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TORTURE IN EGYPT: A CRIME AGAINST HUMANITY

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I. METHODOLOGY AND ACKNOWLEDGEMENTS

This publication was prepared by a team at REDRESS in collaboration with the Egyptian Initiative for Personal Rights (EIPR), the Egyptian Commission for Rights and Freedoms (ECRF), Dignity, Committee for Justice (CFJ) and the International Commission of Jurists (ICJ). REDRESS bears sole responsibility for any errors in this publication.

The research team was responsible for data collection and data analysis. The team used desk-based and open-source research to inform the contextual and legal analysis in this report. The team reviewed domestic and international NGO publications and reports, existing reports and statements by UN Treaty Bodies and Special Procedures, as well as Egyptian and international media reports, and analysed the information using international criminal law and international human rights law and relevant case law by the African Commission on Human and Peoples' Rights. Egyptian and international experts were consulted in the drafting of the report.

The team also reviewed and analysed Egypt's legal framework on torture and the Egyptian government's official communications on this matter. These communications included internal administrative communiqués to relevant authorities (such as ministries and prison management), governmental (including executive emergency) decrees and statements, court filings and judgments, official submissions to UN bodies, and Egyptian officials' statements on record before UN bodies.

The case studies presented in the report were selected based on open-source information on the cases, substantiated by information confidentially shared by partners on the ground.

Rigorous empirical research on torture in Egypt is challenging because official statistics on torture are non-existent or, if such records exist, they are not made public. Additionally, the restrictions on freedom of expression, human rights activism and independent research, as well as the relentless targeting of human rights defenders, are a barrier to human rights organisations carrying out research in Egypt, including in Egyptian prisons. Finally, because Egyptian authorities have a well-documented record of harassing and intimidating individuals who speak out against human rights violations in Egypt - the research team did not conduct in-depth investigations and interviews in Egypt to minimise the risk of reprisals against those on the ground.

II. ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ACommHPR	African Commission on Human and Peoples' Rights
CAT	UN Committee Against Torture
CFJ	Committee for Justice
COP27	2022 UN Climate Change Conference
CSO	Civil Society Organisation
ESSSCs	Emergency Supreme State Security Courts
ECRF	Egyptian Commission for Rights and Freedoms
EIPR	Egyptian Initiative for Personal Rights
FMA	Forensic Medicine Authority
GI	General Intelligence
HRC	UN Human Rights Committee
HRD	Human Rights Defender
ICC	International Criminal Court
ICJ	International Commission of Jurists
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
LGBTIQ+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, and other gender and sexual identities
MI	Military Intelligence
NGO	Non-Governmental Organisation
NPM	National Preventive Mechanism
NSA	National Security Agency
SSIS	State Security Investigation Services
SSSP	Supreme State Security Prosecution
TIMEP	Tahrir Institute for Middle East Policy
UNCAT	UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNHRC	UN Human Rights Council

III. EXECUTIVE SUMMARY AND RECOMMENDATIONS

The Egyptian government has a long, well-documented history of using torture as a tool for repressing political dissent and persecuting minorities. Concern over the pervasiveness of torture in Egypt led to two Article 20 inquiries by the UN Committee Against Torture (CAT). In both instances, contrary to the Egyptian government's denial, the CAT found that torture was systematically used by security forces in Egypt.

Using an anti-terrorism rhetoric, Egyptian authorities often resort to arbitrary arrest, incommunicado detention, and subsequent torture to target individuals because of their real or perceived political and human rights activism. The authorities perceive this activism as undesirable political activity and a threat to the Egyptian regime. As such, the Egyptian authorities have responded by imposing punitive measures that have had the effect of further shrinking civic space, stifling dissent, and silencing political opposition in the country. Among the individuals who have been subjected to torture or other ill-treatment, and other abuses by the Egyptian authorities are lawyers, journalists, bloggers, academics, Human Rights Defenders (HRD), women's rights and gender activists, LGBTQIQ+ individuals and people who are identified as LGBTQIQ+, and opposition politicians.

Egyptian agencies that are directly implicated in the practice of torture include the National Security Agency (NSA), the National Police, and the individuals who lead these institutions. Also implicated are members of the Supreme State Security Prosecution (SSSP) and some arms of the security organ, including the Military Intelligence (MI) and the General Intelligence (GI). Despite the lack of official statistics on torture in Egypt, on the basis of the available information, there is ample evidence that torture is part of the institutionalised culture of violence against detainees practised by Egypt's law enforcement agencies. Acts of torture in Egypt are part of a State policy enabled by Egypt's emergency laws, counter-terrorism framework, and the rampant impunity for violations committed by State security and law enforcement officers. These circumstances have perpetuated a cycle of torture and impunity for torture.

The consistency of the publicly available data on torture in Egypt establishes a clear pattern of abuse, as opposed to isolated acts of misconduct as claimed by the Egyptian government. This pattern includes similarities in the modality of arbitrary arrests and detention, the authorities involved, the individuals targeted, the purpose of their arrest and torture, the methods of torture, and the collusion of the judiciary in the criminalisation of those promoting human rights and dissent.

The systematic and widespread nature of torture against HRDs and others in Egypt has not only been established by the CAT but can be inferred from the concerning trend of arbitrary arrests, torture, criminalisation, and other violations against targeted individuals.

This report offers an analysis of torture in Egypt in light of the definition of the crime against humanity of torture under Article 7 of the Rome Statute of the International Criminal Court (Rome Statute)¹, which reflects customary international law norms binding on Egypt. REDRESS, EIPR, ECRF, Dignity, CFJ and ICJ conclude that the widespread and systematic use of torture by officials of the Egyptian government reaches the Article 7 threshold of torture as a crime against humanity.

1 ICC, [Rome Statute](#), Article 7.

To end torture and ensure that perpetrators are held accountable, REDRESS, EIPR, ECRF, Dignity, CFJ and ICJ recommend the following.

The Egyptian authorities should:

1. Ratify the Optional Protocol to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which defines the parameters for the establishment of a system of regular visits to places of detention, as an important measure for the protection of detainees from torture in Egypt.
2. Extend a standing invitation for country visits to the Special Procedures of the UN Human Rights Council (UNHRC), including the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and allow her to meet detainees, victims and their families, as well as independent Civil Society Organisations (CSOs).
3. Take measures to implement all the recommendations and decisions issued by CAT, other UN Treaty Bodies, UN Special Procedures, and the African Commission on Human and Peoples' Rights (ACommHPR) to eradicate torture in Egypt.
4. Institute legal reforms to ensure that Emergency Law No. 162 of 1958, Articles 126 and 129 of the Egyptian Penal Code, the Egyptian Criminal Procedure Code, anti-terrorism legislation, and all other relevant laws and practices, are brought into conformity with UNCAT, the African Charter on Human and Peoples' Rights (ACHPR), the Robben Island Guidelines, the ACommHPR Principles and Guidelines on the Right to Fair Trial, the Luanda Guidelines, and the ACommHPR General Comment No. 4 on the Right to Redress for Victims of Torture and other Ill-treatment in Africa.
5. Consistent with Article 52 of the Egyptian Constitution, adopt and implement additional legal measures for the prevention of torture. To this end, we urge the Egyptian authorities to review the country's legal and policy framework with the aim of bringing it in conformity with international standards. The Egyptian authorities must:
 - a) Streamline the definition of torture under the Constitution and Article 126 of the Penal Code to meet the requirements of UNCAT.
 - b) Clearly prohibit the use of torture in absolute terms in the Penal Code.
 - c) Review and amend the criminalisation of torture in the Penal Code to include severe mental and physical suffering; expand the definition of the purpose of torture beyond forced confession; and expand liability for torture to include command responsibility of any commander or superior responsible for torture committed by their subordinates.
 - d) Ensure that the sanctions for the crime of torture are commensurate with the gravity of the violation.
 - e) Exclude torture-tainted evidence from all judicial proceedings, except when used against a person accused of torture as evidence that the statement of the victim was made under torture.
6. Revise Egypt's Anti-Terrorism Law and abolish the use of exceptional courts, such as the Terrorism Circuits Courts and Emergency Supreme State Security Courts (ESSSCs), to ensure compliance with international human rights law, international humanitarian law and refugee law.
7. Establish an independent National Preventive Mechanism (NPM) or amend Law 94 of 2003 to expand the mandate of the National Council for Human Rights to conduct regular, independent and unannounced visits to all places of detention and examine the treatment of persons deprived of their liberty.

