

(Translated from Arabic)

Reply of the Egyptian Government to joint communication AL EGY 7/2016 of 29 July 2016 from the Working Group on Arbitrary Detention and a number of special rapporteurs

Before presenting a detailed reply to the joint communication, the Egyptian Government wishes to emphasize the following:

1. Although all the allegations contained in the communication are of an extremely general nature, devoid of any details, unaccompanied by cogent proof and based on random statistics concerning the alleged violations, which is not in keeping with the working methods of the special procedures mechanism, the Egyptian Government, wishing to maintain a positive working relationship with the mandate holders, has prepared the attached detailed reply concerning, inter alia, the health-related rights of prisoners and the State's endeavours to prosecute individual violations that are discovered and punish the members of the security agencies by whom they were committed, as well as the role of the Ministry of the Interior in the field of human rights and the conditions regulating pretrial detention.

2. Since most of the allegations were undocumented and based on hearsay, you are kindly requested to provide us with the substantiating evidence on which they were based so that they can be investigated, particularly in regard to:

(a) A list of the 60,000 persons who have allegedly been detained since the June 2013 revolution and the cases in connection with which they were arrested;

(b) A list of the cases allegedly involving death at the hands of the security forces outside detention facilities so that those that have not already been investigated can be looked into;

(c) If the cases of torture committed in 2015, including those involving minors, were documented as stated in the communication, the figure should logically be more specific than "between 600 and 700".

3. Each case should be submitted separately and accompanied by all the factual and other details, the dates of the measures taken in connection therewith, and any other information, so that the truth of the matter can be investigated and a full reply can be sent in respect of each communication.

The following points are covered in this reply:

I. Guarantees to ensure that detention in Egypt is in conformity with international standards.

II. Allegations concerning torture and enforced disappearance.

III. Allegations concerning the targeting of civil society organizations.

IV. Guarantees to ensure fair trials in Egypt in conformity with international standards.

V. The trial of civilians before military courts and the extent to which this is compatible with international human rights standards.

VI. The extent to which the legal procedures applied by the military courts are compatible with the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Universal Declaration of Human Rights.

VII. Safeguards concerning the death penalty in the Egyptian legal system.



VIII. The legal principles underlying the right of law enforcement authorities to impose a travel ban.

IX. Allegations concerning violations against minor children

I. Guarantees to ensure that detention in Egypt is in conformity with international standards

The Egyptian Constitution respects the guarantees that persons restricted in their liberty should enjoy, in conformity with article 9 of the International Covenant on Civil and Political Rights, by requiring their appearance before independent judicial bodies. No exceptions to these guarantees are made in counter-terrorism or emergency legislation. In this regard, article 54 of the Constitution stipulates that: “Personal freedom is an inviolable natural right that shall be protected and, except in cases of flagrante delicto, it is not permissible to arrest, search, detain or in any way restrict the freedom of any person save on the basis of a substantiated judicial order required for the purposes of an investigation. Anyone whose freedom is restricted must be immediately notified of the reasons therefor, must be informed of his/her rights in writing, must be immediately enabled to contact his/her relatives and lawyer and must be brought before the investigating authority within 24 hours from the time at which his/her freedom is restricted. The suspect can be questioned only in the presence of his/her lawyer. A lawyer must be appointed for persons who do not have one and the requisite assistance must be provided, in accordance with the legally prescribed procedures, for persons with disabilities. Every person whose freedom is restricted, or any third party, has the right to file a judicial appeal against that measure. A decision must be taken on such appeal within one week from the date on which it is filed; otherwise the person must be released immediately.”

Under article 55 of the Constitution: “Any person who is arrested or detained or whose freedom is in any way restricted must be treated in a manner that preserves his dignity. He may not be tortured, intimidated, coerced or physically or mentally harmed. He may be confined or detained only in places designated for that purpose and which meet humanitarian and health requirements. The State shall provide special facilities for persons with disabilities. Violation of any of these provisions shall constitute a legally punishable offence. An accused person has the right to remain silent and any statement proved to have been made by a detainee under any of the above-mentioned forms of duress, or threat thereof, shall be deemed null and void and shall not be admissible as evidence against him.”

Article 56 of the Constitution further stipulates that: “Prisons are places for reform and rehabilitation. Prisons and places of detention are subject to judicial supervision and actions that are inconsistent with human dignity or which endanger human health are prohibited. The procedures for the reform and rehabilitation of convicted persons and the facilitation of a decent life for them after their release shall be regulated by law.”

In this regard, Egypt’s domestic legislation respects all the safeguards for persons deprived of their liberty, as provided for in international instruments and the Egyptian Constitution. In its capacity as an intrinsic branch of the judiciary entrusted with the effective enforcement of the rule of law, including investigation, indictment, the institution and conduct of criminal proceedings, supervision of the enforcement of judgments and the inspection of prisons in an impartial and independent manner, the Public Prosecution is well aware of the importance of human rights and the relevant obligations of the Arab Republic of Egypt under the binding international instruments that the State has ratified, as well as its moral obligations under instruments the ratification procedures of which have not yet been completed or under the declarations, rules and guidelines adopted by the United Nations. It is therefore one of the principal means of legal redress available to individuals seeking to safeguard their personal and public rights and freedoms.

Under article 40 of the Code of Criminal Procedure, no one may be arrested or detained except by order of the legally competent authorities and any person so arrested or detained must be treated in a manner conducive to the preservation of his human dignity and must not be subjected to physical or mental harm.

Under article 41 of the Code, no one may be detained except in the prisons designated for that purpose and no warden may admit any person into a prison except in

accordance with an order signed by the competent authority, nor may he retain any person therein after the expiration of the period specified in the said order.

Under article 42 of the Code, any member of the Public Prosecution and any president or vice-president of an appellate court or a court of first instance is authorized to visit district and central prisons located within their respective areas of jurisdiction to ensure that no one is detained unlawfully therein; they are entitled to examine the prison records, as well as arrest and detention orders, take copies thereof, communicate with detainees and hear any complaints that they might wish to make; prison wardens and staff are required to provide them with full assistance to obtain any information that they request.

Within the context of the judicial authority's supervision of criminal investigation officers, articles 85 and 86 of the Prisons Regulatory Act No. 396 of 1956 stipulate that the Attorney General and his deputies within their respective areas of jurisdiction, as well as representatives of the judicial authority consisting in the presidents of appellate courts and courts of first instance and investigating judges, have the right of access at any time to the prisons located within the areas of jurisdiction of the courts in which they are serving and the president and vice-president of the Court of Cassation have the right of access to all prisons to ensure that no one is detained unlawfully therein; to that end, they are entitled to examine the prison records and the arrest and detention orders issued, empower representatives of the judicial authority to contact detainees and hear their complaints, and instruct the responsible prison officials to help the representatives to obtain any information that they might request. Since the judicial authority is vested, by law, with the above-mentioned rights, it cannot be claimed that the situation of detainees is deteriorating or that they are not being provided with appropriate living and health conditions while the judicial authority is legally empowered to take any measure that it deems appropriate to meet the requirements of all forms of lawful detention.

Under articles 5 and 6 of the Act, no one may be confined in a prison without a written order signed by the legally competent authority and no one may be retained therein after the expiration of the period specified in such order. Before admitting anyone to a prison, its director or warden or the official responsible for prisoner inductions must be given a copy of the confinement order after signing the original in acknowledgement of receipt. The original must be returned to the person who delivered the prisoner and a copy signed by the person who issued the order must be kept in the prison.

Under article 39 of the Act, persons who are restricted in their liberty are permitted to contact and meet with their lawyers in private after permission has been obtained from the competent judicial authority. The Act also makes provision for the education of persons who are restricted in their freedom by stipulating that the Minister of the Interior, in collaboration with the Minister of Education, must draw up a curriculum for male and female detainees (arts. 28 and 29). A library containing books of a religious, scientific or ethical nature must be established in every prison and inmates are permitted to have books, newspapers and magazines brought in from outside (art. 30). The prison administration also has an obligation to encourage inmates to acquire an education and is required to facilitate the studies of those wishing to pursue further educational courses and permit them to take the requisite examinations in the relevant examination centres (art. 31).

Persons who are restricted in their liberty are entitled to send and receive letters and messages, make telephone calls and receive visits from their relatives, including exceptional visits during religious holidays and whenever deemed necessary; they may also be granted temporary leaves of absence in emergencies or for compelling reasons and are allowed to visit their relatives outside the prison for a period of 48 hours during the pre-release transitional period (arts. 64, 64 bis, 71 and 85 of the Implementing Regulations for the Prisons Act No. 79 of 1961).

