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Committee against Torture

Information received from Egypt on follow-up to the concluding observations on its fifth periodic report*

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* The present document is being issued without formal editing.

I. Reply to paragraph 12 (e) of the concluding observations

1. First of all, the Government of Egypt wishes to make it clear that the state of emergency was lifted throughout the country in October 2021 and that the Emergency Act No. 162 of 1958 has not been applied since then. Moreover, even when the provisions of the Act are applicable, all legally unjustified forms of deprivation of liberty are prohibited in all circumstances and that fundamental rights and freedoms continue to be guaranteed. The Government also wishes to point out that the declaration of a state of emergency is not per se contrary to the international obligations of Egypt, as long as there is a legitimate need for the declaration and as long as the exceptional measures envisaged under a state of emergency are not applied in an arbitrary manner by the governing authorities. This state of affairs is consistent with article 4 of the International Covenant on Civil and Political Rights which, in time of public emergency, authorizes States parties to take measures derogating from their obligations under the Covenant. The same principle is enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), the American Convention on Human Rights and the European Social Charter.

2. The issue of the constitutionality of the Act was brought before the Supreme Constitutional Court, which concluded that it is constitutional and ruled that an emergency is to be declared only in order to address circumstances that menace the national interest and the potential consequences of which require exceptional action because the measures normally taken by the State would be inadequate.[1] The state of emergency is thus a special regime that aims to support the executive branch by vesting it with the authority to limit public rights and freedoms with the aim of facing emergency circumstances that threaten public safety or national security, such as war, foreign threats, disturbances that threaten internal security, pandemics and similar situations that have an intimate bearing on public safety and national security. In that respect, it is an entirely exceptional measure designed to achieve a specific goal; it may not be more enforced broadly and a narrow interpretation of its provisions must be adhered to.[2] The fact that the Emergency Act was enacted under the Constitution does not mean that it can be used to violate other provisions of the Constitution. On the basis of the Court's ruling, administrative detention orders are no longer allowed and persons can be imprisoned only under a judicial warrant. issued by the State Prosecution Office or the competent court.

3. It is also important to note that the Emergency Act is not lacking in references to international documents, notably general comment No. 29 of the Human Rights Committee on states of emergency under article 4 of the International Covenant on Civil and Political Rights, which addresses the safeguards that must surround any exceptional measures taken by States during a state of emergency. These include the requirement that an emergency be declared via official channels to meet a crisis which threatens the life of society and that the exceptional measures be applied within the narrowest limits necessary to confront the situation facing the nation. The Government wishes to make it clear that the state of emergency in Egypt duly fulfilled those safeguards, as will be shown hereafter.

4. As regards the requirement for a state of emergency to be declared via official channels, the relevant procedure is regulated by the Constitution of Egypt, which requires that the decree installing a state of emergency be brought before the House of Representatives – i.e., the elected legislative authority – where it needs the approval of a majority of members. Moreover, a state of emergency may not exceed three months, renewable for one similar period.

5. The Emergency Act sets forth the reason for which a state of emergency is to be declared – "if public security and public order is endangered in the territory of the Republic or in part thereof" – and lists some examples that would constitute such a danger, such as "war or the possibility of war, disturbances that threaten internal security, public catastrophes or epidemics".

[1] Supreme Constitutional Court, case No. 1 of judicial year 15, sitting on 30 January 1993.

[2] Supreme Constitutional Court, case No. 74 of judicial year 23, sitting on 15 January 2006.

6. As for the concern that a state of emergency be temporary, the Government wishes to point out that the continuation of the state of emergency is primarily related to the reason that led to the declaration in the first place. With the end of the wave of terrorist attacks that had been affecting the country since 2013, the authorities were able to announce the end of the state of emergency in 2021, as indicated above.

7. Despite the fact that Egypt had been the theatre of bloody terrorist incidents since 2013, the state of emergency was declared only in 2017 following particularly brutal terrorist attacks, some of which targeted of places of worship, including churches, across the country, killing numerous citizens and giving rise to a condemnation from the United Nations Security Council.[3] A number of other terrorist operations led to seven separate statements of condemnation from the Security Council.[4]

8. Attacks continued to be committed by terrorist groups even after the declaration of the state of emergency, causing Egypt to be ranked eleventh among countries affected by terrorism on the Global Terrorism Index in 2018[5] and 2019.[6] Most notable among these was the attack that targeted the National Cancer Institute in 2019, also condemned by the Security Council, which underlined "the need to hold perpetrators, organizers, financiers and sponsors of these reprehensible acts of terrorism accountable and bring them to justice", and urged all States, "in accordance with their obligations under international law and relevant Security Council resolutions, to cooperate actively with the Government of Egypt and all other relevant authorities in this regard."[7] There can be no doubt, then, that the Government imposed the state of emergency to confront and obviate the danger posed by the deadly terrorist attacks which were taking place at the time of the declaration. The Egyptian State put an end to the state of emergency in in 2021 and it has not been declared again since then.