8. Direct the NSA and the National Police to ensure the production and maintenance of official records of detention, which are easily accessible by lawyers, the judiciary, the National Human Rights Institution, and human rights Non-Governmental Organisations (NGOs). These records should be located in each and every facility where individuals are detained.
9. End incommunicado detention in all detention centres, ensuring that all detained persons have immediate access to a lawyer and timely access to a doctor, as well as appropriate contact with their families.
10. Ensure that prison doctors and forensic doctors act with clinical independence, objectivity and impartiality, and according to international standards, including the Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Forms of Ill-treatment (Istanbul Protocol) and the UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. To this end, conduct the required training and ensure that violations are investigated and prosecuted.
11. Establish a complaints mechanism to ensure the prompt, impartial and independent investigation, prosecution and sanction of all credible allegations of torture and other ill treatment.
12. Where investigations establish the crime of torture, all perpetrators, including those in superior and command positions, should be held to account.
13. Ensure effective, timely, and appropriate reparations to the survivors of torture and their families as guided by the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.
14. Lift all travel bans against HRDs, activists and others to ensure the exercise of their rights to freedom of expression, association, peaceful assembly, liberty of movement, and private and family life.

To the international community

The UNHRC should establish an investigative body, such as a Commission of Inquiry or a Fact-Finding Mission, or a Special Rapporteur on the human rights situation in Egypt, tasked with monitoring, investigating, and establishing the facts and circumstances of torture as a crime against humanity in Egypt, as well as other violations of human rights. The evidence collected by such a body would facilitate accountability efforts.

All States should ensure that perpetrators of torture in Egypt are held to account, including through Universal Jurisdiction cases, civil claims, sanctions, and other available avenues for accountability.

IV. INTRODUCTION



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A graffiti of activist Khaled Said on a wall near Tahrir Square in 2013. Said was beaten to death by police and his death sparked mass protests demanding the ouster of former President Mubarak.

During his 30-year authoritarian reign, Egypt's former President Hosni Mubarak normalised the use of torture and arbitrary detention under the guise of fighting terrorism.² Using the State Security Investigations Service (SSIS) as a political tool, President Mubarak shut down human rights groups, muzzled academic freedoms, prevented the registration of opposition political parties, and quashed political opponents.³ To maintain his grip on power, President Mubarak allowed the SSIS to use torture against detained protestors, political opponents and HRDs⁴ – practices that continued well beyond his ousting from office.⁵

In 2011 when President Mubarak was deposed by a popular uprising, there was hope that the brutality of Egypt's security services would finally come to an end. That same year, the SSIS was disbanded and replaced by the NSA,⁶ and soon thereafter Egypt had its first democratically elected president, President Mohammad Morsi. However, President Morsi and his party, the Muslim Brotherhood, were quickly implicated in the continued use of torture

2 Amnesty International, "Hosni Mubarak: A Living Legacy of Mass Torture and Arbitrary Detention", 25 February 2020.

3 Egypt Independent/Ahmed Zaki Osman, "The Rise and Fall of Egypt's Notorious State Security" 9 March 2011.

4 Amnesty International, "Hosni Mubarak: A Living Legacy of Mass Torture and Arbitrary Detention", 25 February 2020.

5 State of Finland and ors., "General Debate Item No 4: Human Rights Situations that Require the Council's Attention: Joint Statement on Egypt", 46th Session of the UNHRC, 12 March 2021.

6 BBC, "Egypt Dissolves Notorious Internal Security Agency" 15 March 2011; Human Rights Watch, "We Do Unreasonable Things Here", 5 September 2017.

against protestors.⁷ When military commander Abdel Fattah el-Sisi came to power through a *coup* in 2013, he continued the systemic use of torture as a tool of repression, while the NSA followed the precedent set by the SSIS of arresting and torturing political dissidents and activists.⁸ Following the *coup*, torture and other forms of ill-treatment were used against President el-Sisi's political opponents, including former President Morsi, who was detained incommunicado for several months before being charged with a wide range of offences.⁹ President Morsi was then imprisoned in inhumane conditions characterised by ill-treatment, including the denial of life-saving medical care and treatment.¹⁰ According to UN experts, "Morsi's death after enduring those [detention conditions] could amount to a State-sanctioned arbitrary killing".¹¹

In total disregard for the international outcry about Egyptian prison conditions, which peaked in 2019 following reports on the conditions in which President Morsi was held, President el-Sisi's administration continued to detain and torture individuals perceived as political dissidents or 'threats' to the regime.¹² Since then, individuals accused of a wide array of crimes, including terrorism-related offences, have been subject to torture and other forms of ill-treatment.¹³ In the last few years, there has been a spike in the targeting of activists and HRDs, who are tortured by police officers and security forces while in *incommunicado* detention before official charges are filed against them. Some minorities, such as LGBTIQ+ individuals, are subject to torture because of their real or perceived sexual orientation and/or gender identity.¹⁴ Even minors have been subjected to torture during interrogation and confinement.¹⁵ Torture victims have included bloggers, human rights lawyers, journalists, civil society actors, and students, among others.¹⁶

Torture in Egypt is systematically perpetrated by the National Police and NSA officers.¹⁷ Other officials have also been implicated in the commission of torture, including members of the prison authority (such as guards),¹⁸ MI, GI,¹⁹ and members of the Forensic Medicine Authority (FMA) of the Ministry of Justice. In fact, a 2018 report by the Egyptian Coordination for Rights and Freedoms documented a total of 830 cases of torture, including 159 incidents in police stations, 101 in State security facilities, 35 in security forces' camps, and six in detention facilities²⁰ over a 12-month period. Other reports from human rights organisations in Egypt documented at least 148 instances of torture between January 2020 and April 2022. Similarly, the Committee for Justice recorded 225

7 BBC, "Mohammed Morsi's Trials and Convictions," 17 June 2019; The Guardian, "Egyptian Protestors Claim they were Tortured by Muslim Brotherhood," 12 December 2012.

8 Human Rights Watch, "We Do Unreasonable Things Here", 5 September 2017.

9 BBC, "Mohammed Morsi's Trials and Convictions", 17 June 2019.

10 International interest in the prison conditions peaked in 2019 as a result of the well-publicised conditions in which former President Morsi was being held. According to the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, during his detention, President Morsi was held in solitary confinement for 23 hours a day, forced to sleep on a concrete floor, and denied life-saving care for his diabetes and high blood pressure. For details on the conditions of President Morsi's detention see UN Office of the High Commissioner on the Human Rights (OHCHR) Press Release: OHCHR, "Egypt: UN Experts Denounce Morsi 'Brutal' Prison Conditions, Warn Thousands of Other Inmates at Severe Risk", 8 November 2019.

11 OHCHR, "Egypt: UN Experts Denounce Morsi 'Brutal' Prison Conditions, Warn Thousands of Other Inmates at Severe Risk", 8 November 2019; CAT, "Summary Account of the Results of the Proceedings Concerning the Inquiry on Egypt", UN Doc A/72/44, 2017, para 58.

12 Cairo Institute for Human Rights Studies, "Egypt: Torture is Systematic and Those Who Perpetrate It Enjoy Complete Impunity", 21 October 2021.

13 Ibid.; Amnesty International, "Egypt: Quash Death Sentences in Torture-Tainted Grossly Unfair Mass Trial", 28 June 2022.

14 Human Rights Watch, "Egypt: Security Forces Abuse, Torture LGBT People", 1 October 2020.

15 Human Rights Watch, "No One Cared He Was a Child", 23 March 2020.

16 Special Rapporteur on Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment et al., Communication to Egypt, AL EGY 12/2021, 5 November 2021.

17 The Guardian, "'We're next': Prisoner's Secret Filming Appears to Show Torture in Cairo Police Station", 24 January 2022.

18 Committee for Justice, "With No Accountability", 10 December 2019.

19 MI and GI officers have been implicated in court filings using universal jurisdiction to hold them accountable for torture in Egypt; see for example "The Freedom and Justice Party and Ors v The Secretary of State for Foreign and Commonwealth Affairs", [2018] EWCA Civ 1719, 19 July 2018.

20 Carnegie Endowment for International Peace, "The Prevalence of Torture in Egypt", 6 March 2018.

deaths in detention between January 2020 and December 2022,²¹ most of which were the result of torture or other ill-treatment, or wanton negligence.²² Finally, the Egyptian Front for Human Rights and the Freedom Initiative reported that between 2015 and 2022, 655 distinct cases of sexual violence were perpetrated by Egyptian authorities in the context of detention.²³

In spite of the widespread use of torture by Egyptian National Police and security forces, there are no official statistics on torture in Egypt and the only information available is produced by Egyptian civil society. Statistics are difficult to establish because lawyers in State security cases are regularly unable to meet with their clients privately, away from the threatening presence of security guards.²⁴ Therefore, individuals who may have been tortured are often unable to discuss their experience of torture with their lawyers. Additionally, because individuals are often subjected to torture while in *incommunicado* detention or during short-term enforced disappearances, the physical signs of torture may no longer be visible by the time the victims meet their lawyers and report the abuse.²⁵ The absence of torture prevention mechanisms, specifically the lack of independent oversight of detention facilities, the lack of a proper record of detention and release, the absence of an effective complaints mechanism for detainees, the lack of timely access to a doctor, and the lack of contact with family members have all contributed to the limited statistics on torture in Egypt.