With regard to the health-related rights of persons who are restricted in their liberty, under article 33 of the Act every penitentiary or prison must have one or more medical officers, one of whom must be resident, to provide the inmates with health care. If the prison medical officer finds that the treatment facilities required by a prisoner are not available in the prison hospital, he must transfer the prisoner to an external hospital after referring the matter to the Medical Department of the Prison Service. In urgent or

emergency situations, the prison medical officer may take whatever measures he deems necessary to safeguard a prisoner's health (article 37 of the above-mentioned Implementing Regulations). Moreover, State medical facilities are required to treat prisoners at government and university hospitals with a view to ensuring that the health care provided is of a high standard.

In this regard, it is noteworthy that the health care provided in places of detention is regulated within an integrated and graded structure of preventive and therapeutic procedures overseen by a specialized Department of Medical Services which, acting in collaboration with branches of the Ministry of Health, is upholding the right of prison inmates to enjoy the same standard of health care and treatment as that enjoyed by the general public outside the prison.

In order to ensure decent living conditions, cells are provided with supplementary ventilation and water coolers. The full range of protective measures taken includes the cleaning and disinfection of cells and all other detention facilities, longer exercise periods, raising awareness of the dangers posed by diseases and ways to prevent them, and coordination with the Ministry of Health in vaccination campaigns to provide protection against various diseases.

It is noteworthy that police stations and places of detention are being renovated and their optimal holding capacity is being determined in consultation with the Ministry of Health. Social workers are available to cater for the welfare of prisoners and almoners are appointed to encourage them to lead righteous lives and engage in religious observances.

II. Allegations concerning torture and enforced disappearance

The Egyptian legislature has shown great concern to prevent torture and all forms of degrading and inhuman treatment and, to this end, has promulgated numerous constitutional and legal safeguards. Egypt was among the first States to address this issue by signing the Convention against Torture under the terms of Presidential Decree No. 154 of 1986 and the Convention thereby became part of the State's domestic legislation and is applicable as such. The State is therefore committed to the provisions of the Convention and its national Constitution and laws clearly designate all acts of torture as punishable offences.

Under the Egyptian Constitution, dignity is a human right that must not be violated; all forms of torture constitute imprescriptible offences; anyone who is arrested, detained or restricted in his liberty must be treated in a manner that preserves his dignity; no one may be tortured, intimidated, coerced or subjected to physical or mental harm; detention and imprisonment are permitted only in facilities that are designated for that purpose and which meet humanitarian and sanitary standards; the human body is inviolable and any assault thereon or disfigurement or mutilation thereof constitutes a legally punishable offence (arts. 51, 52, 55 and 60). These rules and provisions are binding on all the State authorities and must not be infringed.

The Code of Criminal Procedure forms a legal shield under which rights and freedoms enjoy guaranteed protection against any violation. Criminal prosecution in respect of the offences prejudicial to personal freedoms and physical integrity to which reference is made in articles 117, 126, 127, 282, 309 bis and 309 bis (a) thereof, as well as the offences specified in chapter 1, section II, book two of the Penal Code, is not subject to any statute of limitations.

In section VI of the Penal Code, concerning coercion and ill-treatment by public officials, torture is listed among the offences that must not be committed by members of the public authority (arts. 126, 127, 129, 280, 281 and 282). Article 126 prohibits the torture of a suspect with a view to the extraction of a confession and article 127 stipulates that any public official and any person entrusted with the performance of a public service who orders or personally imposes on a convicted person a penalty harsher than that imposed by the court, or a penalty that was not imposed, is liable to a term of imprisonment.

It must be emphasized that the Public Prosecution investigates all reports that it receives concerning subjection to torture or brutality and takes all the measures required for its criminal investigation thereof. Immediately after receiving and verifying the complaint, the investigator examines the corpse (in the event of death) or the body of the person

allegedly subjected to torture or brutality in order to record any visible injuries. He also inspects the scene of the incident, seizes all the instruments allegedly used to commit the offence and presents the corpse (in the event of death) or the victim of torture to the medical examiner to determine the nature, cause and date of any injuries and the instruments used to inflict them. He also questions any persons who witnessed the incident and everyone in any way responsible for the supervision of the place of detention, after which he collects all the criminal evidence, interrogates the person or persons responsible for inflicting the injuries on the victim, confronts them with the statements of the victim and the witnesses and any other evidence obtained and then prefers charges against them. In the light of the findings of the investigation, the case file is either referred for prosecution or closed on the legally prescribed grounds. The victim has the right to lodge an appeal against a decision to close the case.

In the light of the above, the allegations made are false and unfounded insofar as the Arab Republic of Egypt has a corpus of legislation comprising strict measures to combat offences of torture and punish the perpetrators thereof. Moreover, the State authorities, and primarily the Public Prosecution, investigate such offences in order to identify the perpetrators and prosecute them before the criminal courts with a view to the imposition of deterrent penalties. Consequently, it is totally unacceptable to accuse the Egyptian State authorities of torture since such offences as do occur are merely isolated cases which the State, with all its institutions, is making every endeavour to prosecute and punish. We wish to point out that legal and procedural measures have been taken against members of the security agencies in cases involving torture and brutality and, during the period from 2011 to 2015, more than 29 individuals were tried before the criminal courts and some of them were sentenced to terms of imprisonment.

In this connection, it should be noted that all civilian defendants in cases being heard before military courts are detained in legally authorized civilian facilities supervised by the Public Prosecution. None of them are detained in unauthorized facilities run by the Armed Forces or any other security agency and, quite apart from the fact that there are no facilities for the detention of civilians in military prisons, the Office of the Judge Advocate General exercises oversight to ensure that no violations of the law are committed in this connection.

With regard to the allegations concerning cases of enforced disappearance, reference can be made to Egypt's commendable record in this domain since 2011. The notable proliferation of such allegations following the 30 June 2013 revolution coincided with the escalation in acts of terrorism and the Muslim Brotherhood's habit of submitting spurious and deceptive complaints and false allegations with a view to besmirching Egypt's image in international forums by creating the impression that enforced disappearance is a systematic practice. Such allegations are intended as a means of pressure to secure the release of members of the Brotherhood and divert government agencies from their obligation to prosecute them. An examination of the allegations has shown that most of the complaints relate to terrorists who have been arrested and brought before the competent judicial bodies or who have joined terrorist organizations in or outside Egypt and been identified after their commission of suicide attacks or their death in exchanges of fire with the security forces, while others have left the country illegally from points along the Egyptian coast in order to enter European territory. This clearly refutes the allegations made in this connection.

It is noteworthy that the Ministry of the Interior has established a human rights sector to promote a culture of human rights as a basic component of the Police Code of Conduct in order to make police officers more aware of the constitutional and legal principles concerning the manner in which members of the public should be treated. Numerous training courses have been held to promote this culture.

Many directives have also been issued to ensure that detainees are treated decently and not subjected to any coercive measures which constitute punishable offences and entail criminal, civil and administrative liability on the part of their perpetrators when reports or complaints are received in respect of any incidents involving torture or brutality.

III. Allegations concerning the targeting of civil society organizations

First of all, we would like to point out that Egypt respects the right of its citizens to form political parties, private associations and foundations and trade unions and federations,

which are entitled to conduct their activities in a free and democratic manner and the independence of which is guaranteed by the State in conformity with Egypt's commitment to a number of international instruments emphasizing the need to respect those rights and freedoms, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

These principles are also enshrined in articles 74, 75, 76 and 77 of the Egyptian Constitution which recognize the right of citizens to form political parties, private associations and foundations and trade unions and federations, all of which are entitled to conduct their activities in a free and democratic manner and the independence of which is guaranteed by the State. None of them may be dissolved or placed under receivership except by a court order and administrative authorities are not permitted to interfere in their affairs. Their opinion is sought on bills of law concerning trade unions. The Constitution also takes care to lay down standard rules governing the activity of those associations in such a way as to ensure that they do not engage in political, religious, military, paramilitary or any other form of activity of a secret nature or contrary to the principles of democracy.

Under the terms of the Private Associations and Foundations Act No. 84 of 2002, Egypt undertakes to respect and comply with international treaties and to authorize foreign non-governmental organizations to act as private associations and foundations provided that they obtain a permit from the Ministry of Social Solidarity on the basis of the agreement concluded between those organizations and the Ministry of Foreign Affairs.