9. The Government also wishes to make it clear that, even while the state of emergency was in force, the authorities remained under an obligation to apply fair trial guarantees in accordance with the Constitution and the law. Those guarantees include, by way of example, that persons deprived of their liberty are to be informed of the reason for their detention, to be notified of their rights in writing, to be allowed to contact their relatives, to meet with a lawyer immediately and to avail themselves of the lawyer's services during the evidence-gathering and investigation as well as during trial. If persons do not appoint a lawyer, the court is obliged to do so on their behalf. In addition to this, it is prohibited to use any statement or confession that was extracted under torture. Accused persons, moreover, are to benefit from the presumption of innocence and the right to a defence. This includes the concomitant right of such persons and their lawyers request that any investigative measure be taken to prove their innocence, such as calling witnesses or experts, conducting analyses or presenting oral and written arguments, a public trial and the right of appeal.

II. Reply to paragraph 22 (a) of the concluding observations

10. In December 2022, the Government submitted a new draft of the Code of Criminal Procedure, which is currently being discussed in parliament. Among the issues it addresses are pretrial detention (for which it reduces the maximum period and expands the use of alternatives), and reparations and compensation for persons proven innocent.

[3] See: Security Council Press Statement on Terrorist Attacks in Northern Egypt | Meetings Coverage and Press Releases.

[4] See: https://www.un.org/press/en/2017/sc12672.doc.htm, https://www.un.org/press/en/2017/sc12787.doc.htm, https://www.un.org/press/en/2017/sc12845.doc.htm, https://www.un.org/press/en/2017/sc12905.doc.htm, https://www.un.org/press/en/2017/sc12982.doc.htm, https://www.un.org/press/en/2017/sc13039.doc.htm, https://www.un.org/press/en/2017/sc13086.doc.htm.

[5] See: http://economicsandpeace.org/reports/.

[6] See: http://economicsandpeace.org/reports/.

[7] See https://news.un.org/ar/story/2019/08/1037961.

11. Egypt wishes to reaffirm the fact that the legislative and executive rules governing the rights of prison inmates are consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) adopted under General Assembly resolution 70/175, and that they take due account of the variety of national legal, social, economic and geographical conditions, as envisaged in the preliminary observations of the Rules themselves. Egypt also wishes to make it clear that the Ministry of the Interior is developing a philosophy of incarceration that reflects modern approaches to reform and rehabilitation and is in line with the highest international human rights standards, as stated in paragraph 64 of the replies of Egypt to the list of issues in relation to its fifth periodic report (CAT/C/EGY/RQ/5).

12. On the subject of the measures taken to reduce overcrowding in prisons, Egypt makes reference to paragraphs 22 and 63 of its replies to the list of issues in relation to its fifth periodic report. The Government, moreover, strives to reduce the number of prisoners while, at the same time, working to develop new prison facilities. This too, in the final analysis, serves to promote and protect the rights of prisoners. Article 201 of the Code of Criminal Procedure, as amended by Act No. 145 of 2006, envisages alternatives to pretrial detention by allowing the investigating authorities to order one of the following substitute measures: (a) requiring the accused person to remain in his own home or domicile; (b) requiring the accused person to report to a police station at fixed times; (c) prohibiting the accused person from frequenting certain locations. These provisions are governed by the same rules as those that apply to regular pretrial detention vis-à-vis applicable cases, duration and procedures for enforcement and extension. The same Act also envisages alternatives to a criminal trial which could end with a custodial sentence. The alternatives entail a system of restorative justice wherein conciliation for certain offences is achieved via the payment of a sum of money by the offender.