The Egyptian judiciary and State Prosecutors further contribute to the prevalence of torture in Egypt through their failure to conduct effective investigations into allegations of torture by police and security forces,²⁶ therefore creating an enabling environment for impunity for torture. For instance, notwithstanding the recognition of the systematic nature of torture in Egypt by international human rights organisations and CAT, no NSA officer has been convicted of torture.²⁷ On the rare occasions when police officers were prosecuted for the crime of torture, they were either acquitted or given overly lenient sentences,²⁸ often followed by presidential pardons or release on parole, consistent with a pattern of impunity.

Moreover, the el-Sisi administration has relentlessly cracked down on Civil Society Organisations (CSOs) who have long played a role in documenting human rights violations and seeking justice for torture victims, such as El-Nadeem Centre for Victims of Violence and Torture, and the Egyptian Coordination for Rights and Freedoms. Leaders and members of the Egyptian Coordination for Rights and Freedoms, who previously published statistics attesting to the widespread nature of torture in Egypt, have been arrested and detained without trial as a result of their anti-torture work.²⁹ In November 2020, three directors of EIPR, including the group's executive director and criminal justice director were arrested and detained. The SSSP interrogated them specifically about their work on prison conditions, torture and the death penalty before charging them with membership of a terrorist organisation. Although they were subsequently released, the three directors are still facing the same criminal charges and have been subject to an open-ended travel ban and asset freeze orders.³⁰

21 Committee for Justice, [Justice Watch Archive - Database](#), filtered for deaths in custody for 2020-2022.

22 Ibid., filtered for deaths in custody resulting from torture and deprivation of liberty for 2020-2022.

23 The Freedom Initiative & Egyptian Front for Human Rights, "No One is Safe", [n.d.].

24 ICJ, "Politicized and Unfair Trials before the Emergency State Security Court", 26 November 2021.

25 Cairo Institute for Human Rights Studies, "Egypt: Systematic torture is a state policy", 29 October 2019.

26 EIPR, "Egypt: On International Day in Support of Victims of Torture, First Step to Combating Torture is Accountability", 26 June 2021.

27 Human Rights Watch, "Egypt: Set Independent Torture Inquiry", 14 February 2019.

28 Carnegie Endowment for International Peace, "The Prevalence of Torture in Egypt", 6 March 2018; Egyptian Taskforce for Human Rights, [Joint Submission](#) relating to Egypt's UPR, 13 November 2019, para 28.

29 EIPR, "10 Rights Groups Stand in Solidarity with Members of the Egyptian Coordination for Rights and Freedoms Referred to Emergency Court", 9 September 2021.

30 EIPR, "A year since the security attack on the Egyptian Initiative for Personal Rights: The fabricated accusations continue, along with the travel ban and the seizure of the funds of the three directors of EIPR", 15 November 2021.

Against this backdrop, the Egyptian government continues to obfuscate these human rights violations by creating State-controlled human rights agencies – the National Council of Human Rights and the Supreme Standing Committee on Human Rights – adopting a National Human Rights Strategy,³¹ and hosting international conferences (such as the 2022 UN Climate Change Conference (COP27)).³² The Egyptian government in part used COP27 to project a *façade* of tolerance, while simultaneously suppressing activism at the conference. UN experts denounced the Egyptian government’s actions and called for the end to the harassment and intimidation of HRDs and civil society at COP27.³³

31 CAT, “Fifth Periodic Report submitted by Egypt under Article 19 of the Convention, due in 2004”, UN Doc. CAT/C/EGY/5, 27 December 2021, paras. 35 – 36.

32 UNFCCC, Sharm El-Sheik Climate Change Conference (COP27), 6-20 November 2022.

33 UN News, “Rights experts decry harassment of activists attending COP27”, 18 November 2022.

V. TORTURE IN EGYPT AS A CRIME AGAINST HUMANITY



© Reuters/Christian Hartmann.

Human rights activists stage a protest over human rights violations in Egypt during an official visit of Egyptian President Abdel Fattah al-Sisi in France in 2020.

The common factor in the nature of the conduct proscribed by crimes against humanity is the intentional and serious or severe violation of fundamental rights protected by law (including international human rights law and international humanitarian law).³⁴

Article 7 of the Rome Statute provides that torture constitutes a crime against humanity when it is committed “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”³⁵ For the purpose of the Rome Statute, torture is defined as the “intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused,” but does not include “pain or suffering arising only from, inherent in or incidental to, lawful sanctions.”³⁶ The term ‘lawful sanctions’ does not include measures that, whilst sanctioned under domestic law, are clearly illegal under international law.³⁷ As a crime against humanity under the Rome Statute, it is not a requirement that torture be committed for a specific purpose.

34 Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, Request for Authorisation of an Investigation Pursuant to Article 15, ICC-01/19, 4 July 2019, para. 134.

35 ICC, Rome Statute.

36 Ibid., Article 7(2)(e).

37 Guénaél Mettraux, “International Crimes: Law and Practice: Volume II: Crimes Against Humanity” (Oxford University Press, 2020), 6.7.1.4.

Although Egypt is not a State party to the Rome Statute, the definition of ‘crimes against humanity’ embodied in the Statute reflects the definition of crimes against humanity under customary international law,³⁸ which is binding on Egypt.³⁹ As such, this report refers to the statutes and jurisprudence of the ad hoc international criminal tribunals and the ICC in so far as they are relevant to interpret the concept of crimes against humanity under customary international law.

A. Patterns of torture in Egypt

Torture in Egypt, especially against individuals in retaliation for their political and human rights activism, takes place in a context where other human rights violations are simultaneously committed with the aim of intimidating and suppressing dissent. This section of the report highlights the most common patterns of torture, its perpetrators and its victims.

As analysed in detail below, torture in Egypt against activists and dissidents follows a clear pattern of arbitrary arrest, often followed by *incommunicado detention* or enforced disappearance, where detainees are tortured or otherwise ill-treated using a variety of methods. Those detained are then charged with vague offences linked to national security and prosecuted without due process guarantees. In many cases, the eventual dismissal of charges is followed by new cases and re-arrests. Those who are eventually freed face travel bans and other restrictions aimed at harassing them and limiting their activities.

The UNCAT, ratified by Egypt in 1986, defines torture as:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him[or her] or a third person information or a confession, punishing him [or her] for an act he [or she] or a third person has committed or is suspected of having committed, or intimidating or coercing him [or her] or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.⁴⁰

In conformity with Egypt’s obligations under UNCAT, Article 52 of the Egyptian Constitution prohibits torture as a crime not subject to any statute of limitations,⁴¹ and Article 55 prohibits torture and cruel, inhuman, and degrad-

38 International Law Commission, “Draft Articles on Prevention and Punishment of Crimes Against Humanity, with Commentaries”, Yearbook of the International Law Commission 2019, Vol. II, Part Two, p. 30. Also see Yudan Tan, “Crimes against Humanity”, in “The Rome Statute as Evidence of Customary International Law” (Brill, 2021), Chapter 4.

39 The International Court of Justice found in *Belgium v. Senegal* that the prohibition of torture was a *jus cogens* norm, therefore the prohibition of torture committed on a wide scale should be considered *jus cogens* as well. The fact that the prohibition on crimes against humanity is now part of customary international law means that Egypt does not need to be party to a treaty that prohibits crimes against humanity before it can be held accountable for committing them. See International Court of Justice, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, pp. 422 - 463, at p. 457, para. 99; International Law Commission, “Draft Articles on Prevention and Punishment of Crimes Against Humanity, with Commentaries”, Yearbook of the International Law Commission 2019, vol. II, Part Two, p. 24.

40 UNCAT, Arts. 2 and 4.

41 Egyptian Constitution, 2014 (English translation), Article 52: “All forms of torture are a crime with no statute of limitations.”

ing treatment while in detention.⁴² However, neither the Constitution nor the Penal Code defines torture, nor do they capture all the elements of UNCAT's Article 1 definition of torture.⁴³

Egypt's international human rights commitments notwithstanding, the Egyptian authorities have been – and continue to be – implicated in acts of torture against activists and dissidents. Reports from Egyptian and international human rights organisations have documented many cases where Egyptian authorities used a variety of physical and psychological torture tactics to obtain information, extract confessions, intimidate, discriminate, and punish those who oppose or criticise government's policies.⁴⁴

The pattern of abuse usually starts with the arbitrary arrest of those targeted. In 2020, the UN Working Group on Arbitrary Detention and other UN experts showed concern that the number of cases addressed by the UN Special Procedures "indicates a systemic problem with arbitrary detention in Egypt".⁴⁵ In its most recent concluding observations in April 2023, the UN Human Rights Committee (HRC) expressed its concern over the reportedly systematic and widespread recourse to prolonged pretrial detention in Egypt, especially of government critics.⁴⁶