A. Domestic legislation governing the activities of private associations and non-governmental organizations in Egypt

The legislation promulgated in this connection shows due regard for all the guarantees provided for in international instruments insofar as it respects the right of Egyptian citizens to form political parties, private associations and foundations and trade unions and federations, which are entitled to conduct their activities in a free and democratic manner and the independence of which is guaranteed by the State in conformity with Egypt's obligations under the international instruments that it has ratified, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which emphasize the need to respect those rights and freedoms.

These principles are also enshrined in articles 62, 65 and 74-77 of the Egyptian Constitution which recognize the right of citizens to liberty of movement, residence and migration. Citizens cannot be prohibited from leaving the territory of the State, nor can they be placed under restricted residence or prevented from residing in a specific location, except under the terms of a substantiated court order. They have the right to form political parties, private associations and foundations and trade unions and federations, all of which are entitled to conduct their activities in a free and democratic manner and the independence of which is guaranteed by the State. None of them may be dissolved or placed under receivership except by a court order and administrative authorities are not permitted to interfere in their affairs. Their opinion is sought on bills of law concerning trade unions. The Constitution also takes care to lay down standard rules governing the activity of those associations in such a way as to ensure that they do not engage in political, religious, military, paramilitary or any other form of activity of a secret nature or contrary to the principles of democracy. No one may be arrested except on the basis of a judicial order required for the purposes of an investigation and issued by the investigating authorities or the competent judge. Article 94 of the Constitution stipulates that the rule of law is the basis of governance in the State; the State is subject to the law; and the independence, immunity and impartiality of the judiciary are basic guarantees for the protection of rights and freedoms.

We find that those rules are in conformity with the provisions of article 12, paragraph 1, of the International Covenant on Civil and Political Rights which stipulates that "everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence". Paragraph 3 thereof further stipulates that "the above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others".

The Private Associations and Foundations Act No. 84 of 2002 applies the rules laid down in international instruments and the Egyptian Constitution by stipulating that it is prohibited for an association's objectives to include engagement in any political activity since, under the provisions of the Political Parties Act, such activity is restricted to political parties (art. 11); no association may under any circumstances receive funds from abroad, regardless of whether the source of such funds is an Egyptian or foreign national, a foreign entity or its representative inside Egypt, nor may it transfer funds to persons or organizations abroad, without authorization from the Minister of Social Affairs (art. 17); an association may be dissolved by a substantiated order from the Minister of Social Affairs if it uses or earmarks its funds for purposes other than those for which it was established, if it receives funds from a foreign entity or transfers them to a foreign entity in violation of the provisions of article 17, if it commits a gross violation of the law or of public order or morals or if the association's real objective is found to be engagement in any of the activities prohibited under article 11 (art. 42).

B. The State's guarantee of freedom of association and assembly

In keeping with its obligations under the Constitution, its domestic legislation and a number of international instruments, the State respects the right of peaceful assembly provided that it is exercised in a manner that is not prejudicial to public security.

1. Article 21 of the International Covenant on Civil and Political Rights, to which Egypt acceded on 4 August 1967 and which it ratified on 14 January 1982, stipulates that no restrictions may be placed on the exercise of the right of peaceful assembly other than those which are necessary in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

2. Basic United Nations principles:

The right of peaceful assembly is guaranteed in article 73 of the Egyptian Constitution which stipulates that citizens have the right to organize public meetings, processions, demonstrations and all forms of peaceful protest without carrying weapons of any kind. The right to peaceful private assembly is likewise guaranteed without any need for prior notification and members of the security forces are not permitted to attend, monitor or eavesdrop on such assemblies.

The Egyptian legislature has regulated the right of peaceful assembly in Act No. 107 of 2013, which stipulates that citizens have the right to organize and participate in peaceful public meetings, processions and demonstrations (art. 1). Prior notification must be given of any meeting, procession or demonstration (art. 8). The purpose of such notification is to regulate the holding of peaceful public meetings, processions and demonstrations, maintain security therein and make provision for any intervention that might be required, if they cease to be peaceful, in order to protect lives, buildings, public order and security, avert any disruption of production or detriment to private interests, ensure that citizens are not harmed, endangered or hampered in the exercise of their rights or activities, and prevent any perversion of the course of justice, obstruction of the functioning of public facilities, blockage of traffic, thoroughfares or communications or any endangerment of or act of aggression against lives or public or private property.

The following provisions of the Act are noteworthy:

Article 1: Citizens have the right to organize and participate in peaceful public meetings, processions and demonstrations in accordance with the rules and regulations laid down in this Act.

Article 5: Public assemblies for political purposes are prohibited in places of worship or the concourses or annexes thereof and it is likewise prohibited to route processions therefrom or thereto or hold demonstrations therein.

Article 6: Participants in public meetings, processions or demonstrations are not permitted to carry any type of weapons, munitions, explosives, fireworks, incendiary substances or other instruments or materials that might harm or endanger persons,

buildings or property, nor are they permitted to wear masks or scarves concealing their facial features in order to commit any such criminal acts.

Article 7: It is prohibited for participants in public meetings, processions or demonstrations to disturb the peace or public order, disrupt or advocate the disruption of production, cause detriment to private interests, harm or endanger citizens or hamper them in the exercise of their rights or activities, pervert the course of justice, obstruct the functioning of public facilities, block land, sea or air traffic, thoroughfares or communications or endanger or commit acts of aggression against lives or public or private property.

Article 8: Anyone wishing to organize a public meeting, procession or demonstration must give prior written notification thereof to the police station or precinct within the jurisdiction of which the venue of the public meeting or the starting point of the procession or demonstration is located. Such notification must be given not less than three and not more than fifteen working days before the beginning of the public meeting, procession or demonstration. This deadline may be reduced to 24 hours if the meeting is being held in connection with elections, in which case the notification must be delivered by hand or through a process server and must contain the following details and information:

1. The venue of the public meeting or the location and route of the procession or demonstration.
2. The time at which the public meeting, procession or demonstration is scheduled to begin and end.
3. Specification of the topic or purpose of the public meeting, procession or demonstration and the demands that the participants therein will be making.

It is evident from the above that the rules and procedures promulgated by the Egyptian legislature to regulate, handle and control public meetings, processions and demonstrations show high regard for the values of freedom of opinion and expression in a manner consistent with international human rights standards and the provisions of the International Covenant on Civil and Political Rights.

IV. Guarantees to ensure fair trials in Egypt in conformity with international standards

Guarantees concerning the Egyptian judicial authority

The judicial authority is regulated in chapter 3 of section V of the Egyptian Constitution, articles 184-197 of which make provision for its independence by stipulating that: judges and members of the Public Prosecution shall be independent and not subject to any authority other than the law; no interference shall be permitted in their work and they shall not be removable from office. The Judicial Authority Act No. 46 of 1972 regulates all matters pertaining to the appointment and functions of judges and members of the Public Prosecution.

1. Judges

The civil and criminal divisions of the courts adjudicate in civil disputes of all types, and in criminal cases involving legally defined offences, in accordance with the law, within the framework of the disputes brought before them, in the light of the constitutionally established principles and in conformity with the rules and procedures laid down in the Code of Civil Procedure applied by the civil courts or the Code of Criminal Procedure applied by the criminal courts. Each of those Codes regulates the levels and types of courts, the scope of their jurisdiction, the levels of appeal against their judgments, means of legal remedy, the procedures for the hearing of cases, the safeguards enjoyed by the parties concerned, and the right of defence. Any person injured by a criminal offence has a legal right to file a civil claim for damages before the criminal court hearing the case if it involves violations of the rights and freedoms of individuals. The structure of the Egyptian judiciary is based on the principle of two levels of litigation and the courts are divided into summary courts, courts of first instance, appellate courts and the Court of Cassation.

2. The Public Prosecution

The Judicial Authority Act defines the Public Prosecution as the legal representative of society for purposes of the institution of criminal proceedings and stipulates that it shall consist of the Attorney General, assistant attorneys general, chief solicitors general, solicitors general, public prosecutors and their deputies, assistants and aides.

The Public Prosecution, being one of the principal authorities responsible for the effective enforcement of the rule of law in general and for the protection of human rights in particular, is one of the main means of legal redress available to individuals seeking to safeguard their personal and public rights and freedoms.

In its capacity as an integral part of the judicial authority, the Public Prosecution investigates criminal offences in an impartial and independent manner in which it exercises its combined investigative and prosecutorial functions. It also supervises prisons and the enforcement of criminal judgments. Its investigative function consists in control of all the investigation procedures, including the questioning of suspects, the hearing of witnesses and the collection of evidence so that it can establish the truth in the cases brought before it, regardless of whether this leads to the acquittal or conviction of the suspects.

