

Egypt's Fragile Stability: Erosion of the Rule of Law and Institutions of Governance

ACW Research & Analysis Unit

March 31, 2017



Arab Center Washington DC
المركز العربي واشنطن دي سي

This paper addresses the erosion of the rule of law and institutions of governance in Egypt by discussing the significant expansion of legal repression, the closing of public space, the politicization of justice institutions, and the lack of political accountability. Egypt has witnessed a rise in terrorist attacks and armed insurgency since the second half of 2013, mostly in North Sinai and occasionally in other locations in Egypt. In 2016, the country experienced the highest level of terrorism, which targeted security forces, government officials, and Christians. Maintaining stability and order in the most populous Arab state is a source of concern for the US administration and western governments amid the ongoing upheaval and chaos in many other states in the Arab world. While the threats of terrorism and religious extremism are real and longstanding in Egypt, the Egyptian government and its international partners should consider that the prospect for stability and security in the country cannot be approached in isolation from the domestic conditions of governance and human rights.

Expanding Legal Repression

The state under the rule of President Abdel Fattah El-Sisi has steadily expanded the scope of repression. Drawing on public fears of disorder, state collapse, and threats of violent Islamist groups, the current ruling elite has been able to hold its grip on power and oppress its competitors. The failures of governance in neighboring Arab states and the rise of militant jihadists in Syria, Iraq, and Libya have maximized these fears. Security measures and

legal actions aim not only to stifle the Muslim Brotherhood and supporters of former President Mohamed Morsi, but also to prevent any potential mobilization against the new regime and its policies. Restrictive laws inherited from previous governments as well as new laws, such as the 2013 Assembly Law, have been applied.

The counterterrorism context provided a pretext for the government to impose far-reaching legal measures that go beyond their declared purpose. In August 2015, the president enacted a new anti-terrorism law that contains a vague and overly broad definition of what constitutes a "terrorist act," a law that has been used to effectively criminalize freedom of expression, peaceful assembly, and association. Under it, journalists can be punished if their reporting of so-called terrorist acts contradicts the official version of events. Included in the definition of "terrorist acts" is the "use of ... threat or intimidation ... for the purpose of disturbing public order ... harm[ing] national unity, social peace, or national security." Nonviolent civil disobedience is also classified as a terrorist act, under the prohibition of the occupation or seizure of public properties.

Egyptian authorities have used the vague and broad counterterrorism and security measures to ban political organizations and pro-democracy movements since 2013. Over the past year, well-known journalists and lawyers have been detained and charged with having an affiliation with banned organizations. Moreover, under Law 8/2015 for "Organising

Lists of Terrorist Entities and Terrorists,” decreed by the president in February 2015, the prosecutor can request criminal courts to name individuals or groups, without trial, to the lists for more than three years and subject them to tough measures including freezing their assets and banning their travel. For example, in January 2017, an Egyptian court placed more than 1,500 citizens, including journalists and political critics, on a terrorism watch list without prior notification.

Muzzling Civil Society

A significant crackdown on civil society has been taking place since 2014. Human rights defenders face an extremely challenging situation due to restrictions imposed on civil society and peaceful public gatherings and protests, travel bans, asset freezes, arrest and sentencing of human rights defenders, bloggers, journalists, and protesters, as well as an ongoing smear campaign against human rights groups. In the last few months, the government has targeted several activists and human rights organizations through legal measures and judicial harassment to restrict their work and organize independently. Since May 2016, dozens of workers and labor rights defenders were arrested and charged in connection with peaceful protests and strikes in Cairo, Suez, and Alexandria. Some of those workers were subjected to criminal trials including before a military court.

State repression of student activists has also intensified. According to the Association for

Freedom of Thought and Expression, around 1,181 students were detained, 21 killed, and 65 referred to military trials between 2013 and 2016. In addition, stigmatization and propaganda against pro-democracy activists and human rights defenders have been systematically sponsored by the state and its agents in the media not only to isolate them and undermine their reputation, but also to frighten the public from change and activism.

Climate of Impunity

Forced disappearance has reached an alarming level. The Egyptian Commission for Rights and Freedoms documented 912 cases of forced disappearance from August 2015 to August 2016. This tactic is often used to extract forced evidence in fabricated cases. According to Al Nadeem Centre for Rehabilitation of Victims of Violence, people who have disappeared in Egypt are likely to experience isolation, intimidation, and, quite frequently, torture as a means to extract forced confessions. Torture and ill treatment of detainees and prisoners have been used routinely and with impunity. Al Nadeem Center documented 535 cases of torture in 2016. Poor conditions in prisons and detention facilities have been used to humiliate and punish prisoners and detainees. In September 2016, Human Rights Watch released a report documenting serious abuses against political prisoners in Scorpion Prison which may have contributed to some of their deaths. Military courts have tried at least 7,420 civilians since the president expanded military court jurisdiction in October 2014.

The fight against terrorism in Sinai has inflicted serious harm on the people there; while the state prevents media or human rights observers to access Sinai and independently report about the military operations, scattered testimonies and information obtained from the region are alarming. The Al Nadeem Center recorded 1,234 extrajudicial killings in the Sinai. Human Rights Watch recently said that security forces may have executed, extrajudicially, at least four and perhaps as many as 10 men in January 2017 in North Sinai. According to the organization, "The security forces may have arbitrarily detained and forcibly disappeared the men and then staged a counter terrorism raid to cover up the killings." Between July 2013 and August 2015, Egyptian authorities forcibly evicted thousands of people in Sinai along the border with the Gaza strip after demolishing at least 3,255 residential, commercial, administrative, and community buildings in the area. Human Rights Watch reports, "The Egyptian authorities provided residents with little or no warning of the evictions, no temporary housing, mostly inadequate compensation for their destroyed homes – none at all for their farmland – and no effective way to challenge their eviction, home demolition, or compensation."