There is no single comprehensive list of acts that may constitute torture. Allegations of torture must however be considered on a case-by-case basis to determine whether, in light of the acts committed and their context, severe physical or mental pain or suffering was inflicted.⁴⁷ Social and cultural circumstances are relevant because certain behaviour may be rendered more serious or its impact more profound, because of the particular context. Objective factors include the severity of the harm inflicted, but serious injury is not a requirement. Indeed, acts causing physical pain may amount to torture even when they do not cause pain of the type accompanying serious injury.⁴⁸ Subjective criteria can include the age, sex, health status of the victim, and/or the physical or mental effect of ill-treatment on a particular victim. Furthermore, the nature and context of the infliction of pain, the premeditation and 'institutionalisation' of the ill-treatment, the physical condition of the victim, the manner and method used, and the position of inferiority of the victim are all relevant factors.⁴⁹

The Istanbul Protocol⁵⁰ provides a partial list of torture methods. The list includes blunt trauma (e.g., from punching and kicking), positional torture (e.g., through suspension and prolonged constrained movement), electric shocks, sexual violence, deprivation of normal sensory stimulation, psychological manipulation, denial of medical and mental health care and treatment, and solitary confinement.⁵¹

42 Egyptian Constitution, 2014 (English translation), sub-Articles 55(1) – (3): "(1) All those who are apprehended, detained or have their freedom restricted shall be treated in a way that preserves their dignity. They may not be tortured, terrorized, or coerced. They may not be physically or mentally harmed, or arrested and confined in designated locations that are appropriate according to humanitarian and health standards. The state shall provide means of access for those with disabilities. (2) Any violation of the above is a crime and the perpetrator shall be punished under the law. (3) The accused possesses the right to remain silent. Any statement that is proven to have been given by the detainee under pressure of any of that which is stated above, or the threat of such, shall be considered null and void."

43 This position was reiterated by the ACommHPR, which found, in a recent communication to Egypt, that: "A comparison of Article 126 of the Penal Code and Article 1 of UNCAT shows that the former provision does not sufficiently capture the elements enshrined under the latter provision. In particular, Article 126 does not mention severe mental or physical suffering; it limits the purpose of torture to the attainment of forced confession while UNCAT is open-ended; and it limits responsibility for torture to those who order the act or those who carry out the act, whereas UNCAT includes public officials who consent or acquiesce to the act." See ACommHPR, *Mohammed Abderrahim El Sharkawi v. the Republic of Egypt*, Communication 391/11, 2020, para. 241.

44 Egyptian Taskforce for Human Rights, Joint Submission relating to Egypt's UPR, 13 November 2019, para 24.

45 OHCHR, "Urgent Appeal to Egypt: UN Experts Call for Release of Four Minors Facing Death Sentences", 6 March 2020.

46 HRC, "Concluding Observations on the Fifth Periodic Report of Egypt", UN Doc. CCPR/C/EGY/CO/5, 14 April 2023, para. 31.

47 ICTY, *Prosecutor v. Radovan Karadžić*, Judgment, IT-95-5/18-T, 24 March 2016, para. 507.

48 ICTY, *Prosecutor v. Radoslav Brđanin*, Judgment, IT-99-36-A, 3 April 2007, para. 251.

49 Extraordinary Chambers in the Courts of Cambodia, *Prosecutor v. Kaing Guek Eav alias Duch*, Judgment, 001/18-07-2007/ECCC/TC, 26 July 2010, para. 355.

50 OHCHR, "Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (Istanbul Protocol), 2022.

51 *Ibid.*, pp. 87-88.

Acts of torture used by Egyptian authorities mirror the torture methods described in the Istanbul Protocol. While a variety of methods is used, there is a pattern in the way torture is used in Egypt with the purpose of suppressing dissent, including the work of HRDs, journalists, activists, and opposition leaders, as well as in the connivance of the judiciary in allowing torture to take place in a context of impunity. Additionally, torture is committed in a broader context of harassment and intimidation, where physical torture is used in addition to other practices, such as travel bans, the “recycling of charges” and other tools to extend arbitrary detention aimed at punishing those who dissent and their families.

In relation to the methods of torture, former detainees interviewed for a 2017 Human Rights Watch report on torture in Egypt stated that their interrogation sessions typically included shocks with a handheld electric stun gun, slaps and punches, including to the genitals.⁵² If these methods did not result in a confession, stress positions such as hanging the detainee handcuffed from a doorway, or suspending the detainee in the air attached to a bar “resembling a chicken on a rotisserie spit”⁵³ would be used. According to a 2019 report to the UNHRC by the Egyptian Task Force for Human Rights,⁵⁴ other torture methods in detention include rape or other sexual assault using blunt or sharp objects, electroshocks on the body (especially to the genitals), waterboarding, and hanging by hands or feet.⁵⁵

In January 2022, *The Guardian* published an article about a video documenting torture in a police station in Cairo.⁵⁶ The video showed individuals hung in stress positions, suspended from a metal grate by their arms fastened behind their backs, while naked from the waist up. It also included a line-up of individuals to display the injuries they suffered, including open wounds to the head and bruises on their bodies.⁵⁷

Since the overthrow of former President Morsi, Egyptian law enforcement and security officers have also used sexual violence, including rape, anal tests and “virginity tests” as part of a violent strategy against political opponents and as a tool for discrimination and/or persecution of LGBTIQ+ individuals.⁵⁸

Egyptian authorities also routinely use solitary confinement for lengthy periods of time as a means of additional punishment for detainees – especially political detainees.⁵⁹ Detainees are placed in solitary confinement for periods between three weeks to over four years.⁶⁰ Solitary confinement by its nature involves the involuntary physical isolation of a detainee entailing the “deprivation of normal, direct, and meaningful social contact and access to positive environmental stimulation.”⁶¹

Authorities in Egypt also use *incommunicado detention* as an enabling factor for torture. After an arbitrary arrest, officials often detain the person *incommunicado* – denying the detainee contact with family and access to a lawyer.⁶² In cases where detainees are allowed access to a lawyer, their meetings are very brief and supervised by

52 Human Rights Watch, “We Do Unreasonable Things Here”, 5 September 2017.

53 Ibid.

54 Egyptian Taskforce for Human Rights, Joint Submission relating to Egypt’s UPR, 13 November 2019.

55 Ibid., para. 17.

56 The Guardian, “‘We’re next’: Prisoner’s Secret Filming Appears to Show Torture in Cairo Police Station”, 24 January 2022.

57 Ibid.

58 HRC, “Concluding Observations on the Fifth Periodic Report of Egypt”, UN Doc. CCPR/C/EGY/CO/5, 14 April 2023, paras. 9-10; Human Rights Watch, “Egypt: Security Forces Abuse, Torture LGBT People”, 1 October 2020.

59 Amnesty International, “Egypt: Crushing Humanity: the Abuse of Solitary Confinement in Egypt’s Prisons”, 7 May 2018.

60 Ibid.

61 Craig Haney, “Restricting the Use of Solitary Confinement”, Annual Review of Criminology, Vol 1 (2018), pp. 285 – 310, p. 286; the former UN Special Rapporteur on Torture, Mr. Juan E. Mendez, noted that: “Considering the severe mental pain or suffering solitary confinement may cause, it can amount to torture or cruel, inhuman or degrading treatment or punishment when used as a punishment, during pre-trial detention, indefinitely or for a prolonged period, for persons with mental disabilities or juveniles”: see UN News, “Solitary confinement Should be Banned in Most Cases, UN expert says”, 18 October 2011.

62 ICJ, “Submission of the ICJ to the UN Human Rights Committee in view of the Committee’s examination of Egypt’s 5th periodic report under Article 40 of the ICCPR”, 30 January 2023.

security officers.⁶³ Detainees' access to family visits is also heavily restricted and closely monitored. For example, on visiting days family members are deliberately made to wait for many hours before being allowed into the "visiting area", where they can only communicate with the detainee through a glass panel for a brief period of time.⁶⁴ In other cases, the detainee is moved frequently between detention facilities, making it very difficult for them to exercise their right to see family and their lawyer.⁶⁵

Additionally, there is a pattern of enforced disappearance, recycling of charges, renewal of detention orders, post-detention monitoring, and travel bans, coupled with punitive economic sanctions against individuals for their political or human rights activism – practices by Egyptian authorities that could also amount to torture as expanded on below.

Enforced disappearances are notorious features of pre-trial detention in Egypt, often happening immediately after an individual has been arrested on a false charge.⁶⁶ According to the ECRF, between 2015 and 2020, 2,653 people in Egypt were subjected to enforced disappearance for various periods of time before being brought before the prosecution.⁶⁷ While enforced disappearance can, under international standards, constitute torture, in and of itself,⁶⁸ the pattern of enforced disappearance in Egypt is inextricably linked to torture because most acts of torture take place during this period, when the detainee is completely stripped of the protection of the law.⁶⁹ It is presumed that all individuals who are forcibly disappeared are also subjected to one or more forms of torture or other ill-treatment as documented by NGOs on the ground.⁷⁰ This is consistent with the findings of the UN Working Group on Enforced or Involuntary Disappearances that "[o]wing to the seriousness of acts of enforced disappearance, a number of irrevocable rights are infringed by this form of human rights violation", including the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.⁷¹

Another practice that has emerged in recent years is case recycling,⁷² or case rotation, which involves the arbitrary, persistent, and punitive use of similar charges repeatedly, resulting in new criminal cases with the sole purpose of keeping a detainee in a continuous loop of detention orders. This practice is used to punish those who dissent, and it often results in additional torture and anguish by those detained and their families. Under Article 143 of the Code of Criminal Procedure,⁷³ the maximum period an individual can be held in pre-trial detention is two years. However, Egyptian authorities use the practice of case recycling to circumvent this time limit, by taking

63 ICJ, "Politicized and Unfair Trials before the Emergency State Security Court", 26 November 2021.

64 MO*Monial Nieuws, "On the Other Side of the Bars: the Broken Families of el-Sisi's Egypt", 4 November 2022.

65 This practice formed some of the facts that had to be decided upon by the ACommHPR in the *Mohammed El Sharkawi* case. See ACommHPR, *Mohammed Abderrahim El Sharkawi v. the Republic of Egypt*, Communication 391/11, 2020, Communication 391/11, 2020.