Constitutional and legal guarantees in regard to members of judicial bodies and agencies and the Public Prosecution

Constitutional guarantees

- The judicial authority shall be independent and its functions shall be exercised by various types and levels of courts which shall deliver their judgments in accordance with the law. The jurisdiction of the courts shall be defined by law and any interference in judicial affairs or cases shall constitute an imprescriptible offence (art. 184).
- Each judicial body or agency shall manage its own affairs and shall have an independent budget, all the components of which shall be discussed by the House of Representatives. Upon its approval, this budget shall be included in the State budget under one budget line. Each judicial body or agency shall be consulted with regard to bills of law regulating its affairs (art. 185).
- Judges shall be independent and irremovable from office and, in their work, shall not be subject to any authority other than the law. They shall have equal rights and obligations and the conditions and procedures for their appointment, secondment, retirement and disciplinary accountability shall be regulated by law. They may be fully or partly seconded only to the legally designated bodies and for performance of the legally specified functions. The purpose of these provisions is to preserve the independence and impartiality of the judiciary and judges and prevent conflicts of interest. Their guaranteed rights and obligations shall be defined by law (art. 186).
- Court hearings shall be public unless the court decides to conduct them in camera in order to safeguard public order or public morals. In all cases, judgments shall be pronounced publicly (art. 187).
- The judiciary shall have competence to adjudicate in all disputes and offences except those falling within the jurisdiction of other judicial bodies. It shall have sole jurisdiction to settle disputes relating to its own members. Judicial affairs shall be managed by a Supreme Council the structure and jurisdiction of which shall be regulated by law (art. 188).
- The Public Prosecution is an integral part of the judiciary. It shall undertake the investigation and prosecution of criminal cases, except as otherwise provided by law and its other functions shall be regulated by law. It shall be headed by an Attorney General chosen by the Supreme Judicial Council from among the vice-presidents of the Court of Cassation, the presidents of the appellate courts or the assistant attorneys general. He shall be appointed by presidential decree for a four-year term or for any lesser time remaining until he reaches the age of retirement, whichever is shorter, and he shall be so appointed only once during his period of service (art. 189).

Legal guarantees

The Judicial Authority Act No. 46 of 1972 regulates the guarantees and immunities enjoyed by members of the judiciary and the Public Prosecution as follows:

- Appellate courts and courts of first instance may be established and their respective jurisdictions defined or modified only under the terms of a legislative enactment (art. 10).
- The rules governing the competence of the courts shall be specified in the Code of Civil and Commercial Procedure and the Code of Criminal Procedure and the courts must comply therewith (art. 15).
- Court hearings shall be public unless the court decides to conduct them in camera in order to safeguard public morals or preserve public order. In all cases, judgments shall be pronounced publicly (art. 18).
- The working language of the courts shall be Arabic. However, they may hear the statements of non-Arabic-speaking parties and witnesses through an interpreter after the latter has taken the oath (art. 19).
- The distribution and scheduling of their work, the composition of their divisions, the number of their sessions and all other matters relating to their affairs shall be determined at plenary sessions of the court attended by all the judges serving on its bench (arts. 30 and 31).
- The members of the judiciary shall be appointed by presidential decree after approval by the Supreme Judicial Council and may not be transferred, reassigned or seconded except in the circumstances in which such is permitted by law (arts. 52 and 53).
- Members of the judiciary and the Public Prosecution shall not be removable from office (art. 67).
- The Supreme Judicial Council, consisting of the President of the Court of Cassation, the President of the Cairo Court of Appeal, the Attorney General, the two most senior vice-presidents of the Court of Cassation and the two most senior presidents of the other appellate courts, is competent to hear all matters relating to the appointment, promotion, transfer, reassignment, secondment and other affairs of members of the judiciary and the Public Prosecution in the manner prescribed by law.
- Disciplinary action against judges of all grades falls within the jurisdiction of a disciplinary board chaired by the most senior president of the appellate courts who is not a member of the Supreme Judicial Council and comprising the two most senior justices of the Court of Cassation and the two most senior vice-presidents of the appellate courts. Disciplinary proceedings are instituted by the Attorney General, at his own discretion or on the basis of a recommendation by the Minister of Justice or the president of the court on which the judge is serving, and a judge against whom a decision is delivered has the right to contest it by appeal to the Supreme Disciplinary Board, chaired by the President of the Court of Cassation and comprising the three most senior presidents of the appellate courts and the three youngest vice-presidents of the Court of Cassation (arts. 98, 99 and 107).
- The judiciary and the Public Prosecution have an independent annual budget, which is prepared by the Supreme Judicial Council and included as a single budget line in the State budget, in regard to which the Supreme Judicial Council exercises all the functions vested in the Minister of Finance in accordance with the laws and regulations (art. 77 bis (v)).
- The Supreme Judicial Council must be consulted on bills of law relating to the judiciary and the Public Prosecution (art. 77 bis (ii)).
- The above-mentioned regulatory provisions of the Constitution and Egyptian legislation specify the guarantees and immunities granted under the Egyptian legal system in order to ensure the independence of judges and members of the Public

Prosecution and the proper administration of justice through various levels of legally constituted and competent courts the judgments of which can be appealed before a higher judicial body. On the whole, these provisions are consistent with the standards required for the administration of criminal justice as laid down in international human rights instruments and it is clearly evident that there are effective and independent means of judicial remedy in Egypt since anyone whose lawful interests, rights or freedoms have been infringed is entitled to petition the competent judicial bodies, depending on the nature and type of the dispute, to enforce his rights, uphold his claims or award compensation, in accordance with the law, in respect of any harm that he has suffered.

Means of judicial remedy in the Egyptian legal system

In its capacity as an intrinsic branch of the judiciary entrusted with law enforcement, investigation, indictment, the institution and conduct of criminal proceedings, supervision of the enforcement of judgments and the inspection of prisons, the Public Prosecution is well aware of the importance of human rights and the obligations of the Arab Republic of Egypt under the binding international instruments that the State has ratified, as well as its moral obligations under instruments the ratification procedures of which have not yet been completed or under the declarations, rules and guidelines adopted by the United Nations in this regard.

Article 54 of the new Egyptian Constitution promulgated in 2014 stipulates that: “Personal freedom is an inviolable natural right that shall be protected and, except in cases of flagrante delicto, it shall not be permissible to arrest, search, detain or in any way restrict the freedom of any person save on the basis of a substantiated judicial order required for the purposes of an investigation.”

Anyone whose freedom is restricted must be immediately notified of the reasons therefor, must be informed of his/her rights in writing, must be enabled to contact his/her relatives and lawyer and must be brought before the investigating authority within 24 hours from the time at which his/her freedom is restricted. A suspect can be questioned only in the presence of his/her lawyer. A lawyer must be appointed for persons who do not have one and the requisite assistance must be provided, in accordance with the legally prescribed procedures, for persons with disabilities. Every person whose freedom is restricted, or any third party, has the right to file a judicial appeal against that measure. A decision must be taken on such appeal within one week from the date on which it is filed; otherwise the person must be released immediately.

The procedures and grounds for, and the duration of, remand in custody, as well as the circumstances in which the State might be liable for payment of damages in respect of such remand in custody or of any penalty suffered which is subsequently revoked under the terms of a final judgment, are regulated by law.

It is not permissible under any circumstances to prosecute a person accused of an offence punishable by imprisonment unless a lawyer appointed by the accused or by the court is present.

In addition to the above-mentioned article 54, the current Constitution contains the following safeguards:

Article 95: Penalties are personal; there is no crime or punishment except as provided by law; no penalty may be imposed except pursuant to a court judgment and penalties may be imposed only in respect of acts committed subsequent to the entry into force of the legislation under which they were criminalized.

Article 1/1: The Arab Republic of Egypt is a sovereign, united and indivisible State no part of which may be ceded. It has a democratic, republican system based on citizenship and the rule of law.

Article 94: The rule of law is the basis of governance in the State; the State is subject to the law; and the independence, immunity and impartiality of the judiciary are basic guarantees for the protection of rights and freedoms.

Article 184: The judicial authority shall be independent and its functions shall be exercised by various types and levels of courts which shall deliver their judgments in accordance with the law. The jurisdiction of the courts shall be defined by law and any interference in judicial affairs or cases shall constitute an imprescriptible offence.

Article 186: Judges shall be independent and irremovable from office and, in their work, shall not be subject to any authority other than the law. They shall have equal rights and obligations and the conditions and procedures for their appointment, secondment, retirement and disciplinary accountability shall be regulated by law. They may be fully or partly seconded only to the legally designated bodies and for performance of the legally specified functions. The purpose of these provisions is to preserve the independence and impartiality of the judiciary and judges and prevent conflicts of interest. Their guaranteed rights and obligations shall be defined by law.