13. Legislators have introduced rules whereby certain criminal cases can be terminated via reconciliation and without the imposition of penalties. If the reconciliation comes about after a sentence has become definitive, then the enforcement of the penalty is suspended and the accused person, if incarcerated, is released. The relevant provisions are contained in article 18 bis of the Code of Criminal Procedure, as amended by Act No. 174 of 2007, under which accused persons have the right to pursue reconciliation in misdemeanours and crimes wherein the mandatory penalty is not more than a fine or a term of imprisonment of up to 6 months. Under article 18 (a) of the Code, as amended by Act No. 145 of 2006, accused persons and their lawyers, and victims and their lawyers (or their heirs and their lawyers) may seek reconciliation, either before prosecutors or before the court, as the case may be. Such a course of action is admissible in cases involving the crimes and misdemeanours envisaged in the following articles of the Criminal Code: 238 (1) and (2); 241 (1) and (2), 242 (1), (2) and (3); 244 (1) and (2); 265; 321 bis; 323; 323 bis; 323 bis (1); 324 bis; 336; 340; 341; 342; 354; 358; 360; 361 (1) and (2); 369; 370; 371; 373; 377 (9); 378 (6), (7) and (9); and 379 (4). It is also admissible in other cases set forth in the law. In addition to this, article 18 bis (b) of Act No. 16 of 2015 envisages the right to reconciliation for the crimes envisaged in chapter IV of book II of the Criminal Code.

14. All persons who have been sentenced to a term of ordinary imprisonment not exceeding 6 months have the right to request employment outside the prison in lieu of incarceration, as per the provisions set forth in the Code of Criminal Procedure, unless the sentence against them explicitly forbids recourse to such provisions. The relevant text is contained in Act No. 94 of 2014, which amends Prisons Act No. 396 of 1956.

15. Under Act No. 6 of 2018, the rules governing release in the Prisons Act (art. 52) were amended to allow inmates, if they have served at least 6 months, to be conditionally released after serving half – rather than three quarters – of their sentence. Prisoners sentenced to life imprisonment may not be conditionally released until they have served at least 20 years. Two months beforehand, the Ministry of Social Solidarity is given the names of the persons due to be released so as to facilitate their rehabilitation and prepare them for life outside prison.

16. With a view to reducing overcrowding in reform and rehabilitation centres (prisons), a presidential amnesty commission was reconvened and expanded in April 2022, on instructions from the President of the Republic. This reflects a political will to review the cases of convicted persons who meet the conditions for a pardon under article 155 of the

Constitution. A total of 77,585 persons have been released on national holidays and other occasions. In addition, between 2019 and 2024, 613,384 persons were granted conditional release and 27 were released on health grounds. Furthermore, 605 elderly convicts with deteriorating health were pardoned by decree of the President of the Republic in August 2024.

17. Prisoners can be released on health grounds under the provisions of article 36 of the Prisons Act. According to that article, if the prison doctor finds an inmate to be suffering from a life-threatening or debilitating illness, he is to draw the matter to the attention of the director of the prison medical service so that the inmate in question can be examined, with the collaboration of a forensic doctor, with a view to his release. A release order is to be implemented once it has been endorsed by the Deputy Minister for Prisons and approved by the Public Prosecutor.

18. An initiative has been announced whereby the money owed by persons incarcerated in financial cases is paid off so that they can be released. The necessary sums are drawn from the Tahya Misr Fund which is funded by donations from Egyptian citizens. Thanks to this initiative, 77,000 debtors of both sexes with a cumulative debt of 885 million Egyptian pounds (LE) were released between 2014 and 2023.

19. Plans to develop prison infrastructure have been ongoing. Under Act No. 14 of 2022 – which amends certain provisions of Prisons Regulatory Act No. 396 of 1956 – a number of prisons were renamed as reform and rehabilitation centres while the prison department of the Ministry of the Interior became the community protection department and prisoners were reclassified as inmates. The Act envisages the right of inmates in reform and rehabilitation centres to take examinations and to be notified directly – rather that via the prison governor – of legal and judicial documents, a copy of which they can then send to a person of their choice. These amendments to the law reflect a change in the disciplinary philosophy of the Ministry of the Interior as the new Act seeks to consolidate the principle of inmates' rights, to provide them with community protection and to reform and reintegrate them into society.

20. The Ministry of the Interior has developed a strategy for building and modernizing reform and rehabilitation centres (prisons). In this connection, new reform and rehabilitation institutions that reflect the most recent global standards have been established and opened in the areas of Wadi al-Natrun and Badr. The construction boom in prison facilities is being accompanied by a concern to reflect international human rights standards in terms of healthy cell-occupancy limits, lighting, adequate ventilation and properly equipped medical centres. The Ministry of the Interior is seeking to extend the model of the reform and rehabilitation centre of Wadi al-Natrun to the national level, and a number of other such centres are currently being built and will shortly open in different parts of the country.