66 Article 7(2)(i) of the Rome Statute defines enforced disappearance as the "arrest, detention or abduction of persons by, or with the authorisation, support or acquiescence of a State or political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time": ICC, *Rome Statute*, Article 7(2)(i).

67 Egyptian Commission for Rights and Freedoms, "Continuous violation and absent justice Forced Disappearance – A five-year report", 2020.

68 Working Group on Enforced or Involuntary Disappearances, "Compilation of General Comments on the Declaration on the Protection of All Persons from Enforced Disappearance", [n.d.].

69 Egyptian Commission for Rights and Freedoms, "Continuous violation and absent justice Forced Disappearance – A five-year report", 2020.

70 The Egyptian Commission for Rights and Freedoms has confirmed this fact to REDRESS.

71 Working Group on Enforced or Involuntary Disappearances, "Compilation of General Comments on the Declaration on the Protection of All Persons from Enforced Disappearance", [n.d.], General Comment on article 17 of the Declaration, page 9, para. 31.

72 Case recycling is a prosecutorial practice in relation to politically motivated cases.

73 Article 143 states: "The period of pretrial detention in the primary investigation stage and the other stages of the criminal case may not exceed one-third of the maximum penalty depriving liberty, so that it does not exceed six months in misdemeanours and eighteen months in felonies, and two years if the prescribed punishment for the crime is life imprisonment or death". (Egyptian Court of Cassation, "Egypt Code of Criminal Procedure -as last amended in 2020", (in Arabic))

advantage of a new period of pre-trial detention with each new charge.⁷⁴ In 2021 alone, the Criminal Court Terrorism Circuit made 28,959 decisions to renew detentions in 2,043 cases, including renewal of detention orders against individuals who had exceeded the maximum pretrial detention period. In the first half of 2022, the Criminal Court Terrorism Circuits issued 12,394 detention renewal decisions in 1,120 cases.⁷⁵

In its 2023 Concluding observations, the HRC expressed deep concern over this practice and called on the Egyptian authorities to end it:

The Committee is also concerned by information received according to which statutory limits to the duration of pretrial detention are circumvented under the practice known as “rotation” in which detainees are added to new cases under similar charges repeatedly. The Committee is further concerned that this practice is often used as a punitive measure against dissenting voices, journalists, human rights defenders and political opponents, with the unwarranted interference of security agencies in the decisions regarding release, even when defendants have been acquitted by the courts.⁷⁶

In an unprecedented move, on 12 March 2021, during the 46th session of the UNHRC, 31 States issued a statement expressing concern over Egypt’s restrictions on freedom of expression and the right to peaceful assembly, noting in particular that they were “deeply concerned about the application of terrorism legislation against human rights activists, LGBTI persons, journalists, politicians and lawyers”, and urging Egypt “to end the use of terrorism charges to hold human rights defenders and civil society activists in extended pre-trial detention and the practice of adding detainees to new cases with similar charges after the legal limit for pre-trial detention has expired”.⁷⁷

Even in instances when detainees are finally put on trial, their trials often involve gross violations of fair trial rights under international law and standards, and often result in unfair convictions and arbitrary sentences that prolong their detention.⁷⁸ In some cases, the detainee is re-arrested on similar or different charges after serving their first sentence or after their release is ordered by court, such as in the emblematic case of activist Alaa Abdel Fattah who was sentenced to five years in prison in 2015, released in March 2019, re-arrested in September 2019, and sentenced again in December 2021 to five years in prison for “publishing fake news.”⁷⁹ The prolongation of arbitrary detention for individuals by bringing new charges against them, rearresting them, or sentencing them after sham trials, creates a perception among detainees and their families that they can be charged and detained indefinitely. The constant anxiety and stress caused by this cycle can amount to psychological torture.⁸⁰

Prisons in Egypt are notoriously overcrowded and in bad condition with limited sanitary facilities, poor ventilation, and lighting. Poor prison conditions are further compounded by the punitive denial of medical care and

74 Mena Rights Group, “The practice of ‘rotation’: how Egypt keeps its dissidents in indefinite detention” 14 December 2021.

75 Egyptian Task Force for Human Rights, “A Crisis by Design”, Mid-Term UPR Report, January 2023.

76 HRC, “Concluding Observations on the Fifth Periodic Report of Egypt”, UN Doc. CCPR/C/EGY/CO/5, 14 April 2023, para. 31.

77 State of Finland and ors., “General Debate Item No 4: Human Rights Situations that Require the Council’s Attention: Joint Statement on Egypt”, 46th Session of the UNHRC, 12 March 2021.

78 ICJ, “Politicized and Unfair Trials before the Emergency State Security Court”, 26 November 2021.

79 OHCHR, “Egypt must immediately release Alaa Abdel Fattah, Türk says”, 8 November 2022. Alaa Abdel Fattah has been detained several times between 2011-2015: see Working Group on Arbitrary Detention, “Opinion No. 6/2016 concerning Alaa Ahmed Seif al Islam Abd El Fattah (Arab Republic of Egypt)”, UN Doc. A/HRC/WGAD/2016, 6 June 2016.

80 HRC, “Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2233/2013”, UN Doc. CCPR/C/116/D/2233/2013, 2 May 2016, para. 10.6. Also UNHRC, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the UNHRC 37th session”, UN Doc. A/HRC/37/50, 26 February 2018, paras. 21-29.

treatment to detainees, thus stripping them of all guarantees of physical and mental integrity and wellbeing.⁸¹ Consequently, over 1,100 detainees died in Egypt's prisons between 2013 and October 2022, with approximately 46 deaths recorded in 2022 alone; most of the deaths were the result of medical negligence.⁸² Deliberately imposed abhorrent detention conditions, coupled with the deliberate refusal to allow access to basic medical care and treatment, can constitute cruel and inhuman treatment and torture in some cases.⁸³ In its most recent Concluding observations, the HRC expressed concern over "multiple reports indicating that detainees held for political reasons are frequently subjected to particularly harsh conditions, including the deliberate denial of health care, the denial of visits by family members and legal counsel and extended periods of solitary confinement."⁸⁴ The HRC noted that deaths have taken place in places of detention following the denial of access to health care, and compounded by an absence of independent, effective and transparent investigations into such deaths.⁸⁵

Arbitrary politically motivated travel bans are also used by Egyptian authorities as a means of muzzling Egyptian civil society and causing suffering to those who dissent and their families. Under Ministry of Interior Decree No. 2214 of 1994 (as amended),⁸⁶ several entities including the courts, investigating judges, the Prosecutor General, the head of the GI, and the head of the NSA – have the power to authorise travel bans preventing Egyptians from traveling abroad. According to the Decree, a travel ban against an individual automatically expires after three years, provided there is no request for an extension filed by the requesting authority. Once renewed a travel ban has no limitations and has the potential lasting indefinitely. Travel bans have been used by Egyptian authorities to target individuals for various reasons, including their civil society work, political activism, journalism, academic research and, in some cases, because of the target's religious teachings. Under the Terrorist Entities Laws,⁸⁷ individuals designated as terrorists are also subject to a five-year travel ban, with the possibility of renewal for an indefinite period. Travel bans have been reported to have a major impact on the mental health and social, professional and economic lives of those targeted.⁸⁸ As noted by Human Rights Watch, "the bans, which authorities usually do not formally announce and provide no clear way to challenge them in court, have separated families, damaged careers, and harmed the mental health of those subjected to them."⁸⁹ In addition to travel bans, the authorities have used asset freezes as a measure to punish those HRDs who are released from detention.⁹⁰

In the specific case of individuals who are released from a prolonged period of arbitrary detention, including as a result serving arbitrary sentences, travel bans may have serious implications for the individuals, increasing their suffering and that of their relatives.⁹¹

81 Organisation of African Unity (OAU), *ACHPR*, 27 June 1981, Article 16 (1): "Every individual shall have the right to enjoy the best attainable state of physical and mental health".

82 Egyptian Task Force for Human Rights, "A Crisis by Design", Mid-Term UPR Report, January 2023.

83 Aljazeera, "When doctors don't help: 'Medical negligence' in Egypt's prisons", 10 July 2019.

84 HRC, "Concluding Observations on the Fifth Periodic Report of Egypt", UN Doc. CCPR/C/EGY/CO/5, 14 April 2023, para. 29.