Egypt's domestic legislation respects all the safeguards for persons deprived of their liberty, as provided for in international instruments and the Egyptian Constitution. No one may be arrested except on the basis of a judicial order required for the purposes of an investigation and issued by the investigating authority or the competent judge. Article 130 of the Code of Criminal Procedure stipulates that, if a suspect who has been summoned to appear fails to do so without a valid excuse, if he has no known place of residence or if he is apprehended in flagrante delicto, the investigating judge may issue a warrant for the suspect to be arrested and brought before him even in cases in which a suspect's remand in custody is not permitted. Under article 127 of the Code, every warrant issued by the investigating authority must contain the suspect's name, surname, occupation and place of residence as well as the charge against him, the date of the warrant, the signature of the judge who issued it and the official stamp. A summons to appear implies that the suspect has an obligation not only to appear but to do so at a specific time, while a warrant for the suspect to be arrested and brought before a judge implies that the public authorities are required to arrest the suspect and bring him before the judge if he refuses to appear promptly and voluntarily. Under article 40 of the Code, no one may be arrested or detained except by order of the legally competent authorities and any person so arrested or detained must be treated in a manner conducive to the preservation of his human dignity and must not be subjected to physical or mental harm.

Anyone who has been detained in violation of the legally prescribed procedures or in a place other than those legally designated for such purpose, or any person who comes to know of such unlawful detention, may notify a member of the Public Prosecution who must proceed immediately to the place of detention, order the detainee's release and investigate the incident. Under article 43 of the Code of Criminal Procedure, any prisoner has the right to submit a verbal or written complaint to the prison warden at any time and request its transmission to the Public Prosecution; the warden is duty-bound to accept it and transmit it immediately after entering it in the prison's record of complaints; anyone who comes to know of a person being detained unlawfully or in a place other than those designated for detention must notify a member of the Public Prosecution who, on being so notified, must proceed immediately to the place where the person is being held, conduct an investigation, order the release of the person being detained unlawfully and draw up a report thereon in accordance with article 41 of the Code which stipulates that "no one may be detained except in the prisons designated for that purpose and no warden may admit any person into a prison except in accordance with an order signed by the competent authority, nor may he retain any person therein after the expiration of the period specified in the said order". Under article 42 of the Code, any member of the Public Prosecution and any president or vice-president of an appellate court or a court of first instance is authorized to visit district and central prisons located within their respective areas of jurisdiction to ensure that no one is detained unlawfully therein; they are entitled to examine the prison records, as well as arrest and detention orders, take copies thereof and communicate with detainees and hear any complaints that they might wish to make; prison wardens and staff are required to provide them with full assistance to obtain any information that they request.

No one may be detained for more than 24 hours without being brought before the competent investigating authorities. Under article 36 of the Code of Criminal Procedure, the criminal investigation officer is required to listen to the statements of the apprehended

suspect without delay and, if such statements fail to exonerate the suspect, must refer him to the competent office of the Public Prosecution within 24 hours.

The Public Prosecution must question the suspect within 24 hours and then order his arrest or release. Under article 131 of the Code, the investigating judge is required to question an arrested suspect immediately and, if this proves impossible, the suspect must be remanded in custody until such time as he can be questioned. The duration of his remand in custody must not exceed 24 hours, after which the prison warden has an obligation to bring him before the Public Prosecution which must immediately request the examining judge to question him. If necessary, it may request the judge of a summary court, the president of a court or any other judge designated by the president of a court to do so; otherwise, it must order the suspect's release.

At the time of his arrest and before being questioned, the suspect must be informed of the charges against him. Article 123 of the Code of Criminal Procedure stipulates that, when the suspect first appears for questioning, the investigator must establish his identity and then inform him of the offence with which he is charged and record his statements in that regard.

Under the Code of Criminal Procedure, a lawyer must be present with the suspect during the investigation proceedings. In cases involving felonies or misdemeanours punishable by a mandatory term of imprisonment, the investigating authorities must appoint a lawyer to assist any suspect who does not have one. It is not permissible to separate the suspect from his lawyer, who has the right to examine all the papers in the case file. Article 124 of the Code stipulates that, except in cases of flagrante delicto or urgent situations in which the investigator records his substantiated fear that evidence might be lost, persons suspected of committing felonies or misdemeanours punishable by a mandatory term of imprisonment must not be questioned or confronted with other suspects or witnesses without their lawyer being invited to attend. The suspect is required to register the name of his lawyer with the clerk of the court or the prison warden or to inform the investigator thereof. Alternatively, this may be done by his lawyer in person. If the suspect does not have a lawyer, or if his lawyer fails to attend after being invited to do so, the investigator must appoint a lawyer *ex officio* and the lawyer may enter in the record any pleas, requests or observations that he might wish to make.

Under article 125 of the Code, the lawyer must be permitted to examine the case file on the day preceding the questioning or confrontation, unless otherwise decided by the judge, and the suspect and the lawyer appearing with him during the investigation must not be separated under any circumstances.

A suspect may be remanded in custody only by order of the competent judge or the investigating authority and after being questioned. The order, which must be substantiated and issued by an official holding a rank not lower than deputy public prosecutor, is temporary and renewable for a specified period on the expiration of which the suspect must be released. Other alternative non-custodial precautionary measures may be taken against the suspect and the Public Prosecution may release a suspect remanded in custody if, at any time, it deems his release to be appropriate in the light of the case file.

Arrest warrants and remand orders issued by the Public Prosecution cannot be executed more than six months after the date of their issuance unless their extension has been approved. Under article 202 of the Code, if the Public Prosecution wishes to extend a remand order it must submit the case file, not less than four days prior to the expiration of the order, to the judge of a summary court so that he can decide whether to issue the requisite extension after hearing the statements of the Public Prosecution and the suspect.

The judge may extend remand in custody for one or more consecutive periods of not more than 15 days totalling a maximum of 45 days. Under article 203 of the Code, if the investigation has not been completed before the expiration of the period of remand in custody specified in the preceding article, the Public Prosecution must submit the case file to the misdemeanours court of appeal sitting in chambers so that it can issue the order that it deems appropriate. Under article 143 of the Code, if the investigation has not been completed and the judge wishes to extend the period of remand in custody beyond the maximum specified in the preceding article, he must submit the case file, prior to the

expiration of the remand order, to the misdemeanours court of appeal sitting in chambers so that, after hearing the statements of the Public Prosecution and the suspect, it can decide whether to extend the order for consecutive periods of not more than 45 days, if so required in the interests of the investigation, or to release the suspect with or without bail. However, if the suspect has already been remanded in custody for three months, the matter must be referred to the Attorney General so that he can take the measures that he deems appropriate to complete the investigation.

The period of remand in custody must not exceed three months unless the suspect has been given prior notice of his referral to the competent court, in which case the Public Prosecution must bring the matter before the court within a maximum of five days from the date of such notice of referral so that action can be taken in accordance with the provisions of article 151, paragraph 1, of the Code, failing which the suspect must be released. If the suspect is charged with a felony, the period of his remand in custody must not exceed five months unless, prior to its expiration, the competent court has ordered its extension for up to 45 days, renewable for one or more similar periods, failing which the suspect must be released.

In all cases, the period of remand in custody during the preliminary investigation stage of the criminal proceedings must not exceed one third of the maximum custodial penalty, i.e. it must not exceed 6 months in the case of misdemeanours, 18 months in the case of felonies and 2 years if the penalty prescribed for the offence is life imprisonment or capital punishment. However, if a penalty of capital punishment has been imposed, the Court of Cassation or the court to which the case is referred for retrial may order the convicted person's remand in custody for a renewable period of 45 days without being limited by the periods specified in the above-mentioned paragraph of that article.

The Code of Criminal Procedure also regulates the manner in which suspects can file appeals against remand orders issued against them. Under article 164, only the Public Prosecution can appeal an order for the provisional release of a person suspected of committing a felony, while the suspect has the right to appeal an order for his remand, or the extension of his remand, in custody. Under article 166, the time limit for appeal is set at 10 days from the date of issuance of the order in the case of the Public Prosecution and from the date of its notification in the case of other parties, except in the circumstances specified in paragraph 2 of article 164. Such appeals must be heard within 48 hours from the date on which they are filed. A suspect may file an appeal at any time and, in the event of its rejection, has the right to file a new appeal 30 days after the date on which his initial appeal was rejected.