III. Reply to paragraph 38 (b) of the concluding observations

21. One of the targets envisaged in the national strategy for human rights is the application of a framework to review the most serious crimes for which the death penalty is envisaged, taking account of societal factors and of specialized studies, in accordance with the international and regional human rights treaties ratified by Egypt. As part of the implementation of the national human rights strategy and of recommendations issued by international human rights bodies – a process overseen by the Supreme Standing Committee for Human Rights – a round-table discussion has been organized with judges, members of parliament, lawyers, members of the National Council for Human Rights and representatives of civil society. They examined the concept of "the most serious crimes" and discussed the procedural guarantees surrounding the imposition and enforcement of the death penalty both at the international level and under national legislation. They also looked at leading international trends and experiences with a view, for example, to amending the Arms and Ammunition Act so as to allow courts to reduce sentences for a number of crimes, which should lead to a reduction in resort to the death penalty for the most serious crimes.

22. A number of provisions of the Code of Criminal Procedure were amended under Act No. 1 of 2024 which envisages a system for lodging appeals against criminal sentences and constitutes a further safeguard concerning the imposition of the death penalty.

23. Referring also to paragraphs 90 and 91 of its replies to the list of issues in relation to its fifth periodic report (CAT/C/EGY/RQ/5), Egypt wishes to reaffirm that national legislation envisages the death penalty only for the most serious crimes, such as crimes that prejudice State security on behalf of a foreign power in time of war, crimes of terrorism and premeditated murder committed in the aggravated circumstances specified by law. It is a principle, moreover, that crimes are to be punished under the law that was in force at the time they were committed.

24. Another principle is that the law to be applied is the one most favourable to accused persons, even after the commission of the offence (art. 5 of the Criminal Code). The competent court has the right to commute a death penalty to life imprisonment or rigorous imprisonment if the circumstances of the crime so warrant (art. 17 of the Code). This is in accordance with the principle whereby punishment is not a generalized measure but is applicable to individuals, which has been upheld in rulings of the Supreme Constitutional Court (case No. 37 of judicial year 15 and case No. 78 of judicial year 36). This means that judges can exercise their discretion and calibrate the penalty to that it is reasonable, humane and commensurate with the circumstances of the crime and the personal situation of the offender.

25. Egypt must once again reaffirm that the death penalty is a judicial and legislative matter that falls within the scope of the sovereign right of States to determine their own systems of criminal justice. Consideration of whether it should be applied must take into account numerous considerations related to the particularities, customs and traditions of a society. The decision to abolish or suspend this penalty should only be taken after a series of discussions at the local level around the country, and only after examining the impact of such abolition or suspension on the rights of victims and guarantees of effective redress for them and their families. In addition, consideration should be given to the effect that it might have on rates of serious crimes and the security and peace of society. It is important to note, moreover, that the application of the death penalty, with all its concomitant safeguards, does not violate the international obligations Egypt has under the International Covenant on Civil and Political Rights.

26. Whereas the general rule is that courts are to hand down verdicts by majority, criminal courts of both levels can hand down death sentences only by the unanimous consensus of judges. Before emitting such a sentence the court must seek the opinion of the Grand Mufti of the Republic, in accordance with article 381 of the Code of Criminal Procedure.

27. Contrary to the principle generally applied to the enforcement of criminal penalties, appeals against a death sentence result in a stay of enforcement, be it at the stage of appeal (art. 419 bis (9) of the Code of Criminal Procedure) or of cassation (art. 469 of the Code) or in the case of a request for reconsideration (art. 448 of the Code).

28. Whenever a penalty of death has been imposed, the State Prosecution Office is obliged to submit the case to the Court of Cassation, as per article 46 of Act No. 57 of 1959 on the circumstances and procedures for lodging appeals before the Court of Cassation. The Court then examines the validity of the death penalty in terms both of its merits and its formal aspects, and it can overturn it on grounds of legal errors that nullify the sentence. In doing so, the Court acts ex officio and is not bound by the grounds of the appeal submitted by the defendant. In a number of cases, the Court can overturn the sentence even if the convicted party has not lodged an appeal at all. The Court of Cassation, with sits at the top of the judicial hierarchy, acts to ensure that the verdict is in conformity with the law, to prohibit the imposition of the death penalty on persons who were under the age of 18 at the time of committing the crime and to halt the enforcement of a death penalty against a pregnant woman until two years after she gives birth.