85 Ibid.

86 *Wizarat al-dakhelya, qarar raqam 2214 beshaan tanzim qawaem al-mamnoueen, 1994* (English translation: *Ministry of Interior decree number 2214 regulating 'The banned lists', 1994.*)

87 No. 8 of 2015 (English translation), as amended by Law No 14 of 2020 (in Arabic), see TIMEP, "TIMEP Brief: Terrorist Entities Law", 4 April 2019

88 The Freedom Initiative and TIMEP, "Abuse of Travel Bans in Egypt", 5 July 2022, p. 6.

89 Human Rights Watch, "Egypt: Arbitrary Travel Bans Throttle Civil Society" 6 July 2022.

90 State of Finland and ors., "General Debate Item No 4: Human Rights Situations that Require the Council's Attention: Joint Statement on Egypt", 46th Session of the UNHRC, 12 March 2021.

91 Travel bans can also violate the prohibition on States to prevent its nationals from entering the country. See International Covenant on Civil and Political Rights (ICCPR), Article 12(4).

B. Torture victims in Egypt as 'civilian population'

As highlighted in the Rome Statute, for torture to constitute a crime against humanity, the attack should be directed against a civilian population. Albeit this element establishes the collective nature of the attack, it does not require that the entire population of a given State or territory be victimised by it.⁹²

Similarly, the civilian population is not “limited to populations defined by a common nationality, ethnicity, or other distinguishing features”.⁹³ Rather, targeted civilian populations may “include a group defined by its (perceived) political affiliation”.⁹⁴ For example, in the *Ruto & Sang* case, the International Criminal Court (ICC) Pre-Trial Chamber II found that post-election violence committed in Kenya’s Rift Valley against a “specific subset of the civilian population” based on their perceived political affiliation could fulfil the requirement of “an attack directed against any civilian population”.⁹⁵ Further, in the *Gbagbo* case, the ICC Pre-Trial Chamber I found that acts of violence directed against perceived opposition supporters during the 2010-11 post-election crisis in Côte d’Ivoire could qualify as an attack against a civilian population⁹⁶. Furthermore, in its decision authorising an investigation relating to Burundi, ICC Pre-Trial Chamber III determined that Burundi State institutions and army and police units carried out an attack against the Burundian civilian population “pursuant to a State policy to suppress dissenting views and opposition to President Nkurunziza’s third term in office”.⁹⁷

To tighten its grip on power, the Egyptian government has sanctioned the use of repressive measures, including torture and other ill-treatment, against civilians engaging in political activism or dissent. The common denominator amongst the targeted individuals is their political activism against the ruling regime, their work in exposing government-sanctioned human rights violations and their dissent against government policies and official discourse.

Political prisoners and HRDs are subject to solitary confinement and denial of medical care as punitive measures, a practice that can amount to torture and has led to the death of detainees.⁹⁸ The majority of political prisoners and HRDs face charges such as “joining a banned or terrorist group”, “financing terrorist groups”, and “spreading false news.”⁹⁹ These charges are often brought against individuals who are politically affiliated with the opposition to the regime.

Once in power, President el-Sisi’s regime initiated a rigorous campaign aimed at eradicating political opponents, such as the Muslim Brotherhood’s leaders. While former President Morsi died in prison due to ill-treatment in 2019, other leaders from the party have been either detained and handed long prison sentences, or have fled into

92 ICTY, *Prosecutor v. Dusko Tadić aka “Dule”*, IT-94-1-T, Opinion and Judgment, 7 May 1997, para. 644.

93 ICC, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Judgment, 8 July 2019, para. 667; ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07, Decision on the Confirmation of Charges, 30 September 2008, para. 399.

94 ICC, *Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey & Joshua Arap Sang*, ICC-01/09-01/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, para. 164.

95 *Ibid.*, paras. 164-174. Similarly, Pre-Trial Chamber II of the ICC found that waves of violence that erupted in Nakuru and Naivasha in the period following the announcement of the results of the presidential election were “politically motivated” and directed against particular ethnic groups based upon their “assumed political allegiance.” As such, this violence could qualify as an attack directed against any civilian population for the purposes of a charge of crimes against humanity: ICC, *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta & Mohamed Hussein Ali*, ICC-01/09-02/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, paras. 115-145, 229.

96 ICC, *Prosecutor v. Laurent Gbagbo*, ICC-02/11-01/11, Decision on the Confirmation of Charges against Laurent Gbagbo, 12 June 2014, paras. 209-212.

97 ICC, *Situation in the Republic of Burundi*, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi, ICC-01/17-X-9-US-Exp, 25 October 2017, 9 November 2017.

98 See Dignity, “#38: Torture in Egypt: Systemic and Systematic”, 2021; Egyptian Taskforce for Human Rights, *Joint Submission* relating to Egypt’s UPR, 13 November 2019, para 31-32.

99 State of Finland and ors., “General Debate Item No 4: Human Rights Situations that Require the Council’s Attention: Joint Statement on Egypt”, 46th Session of the UNHRC, 12 March 2021.

exile.¹⁰⁰ Politicians belonging to other political parties have also been targeted, including former Parliamentarian and Co-founder of the Justice Party, Mostafa Al-Naggar (forcibly disappeared since September 2018),¹⁰¹ the President of the Strong Egypt opposition party, Abdel Moneim Abolfotouh, who was arbitrarily arrested in February 2018, as well as his deputy Mohamed al-Qassas, who was arbitrarily arrested in February 2017 and kept in solitary confinement for a long period of time. Abolfotouh and al-Qassas were sentenced, respectively, to 15 and 10 years' imprisonment by an ESSC for "spreading false news", "joining a terrorist group" and "leading a terrorist group".¹⁰² In March 2021, Egypt's prison population was estimated at approximately 120,000 persons, 65,000 of whom were political prisoners. It was estimated that 26,000 political prisoners were in pre-trial detention.¹⁰³

Beside members of the opposition, the el-Sisi's regime has relentlessly targeted HRDs. As part of the government's campaign to annihilate the Muslim Brotherhood, by October 2015, more than 200 lawyers had been arrested for representing so-called Islamist opponents.¹⁰⁴ Furthermore, lawyers have been arrested for their human rights work and for representing political activists and other HRDs. In a joint briefing paper, the International Commission of Jurists (ICJ) and the Tahrir Institute for Middle East Policy (TIMEP) presented emblematic cases of lawyers who have been subject to arbitrary detention in Egypt, including a non-exhaustive list of 35 lawyers who have been arrested and arbitrarily detained between January 2018 and September 2020.¹⁰⁵ The paper included the case of lawyer Ibrahim Metwally, who was arrested in 2017 at Cairo International Airport when he was traveling to Geneva to speak about the enforced disappearance of his son before the UN Working Group on Enforced or Involuntary Disappearances. Metwally was subjected to enforced disappearance during parts of his detention, as well as torture and other ill-treatment by NSA officers.¹⁰⁶ He was also continually denied access to medical care by prison officials despite having an enlarged and inflamed prostate, until 2023 when he has been finally allowed medical care and family visits.

The case of Mohamed Al-Baker, a human rights lawyer and Director of the Adalah Centre for Rights and Freedoms (Adalah) followed a similar pattern. He was arrested in 2019 while representing detained activist Alaa Abdel Fattah before the SSSP, and questioned about Adalah's human rights work, including its submissions to the Universal Periodic Review (UPR). While in detention, Al-Baker was subjected to ill-treatment and cruel and degrading detention conditions.¹⁰⁷ In December 2021, he was sentenced to four years in prison for "spreading false news using a social networking site".¹⁰⁸ Al-Baker was released by presidential pardon in July 2023.¹⁰⁹ Haitham Mohamedeen, a lawyer and human rights activist who had worked with El-Nadeem Centre for Rehabilitation of Victims of Violence and Torture, was treated similarly. Mohamedeen had been detained and released multiple times since 2013.¹¹⁰ Following his most recent arrest in 2018, he was held in pre-trial detention for four years.¹¹¹

100 See Reuters, "Court jails Egyptian former presidential candidate for 15 years", 30 May 2022.

101 See OMCT, "It's been 1000 days since the enforced disappearance of former parliamentarian Mustafa Al-Naggar: Egypt must disclose his fate", 25 June 2021.

102 See France 24, "Egypt sentences ex-presidential candidate to 15 years: judiciary", 29 May 2022; COP Civic Space, Prisoners of Conscience, "Mohammed El-Qassas", [n.d.].

103 See the Arabic Network for Human Rights Information, "Prisons and harsh conditions of prisoners...Between the real and tragic truth and the fake image presented by the media", 11 April 2021; Human Rights First, "'Prison Atlas' Details Egyptian Cases, Prisoners, and Judges", 3 July 2022; Middle East Eye, "The brutal backdrop to Cop27: How Sisi's Egypt became a crucible of repression", 10 November 2022.