In all cases, appeals against remand orders, their extension or provisional release of the suspect must be heard within 48 hours from the date on which they are filed, failing which the suspect must be released. One or more divisions of the court of first instance or the criminal court are competent to hear appeals against such orders for the remand in custody or provisional release of the suspect and the decisions taken in chambers in this regard are final.

Any person who, after being remanded in custody, is subsequently acquitted is entitled to compensation in respect of the period of time spent in custody. Under article 312 bis of the Code, the Public Prosecution is required to publish every final judgment acquitting a person who has been remanded in custody, as well as every decision of non-lieu, in two daily newspapers with a wide circulation at the Government's expense. In both cases, such publication is effected on the basis of a request from the Public Prosecution or from the suspect or any of his heirs, with the approval of the Public Prosecution, in the case of decisions of non-lieu. The State is endeavouring to secure the right to financial compensation in respect of previous remand in custody in both such cases in accordance with rules and procedures to be promulgated in a special legislative enactment.

V. The trial of civilians before military courts and the extent to which this is compatible with international human rights standards

A. The constitutional status of the Egyptian military judiciary

Article 204 of the Egyptian Constitution of 2014 stipulates as follows:

“The military judiciary is an independent judicial body vested with sole jurisdiction to adjudicate in all criminal cases involving the Armed Forces, military officers and other ranks or offences committed by General Intelligence personnel in the course of the performance of their official duties or as a result thereof. A civilian may be prosecuted before a military court only in respect of offences constituting a direct act of aggression against military facilities, camps of the Armed Forces or the like, military zones or border areas designated as military zones or against the Armed Forces’ equipment, vehicles, weapons, munitions, documents, military secrets, public property or military factories, offences relating to military conscription or offences constituting a direct act of aggression against officers or other ranks of the Armed Forces by reason of their performance of their official duties. These offences, as well as the other functions of the military judiciary, shall be specified and defined by law. Members of the military judiciary shall be independent and irremovable from office and shall have all the guarantees, rights and obligations prescribed for members of the judicial authority.”

Accordingly, under the Egyptian Constitution the military judiciary is an independent judicial body competent to hear and adjudicate cases involving specific offences and its guarantees and immunities, as well as the rules governing the appointment of its members, are the same as those applicable to members of the judicial authority.

B. The legislative and legal status of the Egyptian military judiciary

Act No. 25 of 1966 promulgating the Code of Military Justice, as amended, contains the following articles:

Article 1: The military judiciary is an independent judicial body comprising military courts and prosecution offices and other judicial branches governed by the laws and regulations pertaining to the Armed Forces. The military courts have exclusive competence to hear cases involving offences falling within their jurisdiction, as defined herein, and other offences in which it has jurisdiction under the provisions of any other legislative instrument. Oversight of the military judiciary is exercised by a commission in the Ministry of Defence.

Article 2: Military courts consist of a president and a sufficient number of members meeting not only the requirements laid down in Act No. 232 of 1959, defining the conditions governing the service and promotion of officers of the Armed Forces, but also the requirements stipulated in article 38 of the Judicial Authority Act No. 46 of 1972. Holders of posts in the military judiciary enjoy the same standing as their peers in the ordinary judiciary and the Public Prosecution, as specified in the implementing regulations annexed hereto.

Article 3: Military judges are independent and, in their administration of justice, are subject to no authority other than the law. Officers of the military judiciary, with the exception of military prosecutors holding the rank of first lieutenant, are removable from office only through the disciplinary procedure provided for in Act No. 232 of 1959 defining the conditions governing the service and promotion of officers of the Armed Forces and they perform the same duties as those required of ordinary judges and members of the Public Prosecution under the provisions of the Judicial Authority Act. Except in cases of flagrante delicto, an officer of the military judiciary may not be arrested and remanded in custody without the approval of the Military Judicial Commission.

Article 25: The Military Prosecution Service is headed by a Judge Advocate General holding a rank not lower than brigadier general, assisted by a sufficient number of members holding a rank not lower than first lieutenant and meeting not only the requirements laid down in articles 38 and 116 of the Judicial Authority Act No. 46

of 1972 but also the requirements stipulated in Act No. 232 of 1959 defining the conditions governing the service and promotion of officers of the Armed Forces.

Article 28: In addition to the functions assigned to it under the provisions of this Act, the Military Prosecution Service shall perform the functions and exercise the powers of the Public Prosecution, investigating judges and urgent applications judges under the ordinary law.

Article 43: The military courts consist of: the Supreme Military Court of Appeal, the Supreme Military Court, the higher military district courts and the military district courts, all of which are competent to hear the cases brought before them in accordance with the law.

Article 66: After the case is entered in the record by the clerk of the court, the president of the court shall summon the prosecutor, the parties and the witnesses to attend a hearing on a fixed date.

Moreover, the military judiciary enjoys all the guarantees and immunities granted to the ordinary judiciary and is subject to oversight by the Ministry of Defence only on administrative matters. The appointment of military judges is governed by the same conditions as those applicable to ordinary judges and they enjoy the same guarantees and immunities as those accorded to members of the judicial authority. They are irremovable from office, like their civilian counterparts. Their court proceedings are regulated by the Codes of Criminal and Civil Procedure and the fair trial guarantees and all the rights of defence are respected during their hearings. The judgments that they deliver at all levels of litigation are subject to appeal before the Supreme Military Court in accordance with the rules and procedures concerning appeal in cassation as specified in Act No. 57 of 1959.

Accordingly, the military judiciary enjoys the same independence and impartiality as the ordinary judiciary.

VI. The extent to which the legal procedures applied by the military courts are compatible with the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Universal Declaration of Human Rights

Article 14 of the International Covenant on Civil and Political Rights reads as follows:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

An examination of the provisions of the International Covenant on Civil and Political Rights shows that they do not exclude the referral of cases to military courts; they merely affirm the right of the accused to resort to his “natural judge”, who is customarily defined as any judge whose competence was established by law, on a permanent basis, at a time prior to the initiation of the legal proceedings. The bench must consist of judges who are specialized in law and fulfil all the legally stipulated conditions and safeguards including, in particular, full independence and irremovability from office, and the court must apply the law in its formal and substantive proceedings and respect all the rights and guarantees in regard to defence.

The military judiciary, in its capacity as a branch of the judicial authority, consists of judges whose independence, impartiality and legal expertise meet the standards required of a natural judge. The military courts were established and their competence was defined by law prior to the initiation of the proceedings; they apply the Code of Criminal Procedure and respect all the rights and safeguards enjoyed before the ordinary courts in a manner consistent with the relevant international instruments.

The same principles are found in the provisions of the Universal Declaration of Human Rights, article 10 of which stipulates that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.

The provisions governing the military judiciary which we have outlined above clearly illustrate its independent and impartial nature and the respect that it shows for all the requisite safeguards.

VII. Safeguards concerning the death penalty in the Egyptian legal system

First of all, we wish to emphasize the Arab Republic of Egypt’s full commitment to, and respect for, all the international instruments that it has ratified in this regard. Its domestic legislation is consistent with the provisions of those instruments, and particularly the provisions of article 6 of the International Covenant on Civil and Political Rights under which: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

In countries that have not abolished the death penalty, it may be imposed only in respect of the most serious crimes under the legislation in force at the time of their commission, unless otherwise stipulated in above-mentioned International Covenant or the Convention on the Prevention and Punishment of the Crime of Genocide, and only under the terms of a final judgment delivered by a competent court.

As already indicated, the right to life is one of the most fundamental and inherent human rights and violations thereof fall within the category of the most serious, violent and grave offences under the Egyptian Penal Code in respect of which, in specific aggravating circumstances, the death penalty (deprivation of life) may be imposed on the perpetrators, pursuant to a final court judgment in respect of an offence punishable by such a penalty at the time of its commission, in accordance with the Constitution. The death penalty is not applicable to persons who were under 18 years of age at the time of their commission of the offence. These legal safeguards are fully consistent and in conformity with the international standards laid down in article 6 of the International Covenant on Civil and Political Rights of 1966 and the Convention on the Rights of the Child of 1990 to which Egypt is a party.