Politicization of Justice

Egyptian courts have become a tool for repression of peaceful opposition since the second half of 2013. According to a recent comprehensive report on the state of justice in Egypt, the International Commission of Jurists

(ICJ) states that "an analysis of recent cases, in particular those initiated or decided since the overthrow of President Morsi, demonstrates that Egypt's judges and prosecutors have come to be seen as a primary tool in the repression of political opponents, journalists and human rights defenders." Many independent and critical judges have been subjected to unfair disciplinary measures or removed. This prompted the International Commission of Jurists to state in March 2016 that: "The intensity of Egypt's attacks against individual judges is reaching a frightening level." Certain existing legal loopholes and new legal amendments have enabled the executive to interfere flagrantly in the judicial and prosecution processes and undermine the safeguards and due process provided for accused persons.

One of the major challenges that the judicial system in Egypt faces is the politicized and inefficient performance of the General Prosecutor, who has long been susceptible to heavy political influence from the executive. The politicized and insufficient performance of the general prosecution explains the failure of Egypt's judiciary to provide justice for victims of grave human rights crimes committed during and after the 2011 uprising. The Office of the General Prosecutor enjoys extensive powers in Criminal Procedures Law; it is mandated to collect evidence, conduct interrogations and indictments, and refer accused persons to the courts. The law is lenient in allowing for pretrial detention, which prosecutors and judges have systematically ordered for prolonged periods in most cases related to freedom of expression and

assembly. In May 2016, the Egyptian Initiative for Personal Rights highlighted at least 1,464 persons held in Egyptian prisons pending trials for periods that have exceeded the legal limit.

Egypt has witnessed a significant increase in the politically motivated prosecution and trials of political activists, journalists, trade unionists, and human rights defenders. Many of these trials have been marred by serious irregularities. According to the September 2016 report by the ICJ, “prosecutions have been initiated by prosecutors and, in many instances, continued by judges, where the charges are unfounded . . . Thousands have been convicted following unfair trials and, of them, hundreds have been sentenced to death.”

To influence high profile political trials, the executive established special circuits in January 2014 within ordinary criminal courts to examine cases related to terrorism and national security. These special circuits, whose judges are selected by chief appellate judges, tried leaders and members of the Muslim Brotherhood as well as prominent non-Islamist young political activists like Ahmed Douma and Alaa Abd El-Fattah.

The judicial harassment of most visible Egyptian human rights defenders under the foreign funding case no.173/2012 stands as a clear example of the politicization of justice. Under this case, thirty-seven Egyptian rights organizations have thus far faced charges, with some leaders and staff members charged with “receipt of illegal foreign funding” and “working without legal permission.” As part of

this case, several human rights defenders had been subjected to travel bans or freezes of their personal and/or their organizations’ assets. At least 85 travel ban cases against human rights defenders, journalists, academics, and political activists have been recorded since June 2014. In most of these cases, targeted persons found out that they were under a travel ban only at the airport, without prior notification or having the chance to defend themselves.

Unchecked Executive Powers

The erosion of justice institutions coincided with the increasing unchecked powers of the security apparatus. The political changes following the overthrow of the Muslim Brotherhood in July 2013 benefitted the military and security apparatus. Both institutions have been immune from accountability. The military budget, involvement in the economy, and arms deals continue to be shielded from public scrutiny and the media is not allowed to report independently about them. Egypt’s parliament, elected in 2016, has proved to be structurally incapable of scrutinizing the executive branch; rather, it has become part of the repressive apparatus of the state. The membership of this parliament and its mainstream political alliances were carefully engineered by the president himself and his security aides in 2014 and 2015. It was the goal of the electoral system to create a fragmented parliament that can be easily controlled and mobilized to support the president’s political agenda. Additionally, the parliamentary election was carried out in a non-competitive political setting shaped by

intimidation and harassment of opposition parties, media, and civil society. The leadership of the parliament has tended to intimidate and silence critical parliamentarians, and the parliament approved all repressive laws decreed by the president. Recently, its leadership and members have advocated for amending the constitution to allow the president to run for elections without maximum terms. Moreover, members of parliament have systematically pushed state authorities to prosecute opposition figures, human rights defenders, and critical journalists. In November 2016, the parliament approved a highly restrictive draft NGO law, awaiting ratification by the Egyptian president, which was proposed for discussion on November 14 by 204 parliamentarians.

Conclusion: Threats and Consequences

The ongoing tumultuous transitions in the Arab region have informed us that the survival of a political regime does not guarantee its stability. As noted by Sottilotta, "The notion of stability as regime survival has turned out to be too simplistic, in that it has been incapable of shedding light on the determinants of long-term political stability." Autocratic rulers in the Arab region remained in power for decades but their sudden collapse came with imminent risks with

high price for their societies and the whole region. While Egypt has avoided the dramatic destiny of Syria, Libya, or Yemen, the disruption of its democratic transition and the erosion of the rule of law and justice institutions have escalated many of the intractable security and socioeconomic challenges that Egypt has faced in recent years. The accumulation of grievances against the state and distrust of its governance institutions have created fertile ground for political extremism and violence by "push[ing] alienated Egyptians into the arms of extremist groups, as well as creat[ing] a broader swath of society unwilling to help the army or police defeat them." Moreover, the systematic repression of civil society and closing the public space undermine the development of moderate and liberal political alternatives, which are the most sustainable safeguards against extremist political projects. To conclude, aggravating social and political divisiveness and polarization does not help the fight against terrorism or secure Egypt from tumultuous political changes. It is only through a process of consensus building, reconciliation, and public participation that Egypt can effectively respond to its deep security and socioeconomic challenges.

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