104 Reuters, "Special Report - Egypt locks up lawyers in Islamist fight", 22 October 2015.

105 ICJ & TIMEP, "Targeting the Last Line of Defense: Egypt's attacks against lawyers", 24 September 2020.

106 Ibid.

107 Ibid.

108 Lawyers for Lawyers, "Mohamed El-Baqer sentenced to 4 years in prison", 20 December 2021.

109 AP News, "Two prominent Egyptian rights figures are released from prison following presidential pardons", 20 July 2023.

110 Front Line Defenders, "Ongoing detention of Haytham Mohamedeen", 28 September 2016.

111 Ibid.

Other human rights lawyers who have been targeted include Ezzat Ghoneim, the Executive Director of the Egyptian Coordination for Human Rights and Freedoms, Hoda Abdel Moneim, a Board member, as well as Mohamed Abu Horayra and his activist wife Aisha Al Shatir, amongst other members of the organisation. The four members have been charged with joining a banned group, financing terrorist groups and spreading false news, and were subjected to a number of human right violations, including enforced disappearance and being held in *incommunicado* detention for extended periods with no access to medical care.¹¹² In March 2023, Ghoneim and Abu Horayra were sentenced to 15 years in prison while Al Shatir and Abdel Moneim were sentenced to 10 and five years respectively.¹¹³

In July 2020, UN experts sent a communication to the government of Egypt concerning the detention of a number of HRDs.¹¹⁴ This communication focussed on some of the lawyers mentioned above, as well as on the case of Laila Soueif and her daughter, Sanaa Seif, who are women HRDs and relatives of detained activist Alaa Abdel Fattah. Both women were physically attacked and insulted outside prison when attempting to deliver a letter to Alaa in June 2020. While Soueif was detained for 24 hours for peacefully protesting the arbitrary detention of individuals during the Covid-19 pandemic, her daughter Seif was arbitrarily arrested and officially charged with “terrorist crimes” and “publishing false news”.¹¹⁵ Seif served a sentence of imprisonment one year and a half and was released in December 2021.¹¹⁶

In addition, the UN experts’ communication highlighted the case of Esraa Abdel-Fattah, a woman HRD and journalist who was arrested in October 2019, subjected to torture and ill-treatment, and kept in arbitrary detention for terrorism-related charges until July 2021.¹¹⁷ Other cases of HRDs who were detained in poor conditions and subjected to torture, ill-treatment, physical and psychological abuse include: Ibrahim Ezz El-Din, an urban researcher focusing on the right to housing and forced evictions; Ramy Kamel, an advocate for the rights of Coptic Christians in Egypt and for a community-based approach to urban development; Eman Al-Helw, a HRD working on equality and anti-discrimination; Hossam Ahmad, an advocate for the rights of transgender individuals; and political activist and HRD, Ramy Shaath.¹¹⁸

Egyptian authorities have also targeted journalists and social media activists for exposing the government’s questionable policies and involvement in human rights violations. According to the Committee to Protect Journalists’ Prison Census database, between 2013 and 2021, 92 journalists and media workers were imprisoned in Egypt.¹¹⁹ 2019 and 2022 had the highest number of imprisoned journalists on record, at 31 and 34 journalists, respectively.¹²⁰ Once detained, journalists and social media activists are charged with “spreading false news”, “misuse of social media” and “joining a banned group” and held in arbitrary pre-trial detention for extended periods of time. For example, in November 2019, journalists Solafa Magdy and Hossam Saïad (spouses), were arbitrarily detained

112 Committee for Justice, “The Egyptian Coordination For Rights And Freedoms: Two Years Of Arrest And Repression”, 2 December 2020.

113 Human Rights Watch, “Egypt: Harsh Sentences Against Rights Activists”, 8 March 2023.

114 UN mandates of the Special Rapporteur on the situation of human rights defenders, Special Rapporteur on extrajudicial, summary or arbitrary executions, Working Group on Arbitrary Detention, Working Group on Enforced or Involuntary Disappearances, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the rights to freedom of peaceful assembly and of association, Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on minority issues, Special Rapporteur on freedom of religion or belief, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Special Mandates), Communication, AL EGY 10/2020, 29 July 2020.

115 Ibid.

116 Amnesty International, “Egypt: Further information: Activist and filmmakers released from detention: Sanaa Seif”, 2 February 2022.

117 Amnesty International, “Egypt: Further information: Human rights defender released: Esraa Abdelfattah”, 23 August 2021.

118 UN Special Mandates, Communication, AL EGY 10/2020, 29 July 2020.

119 Committee to Protect Journalists, CPJ’s “CPJ’s database of attacks on the press”, Journalists attacked in Egypt between 2013 and 2022.

120 Ibid.

and held in pre-trial detention for 18 months. While in detention, Magdy was subjected to torture and ill-treatment, including by being sexually assaulted.¹²¹

On 21 May 2021, journalist Tawfiq Ghanem was arrested for “spreading false news”, “misusing social media”, and “joining a terrorist group”. He was forcibly disappeared before appearing before the SSSP on 26 May 2021.¹²² He continues to be held in pre-trial detention in very poor conditions that have worsened his pre-existing health issues. The authorities continue to deny him access to appropriate medical care.¹²³

Further, the Egyptian government’s repressive campaign has targeted students, researchers, and other professionals who monitor, document and address human rights issues, or analyse and report on the government’s policies. Patrick Zaki, a Gender, and Human Rights Researcher at the EIPR and Master’s student in Italy, was arrested while on a visit to Egypt in February 2020 and subjected to enforced disappearance, torture, and sham criminal proceedings before an ESSC for “disseminating false information” based on a 2019 article on the human rights of the Christian minority in Egypt.¹²⁴ He was released in December 2021 pending trial, was re-arrested upon being convicted and sentenced to three years in prison in July 2023, and finally released by a presidential pardon a few days later.¹²⁵

Ahmed Samir Santawy, a sexual and reproductive rights activist and a Master’s student at the Central European University of Austria in Vienna, was arrested in February 2021 while on a family visit to Cairo. Charged with “spreading false news” and terrorism-related charges for his social media posts critical of human rights violations in Egypt, Santawy’s arbitrary detention was characterised by the use of torture as an interrogation tactic and judicial harassment. While he was finally released in August 2022, he cannot leave Egypt to resume his studies as he is the subject of an arbitrary travel ban.¹²⁶

Ayman Hadhoud, an Egyptian economist, was forcibly disappeared in February 2022 and died in custody in March 2022, with his family only being notified of his death a month later. The government-led investigation into his death was completed after six days and concluded that the cause of death was a “cardiac arrest”.¹²⁷ However, Amnesty International conducted its own investigation into the incident by examining official records, conducting interviews with witnesses and other sources, and using independent forensic experts who examined leaked photos of Hadhoud’s body. The organization’s investigation reached the conclusion that there was strong evidence that Hadhoud was tortured or otherwise ill-treated before his death.¹²⁸

In November 2018, Seif Fateen, Professor of Environmental Engineering at Zewil University and Chemical Engineering at Cairo University, and a former advisor to the Minister of Education under the Morsi regime, was arrested, forcibly disappeared, and tortured for nine months before being brought before the SSSP in August 2019. He was charged with “joining a terrorist group” and “funding a terrorist group”. He continues to be held in pre-trial detention with limited family visits and punitive denial of medical care at Al-Qanater Prison.¹²⁹

121 See Front Line Defenders, “Solafa Madgy”, [n.d.].

122 International Service for Human Rights, “[Egypt must immediately release journalist Tawfik Ghanem after 150 days in detention](#)”, 28 October 2021.

123 International Federation of Journalists, “[Egypt: IFJ calls for release of all imprisoned journalists](#)”, 25 May 2022.

124 OMCT, “[Egypt: Release of Patrick George Zaki](#)”, 9 December 2021; BBC, “[Patrick Zaki: Egypt jails Christian rights activist on false news charge](#)”, 18 July 2023.

125 AP News, “[Two prominent Egyptian rights figures are released from prison following presidential pardons](#)”, 20 July 2023.

126 OMCT, “[Egypt: New charges against master’s student Ahmed Samir Santawy](#)”, 25 February 2021.

127 See Human Rights Watch, “[Egypt: Flawed Investigation Into Death in Custody](#)”, 7 July 2022.

128 See Amnesty International, “[Egypt: Investigate the suspicious death in custody of economist Ayman Hadhoud following his enforced disappearance](#)”, 14 April 2022.