In keeping with Egypt's above-mentioned international and constitutional obligations, Egyptian legislation contains numerous safeguards that must be observed in cases in which the death penalty is applicable. These are illustrated by the following:

- The members of the public and military prosecution are responsible for investigating, referring and prosecuting all offences before all levels of courts in accordance with the rules, procedures and safeguards prescribed in the Code of Criminal Procedure. In the Egyptian legal system, they form part of the judicial authority and the military prosecution, enjoy the same judicial immunities as judges and are irremovable from office. This is consistent with the rules adopted by the United Nations Congresses on the Prevention of Crime and the Treatment of Offenders.
- Offences punishable by imprisonment or the death penalty are heard by the criminal courts which are one of the highest levels of judicial jurisdiction.
- In their criminal investigations and prosecutions, the public and military prosecutors and the criminal courts apply all the principles, procedures and safeguards for a fair trial in accordance with the Constitution and the Code of Criminal Procedure under which they are required to appoint attorneys to defend accused persons lacking legal counsel. Any violation of the right of defence constitutes a legal ground for annulment and cassation of the judgment and a retrial.
- Judgments may be appealed either by the Public Prosecution or the convicted person in accordance with article 46 of Act No. 57 of 1959 concerning appeal procedures before the Court of Cassation and, in the circumstances specified in articles 441 et seq. of the Code of Criminal Procedure, a retrial may be requested before the court that delivered the judgment.
- In particular, the public and military prosecutions have a legal obligation to refer a death sentence handed down in the presence of the accused to the Supreme Court, even if the person sentenced has not filed an appeal, in order to make sure that the law has been applied in a proper manner and with due regard for the standards concerning the effective enforcement of the safeguards for a fair trial. Such sentences are reviewed within the context of the legally prescribed grounds for appeal in cassation, namely improper application or breach of the law, failure to respect the right of defence or flawed substantiation of the judgment. If any such defects are found, the Supreme Court must annul the judgment and order a retrial before a division other than that which heard the appeal.
- If the judgment is upheld by the Supreme Court, the case file containing the final judgment and death sentence must be referred to the President of the Republic so that he can exercise his constitutional right to grant a pardon or commute the penalty.
- In conformity with the Convention on the Rights of the Child and article 112 of the Children's Act No. 12 of 1998, the death penalty cannot be imposed on a person

who was under 18 years of age at the time of commission of the offence. Juvenile offenders are tried before the juvenile courts established pursuant to that Act and are liable to the lesser penalties prescribed therein.

- In accordance with article 395 of the Code of Criminal Procedure, legally prescribed death sentences and other penalties imposed in absentia in cases involving felonies are regarded as suspended and are extinguished and deemed null and void as soon as the convicted person is arrested or appears of his own accord before they become statute-barred. In such an eventuality, the case must be retried and the court cannot impose a penalty more severe than that imposed in absentia.

The above-mentioned safeguards provided in Egypt's legal system are a clear indication of its full commitment to all the international standards pertaining to criminal justice and a fair trial in accordance with the provisions of the Egyptian Constitution and the international human rights instruments to which Egypt is a party.

VIII. The legal principles underlying the right of law enforcement authorities to impose a travel ban

Article 59 of the Egyptian Constitution stipulates that: "Everyone has the right to a safe life. The State shall provide security and peace of mind for its citizens and all persons residing in its territory."

Article 62 thereof further stipulates that: "Freedom of movement, residence and emigration shall be guaranteed. No citizen may be expelled from the territory of the State or prevented from returning thereto. No citizen may be prevented from leaving the territory of the State, placed under house arrest or prohibited from residing in a designated location except under the terms of a substantiated judicial order, for a fixed period of time and in the circumstances specified by law."

Travel bans are governed by Ministerial Decision No. 54 of 2013, regulating the situation of persons prohibited from travelling on grounds of imperative considerations of national security or the interests of an investigation, article 1 of which stipulates that natural persons may be included on the lists of those prohibited from travelling solely on the basis of an enforceable court judgment or order or at the request of the Attorney General or an investigating judge.

Accordingly, travel bans may be imposed by judicial authorities if so required by the interests of an investigation. The Act also regulates the manner in which appeals may be filed against such bans.

IX. Allegations concerning violations against minor children

Article 80 of the Egyptian Constitution of 2014 stipulates as follows:

"Anyone under the age of 18 shall be considered a child. Every child shall have the right to a name, identity documents, free compulsory vaccination, health and family or alternative care, basic nutrition, safe shelter, religious education, and emotional and cognitive development.

The State shall guarantee the rights of children with disabilities, their rehabilitation and their integration in society.

The State shall provide children with care and protection against all forms of violence, abuse, maltreatment and commercial and sexual exploitation.

Every child shall be entitled to acquire early education in a children's centre until the age of 6. It is prohibited to employ children before the age of completion of their basic education (six years of primary and three years of preparatory) or in occupations which expose them to danger.

The State shall also develop a judicial system for child victims and/or witnesses. Children may not be held criminally accountable or detained save as provided by law and for the period of time specified therein. In such a case, they shall be provided with legal assistance and detained in appropriate locations separate from those allocated for the detention of adults.

The State shall endeavour to ensure the best interest of children in all measures taken against them.”

The Egyptian Children’s Act is therefore proactively providing all forms of care for children, protecting them and creating circumstances conducive to all aspects of their proper upbringing within a framework of freedom and human dignity.

Article 3 of the Act guarantees the following principles and rights:

(a) The child’s right to life, survival and development in a cohesive and mutually supportive family environment and to enjoy various preventive and protective measures against all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse;

(b) Protection against any form of discrimination by reason of the child’s place of birth, parentage, gender, religion, origin, disability or other status, and guarantee of effective equality among children in regard to the enjoyment of all their rights;

(c) The child’s right to form his or her own views and to access the information needed to form those views, and the right to express them and to be heard in all matters affecting the child, including judicial and administrative proceedings, in a manner consistent with the procedural rules of national law.

Protection of the child and his or her best interests must be accorded precedence in all decisions and measures affecting children, regardless of the body by which they are issued or applied.

Stages of the child’s criminal responsibility

It is noteworthy that, under the provisions of the Children’s Act, the stages of the child’s criminal responsibility in respect of the commission of a felony or misdemeanour are defined as follows:

1. A child under 7 years of age bears no criminal responsibility whatsoever.
2. A child over 7 but under 12 years of age may be sentenced by a juvenile court to only one of the following measures: a reprimand, delivery into parental care, placement in a medical facility or placement in a social care institution;
3. In addition to the four above-mentioned measures, a child over 12 but under 15 years of age may be placed on probation or ordered to perform community service;
4. A child over 15 but under 18 years of age cannot be sentenced to death, life imprisonment or penal servitude.

A child under 15 years of age who has committed two or more offences can be sentenced to only one appropriate measure, regardless of whether the other offence or offences were committed prior or subsequent to the sentence.

Conditions which, under the provisions of the Act, must be observed when ordering measures

- If the measure chosen involves enrolment in a training and rehabilitation facility, the court order must stipulate that the child is to be entrusted to an industrial, commercial or agricultural institution that agrees to provide training, appropriate to the child’s circumstances and in a manner that does not impede the child’s regular school attendance for the purpose of basic education, for a period specified by the court which must not exceed three years.
- If the measure chosen involves specific obligations determined by the Minister of Social Affairs, such as non-frequentation of certain types of establishments or a requirement that the child present him or herself before a specific body or persons or attend guidance counselling on a regular basis, the duration thereof must amount to not less than six months and not more than three years.

- If the measure chosen involves judicial probation, the child is placed in his or her natural environment under guidance and supervision, without prejudice to the obligations specified by the court, for a period not exceeding three years.
- If the measure chosen involves community service, this must be performed in a manner that is not detrimental to the child's physical or psychological health. It can be performed, for example, in public libraries close to the child's place of residence, in care facilities for the elderly or persons with disabilities or in orphanages, on four conditions:
 1. The work must be of social benefit.
 2. It must not be prejudicial to the child's dignity.
 3. It must not be detrimental to the child's physical or psychological health.
 4. It must promote the child's emotional sense of belonging.

In all cases, due regard must be shown for the best interests of the child.

- If the measure chosen involves placement in a specialized medical facility, the court is required to stipulate in its judgment that the child is to be placed in such a facility in order to receive the care required by his or her condition and a medical report thereon must be submitted to the court. The court may monitor the condition of the child under treatment at periodic intervals of not more than one year.
- If the measure chosen involves placement in a social care institution, the institution must be among the childcare facilities run by the Ministry of Social Solidarity or a body recognized by the Ministry. If the child concerned has a disability, he or she must be placed in a facility appropriate to his or her condition and the court is required to monitor the child's situation by means of a report submitted to it by the facility at two-monthly intervals so that the measure can be terminated or replaced by one that is more appropriate. The court may order such placement only as a last resort and must not specify the duration thereof in its judgment, bearing in mind that, in accordance with the provisions of article 107 of the Children's Act, it should not exceed 10 years in respect of felonies or 5 years in respect of misdemeanours.

Maximum penalties and the possibility of their commutation

A child over 15 years of age who commits an offence punishable by capital punishment, life imprisonment or penal servitude may be sentenced only to a term of imprisonment. If the offence is punishable by a term of imprisonment, the child may be sentenced to a term of not less than three months' detention, which the court may commute to a placement order.

In the case of a child over 15 years of age who commits a misdemeanour punishable by a term of detention, the court may commute the prescribed penalty to a probation, community service or placement order.

Segregation of child offenders from adults

It is prohibited to detain or imprison children in the same place as adult offenders. During their detention, children must be separated into categories in accordance with their age and sex and the type of offence committed. Any public official or person assigned to perform a public service who holds in custody, detains or imprisons a child together with one or more adults in the same place shall be liable to a penalty of detention for a term of three months to two years and/or a fine of 1,000-5,000 Egyptian pounds.

Increase in the minimum penalty if the offence is committed against a child

The minimum penalty prescribed for any offence is doubled if the offence is committed against a child by an adult, by one of the child's parents, by the child's legal or testamentary guardian, by a person responsible for the child's supervision or upbringing or

by anyone exercising authority over the child or employed in the service of any of the said persons.

Prohibition of disclosure of the child's identity

Without prejudice to any more severe penalty prescribed in other legislation, anyone who publishes or discloses through a media platform any information, details, sketches or photographs revealing the identity of a child brought before the authorities responsible for children at risk or in conflict with the law is liable to a fine of 10,000-50,000 Egyptian pounds.

Procedures for the questioning of children by the Public Prosecution

(a) Treatment of child witnesses

At all stages of investigation, questioning, trial and enforcement, child victims and child witnesses have the right to be heard and to be treated with dignity, compassion and full respect for their physical, psychological and moral integrity, as well as the right to protection, health and social care, legal assistance and social reintegration in conformity with the United Nations Guidelines on Justice for Child Victims and Witnesses of Crime.

(b) Treatment of child suspects

Children under 12 years of age are not held criminally responsible since they are incapable of distinguishing between right and wrong and, therefore, cannot be interrogated in the manner provided for in the Code of Criminal Procedure due to their inability to understand the nature and consequences of their acts.

However, their statements can be heard and they can be asked about the circumstances and evidence of the incident in the form of questions to which they are able to reply and the purport of their statements is entered in the record of the investigation in the light of their abilities and general comprehension as defined in the international standards that Egypt has accepted.

Children are delivered into the custody of a parent or guardian for safekeeping and presentation on demand since this measure is unrelated to the provisions concerning criminal responsibility.

Children over 12 but under 15 years of age may be interrogated but not remanded in custody. The public prosecutor may order the child's placement in a surveillance centre, if the circumstances of the investigation so require and subject to presentation on demand, for a period of up to one week. If the public prosecutor wishes to extend this period, the case file must be submitted to the juvenile court before its expiration so that an order can be issued for its extension in accordance with the provisions of the Code of Criminal Procedure concerning remand in custody. As an alternative to the above-mentioned placement order, the public prosecutor may order the child's delivery into the custody of a parent or guardian for safekeeping and presentation on demand.

Children over 15 but under 18 years of age may be interrogated and their remand in custody is subject to the normal procedures, with the proviso that children may not be held in custody, detained or imprisoned in the same place as adults.

In cases involving felonies or misdemeanours punishable by a mandatory term of detention, a child must have a defence counsel during the investigation and trial and, as stipulated in the Code of Criminal Procedure, if the child has not chosen a lawyer, the public prosecutor or the court must appoint one. The child's right to defence counsel during investigation and trial was initially restricted to cases involving felonies punishable by a term of detention but was subsequently extended to include misdemeanours.

Regulations governing the remand in custody of children

Children under 15 years of age cannot be remanded in custody and the Public Prosecution is permitted to place them in a surveillance centre, if the circumstances of the investigation so require and subject to presentation on demand, for not more than one week unless the court extends the placement order in accordance with the regulations governing remand in custody as laid down in the Code of Criminal Procedure. As an alternative to a

placement order, the child may be delivered into the custody of a parent or guardian for safekeeping and presentation on demand. Failure to present the child on demand is punishable by a fine of up to 100 Egyptian pounds.

Prosecution of children

The juvenile court consists of a panel of three judges and two sociologists, at least one of whom must be a woman. The appellate court consists of a panel of three judges, at least two of whom must hold the grade of court president, and two sociologists, at least one of whom must be a woman.

Procedures for the trial of children

The trial must be attended by two sociologists, at least one of whom must be a woman, who are required to present a report before the judgment is delivered. The child is entitled to legal assistance and must have a defence counsel in cases involving felonies or misdemeanours punishable by a mandatory term of detention.

Only the child's relatives, witnesses, lawyers, probation officers and persons with special authorization from the juvenile court are permitted to be present during the trial proceedings.

Before delivering its judgment, the court must discuss the content of the report with the sociologists who drafted it and may order further examinations. Civil actions cannot be brought before a juvenile court.

Procedures governing the delivery and appeal of judgments

Judgments ordering measures against children are enforceable.

All proceedings which, by law, must be made known to the child and all judgments delivered in connection therewith must be notified to one of the child's parents, the guardian or the person responsible for the child, all of whom are entitled to institute the legally prescribed appeal proceedings in the child's interest.

Periodic visits are made to places of detention.

The president of the juvenile court, or a juvenile judge or an expert delegated by the president, visits surveillance, training, rehabilitation, social care and specialized medical institutions, as well as correctional and other facilities collaborating with the juvenile court and located within its area of jurisdiction, at least once every three months to verify that they are fulfilling their rehabilitation duties and helping the child to reintegrate into society. The president of the juvenile court is entitled to send a report containing his observations to the competent child protection committee so that it can take the requisite action thereon.

A probation officer is assigned to supervise implementation of the above-mentioned measures, extend or commute them as required, keep the child under surveillance and offer guidance to the child and the persons responsible for the child's upbringing. The probation officer is also required to submit periodic reports to the juvenile court on the child under his or her supervision.

The custodial penalties imposed on children are served in special correctional facilities which are regulated by the Minister of Social Solidarity in agreement with the Minister of the Interior. When the child reaches the age of 21 years, the penalty or the remaining period thereof is served in a public prison. However, it may continue to be served in the same correctional facility if this would not entail any risk and provided that the remaining period of the penalty does not exceed six months.

Following the above review, we wish to draw attention to the fact that the Egyptian State is suffering from a ferocious wave of terrorism which is threatening its citizens' right to life. Some terrorist groups, and particularly the Muslim Brotherhood, have adopted violence as a means to undermine the State and they are using Egypt's human rights record as a means of active political polarization in an attempt to put the State under substantial pressure by exploiting individual incidents with a view to giving the impression that the State is violating human rights and freedoms. Consequently, the validity and credibility of their claims and allegations should be carefully examined from the legal and factual

standpoints. The information contained in the communication to the effect that thousands of persons have been imprisoned without being formally charged or tried, that many members of the terrorist Muslim Brotherhood group as well as journalists, human rights defenders, dissidents and political activists have been arrested, that thousands have been detained for political reasons, that the Egyptian security forces have used excessive force against demonstrators, that there are dozens of reports of alleged cases of arbitrary detention in Egypt, and that children have been arrested, detained, ill-treated and physically abused, is unreliable and unsubstantiated. The few details provided concerning victims which might appear to be sufficient to document certain incidents are not verifiable and the allegations were based solely on hearsay from unknown sources, without requesting the investigating authorities to check their validity, which casts considerable doubt on the truth of those allegations. This is incompatible with the principles that should be observed to ensure the investigation of human rights violations in a professional manner. By way of example, we wish to point out that an examination of the cases of ██████████ and Hosni Talaat Mohammad al-Naggar has shown that the first defendant was charged with participation in an unauthorized public demonstration and damage to property and the second was charged with membership of the terrorist Muslim Brotherhood group. Moreover, the allegations made in their regard were not properly substantiated on sound legal grounds and conclusions consistent with international practice. The communication failed to explain the manner in which the validity of the allegations had been assessed and the facts substantiated since it did not give a clear description of the facts, nor did it specify the logical causality and chronological sequence of the evidence relating thereto which needs to be ascertained, particularly in cases in which there is no other way to contest the truth or validity of such evidence. In addition, the allegations were based on highly generalized facts, without giving sufficiently clear details of specific cases or incidents so that the competent authorities in the State could reply to individual cases. In this regard, the Egyptian authorities draw attention to the apparently deliberate vagueness of the details and the exaggerated and irrational numbers of persons involved. With regard to the alleged violations committed against persons accused and tried in criminal cases, no reference was made to the numbers under which those cases were registered.