129 COP Civic Space, Prisoners of Conscience, “[Seif Fateen](#)”, [n.d.].

The Egyptian authorities have also systematically targeted individuals for arrest and torture based on their perceived or real sexual orientation or gender identity. Egyptian police and NSA officers have used social networking sites and dating apps to entrap LGBTIQ+ individuals and charge them with “promoting debauchery”, “prostitution”, “joining a banned group”, or “misuse of social media”.¹³⁰ Individuals detained under these charges are subjected by doctors in the Department of Medicine to forced “virginity tests” and “anal exams” to produce “evidence” of same-sex activity, and to “pseudo-medical examinations” that can constitute torture under international law.¹³¹

In a 2017 report documenting the treatment of LGBTIQ+ individuals in Egypt over a four-year span, the EIPR found that arrests and prosecutions targeting the LGBTIQ+ community had reached almost five times the average number of arrests in previous years.¹³² In those cases, the Prosecution charged detained individuals with the “habitual practice of debauchery”, “advertising material that incites debauchery on the internet”, or “running a house, locale, [or] residence for debauchery purposes or inciting it”. Between October 2013 and March 2017, an average of 66 people per year were arrested in relation to such charges, which compares to an average of 14 people per year in the 13 years prior to the start of the crackdown (2000-2013).¹³³ The situation is of serious concern and in March 2023 the HRC raised concerns about the treatment of LGBTIQ+ individuals in Egypt.¹³⁴

In 2021, the CEDAW Committee expressed deep concern on the arbitrary detention, prolonged pre-trial detention, ill-treatment and travel bans imposed against women HRDs for their civic engagement.¹³⁵ Female protestors who are detained are also subjected to gender-based violence including rape, other forms of sexual assault and sexual harassment.¹³⁶ The severity of the physical, psychological and sexual violations is likely to constitute torture.¹³⁷

These examples are representative of the overwhelming brutality adopted by the Egyptian police and NSA officers with the aid of forensic doctors – and permitted by State prosecutors and the judiciary – to intimidate and silence any voices critical of the government’s appalling human rights violations and the absence of the rule of law. In recent years, torture has been entrenched in the criminal justice process (at arrest, during trial and after sentencing) and adopted as one of the main interrogation tactics by the security forces at National Security facilities.

C. Perpetrators of torture in Egypt

To establish criminal responsibility for crimes against humanity, the Rome Statute requires that the ‘perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.’¹³⁸ While ICC jurisprudence has not explicitly dealt with the issue of constructive knowledge, jurisprudence from other international tribunals, such as the ICTY, has interpreted the knowledge

130 Over the years some of the prominent crackdowns on the LGBTIQ+ community have included: (i) the 2001 police raid of the “Queen boat” night club (Gay & Lesbian Archives of the Pacific Northwest, “Twenty-One of Cairo 52 Re-Sentenced”, 21-27 March 2003); (ii) the 2003 Qasr al-Nil arrests (Human Rights Watch, “Egypt: Crackdown on Homosexual Men Continues”, 6 October 2003); (iii) the 2014 Video of the gay marriage case and the Bab al-Bahr case (BBC, “Egypt jails ‘gay wedding video’ men”, 1 November 2014); (iv) the 2017 rainbow flag case (Outright International, “Country Overview: Egypt”, [n.d.]); (v) the 2019 arrest of LGBTIQ+ human rights defenders (Rights Africa, “Repression in Egypt: 92 LGBTIQ+ arrests last year”, 8 March 2020); and (vi) the most recent 2020 Fairmont case (Human Rights Watch, “Egypt Detains Men for Alleged Sexual Orientation, Alongside Alleged Rapists”, 2 November 2020.)

131 Human Rights Watch, “Egypt: Security Forces Abuse, Torture LGBT People”, 1 October 2020.

132 EIPR, “The Trap: Punishing sexual difference in Egypt”, November 2017.

133 Ibid.

134 OHCHR, “In Dialogue with Egypt, Experts of the Human Rights Committee Commend Measures Combatting Discrimination, Raise Issues Concerning Treatment of Lesbian, Gay, Bisexual, Transgender and Intersex Persons and Judicial Independence”, 1 March 2023.

135 CEDAW, “Concluding Observations on the Combined Eight to Tenth Periodic Reports of Egypt”, CEDAW/C/EGY/CO/8-10, 26 November 2021, para. 29.

136 Middle East Monitor, “We Record: 2,761 Women Tortured and Degraded Since Egypt Coup”, 2 August 2019.

137 UNHRC, “Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak”, UN Doc A/HRC/13/39, 9 February 2010, para 44.

138 ICC, “Elements of Crimes”, Article 7 - Crimes against humanity.

requirement to extend to constructive knowledge, where proof that the accused ‘at least’ took the risk that his or her acts were part of the attack, is sufficient.¹³⁹

The knowledge element can be inferred from circumstantial evidence.¹⁴⁰ Its application is not limited to direct perpetrators, but is also a prerequisite for anyone held liable under any mode of liability for crimes against humanity.¹⁴¹

Any person, whether a public official or private citizen, can commit acts of torture.¹⁴² Acts of torture in Egypt, as illustrated in this report, are typically perpetrated by members of the NSA and the National Police. In some cases, acts of torture are also perpetrated by other law enforcement and security agents, prison officials including prison doctors and prison guards, and military officers. Forensic doctors who support criminal investigations perform pseudo-medical exams that can amount to torture. The SSSP, in turn, is often complicit through its failure to remedy the arbitrary detention of dissidents and HRDs, and its systematic failure to investigate incidents and allegations of torture. As reiterated by the CAT in its findings under an Article 20 inquiry into Egypt in 2017:

Torture occurs in police stations, prisons, State security facilities, and Central Security Forces facilities. Torture is perpetrated by police officers, military officers, National Security officers and prison guards. However, prosecutors, judges and prison officials also facilitate torture by failing to curb practices of torture, arbitrary detention, and ill-treatment or to act on complaints.¹⁴³

The NSA and National Police are law enforcement agencies within the Ministry of Interior. The NSA and its mandate were established by Ministerial Decree No. 445/2011¹⁴⁴. Under this mandate the NSA oversees counter-intelligence, internal and border security, counter-terrorism and surveillance. Its functions include executing arrests, carrying out searches and seizures, and conducting preliminary investigations of terrorism and internal security threats. The NSA is therefore the government institution at the forefront of implementing the government’s ‘security’ and ‘anti-terrorism’ policies.¹⁴⁵ The National Police is responsible for law enforcement in Egypt.¹⁴⁶

The NSA and the National Police are jointly responsible for the high number of raids, arbitrary arrests, enforced disappearances and torture of persons alleged to have taken part in terrorism or political cases.¹⁴⁷ Specifically, National Police forces from nearby local police stations often accompany plain-clothed NSA officers during unlawful arrests. In many cases, the arrested individuals are taken to NSA facilities where they are subjected to various periods of enforced disappearance, torture and other ill-treatment. However, local police stations also frequently function as detention centres and as sites for torture and ill-treatment of detainees, both immediately after their arrest and later during pre-trial interrogations. This pattern of abuse reflects a long-standing trend that has been

139 ICTY, *Prosecutor v. Dragoljub Kunarac et al. (Appeal)*, IT-96-23 & IT-96-23-A, Appeal Judgement, 12 June 2002, paras. 99 - 102.

140 ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07, Decision on the Confirmation of Charges, 30 September 2008, para. 402 (“Therefore, in the view of the Chamber, knowledge of the attack and the perpetrator’s awareness that his conduct was part of such attack may be inferred from circumstantial evidence, such as: the accused’s position in the military hierarchy; his assuming an important role in the broader criminal campaign; his presence at the scene of the crimes; his references to the superiority of his group over the enemy group; and the general historical and political environment in which the acts occurred.”).

141 ICTY, *Prosecutor v. Radovan Karadžić*, Judgment, IT-95-5/18-T, 24 March 2016, fn. 1543.

142 ICTY, *Prosecutor v. Miroslav Kvočka et. al. (Appeal)*, Judgment, IT-98-30/1-A, 28 February 2005, para. 284.

143 CAT, “Annual Report: May 2016 - May 2017”, [n.d.], para. 69.

144 Non-published decree issued on 15 March 2022, see Carnegie Endowment for International Peace, “Background Paper on Security Sector in Egypt in 2013”, page.3.

145 Amnesty International, “Egypt: End National Security Agency’s web of fear controlling activists’ lives”, 16 September 2021.

146 Law No. 901 of 1971 on Police Authority (in Arabic).

147 Amnesty International, “Egypt: End National Security Agency’s web of fear controlling activists’ lives”, 16 September 2021.

documented by organisations such as Human Rights Watch,¹⁴⁸ Amnesty International,¹⁴⁹ the Committee for Justice¹⁵⁰ and TIMEP.¹⁵¹

In a report by Human Rights Watch, out of 20 documented cases of torture, 13 detainees were tortured in NSA offices, five in police stations, and two in both places.¹⁵² For example in the case of Giulio Regeni, an Italian national who was kidnapped and tortured to death in Egypt in 2016, four of the perpetrators identified and charged by the Italian Prosecution were senior officers of the NSA.¹⁵³

Once charged, detained individuals are often subject to prolonged periods of pre-trial detention ordered by the Prosecution. During this period, detainees are also subject to several forms of torture and ill-treatment, held in inhumane prison conditions, and often denied access to medical care and medication,¹⁵⁴ all of which have resulted in numerous deaths in detention and death soon after release from State custody.¹⁵⁵

Many individuals who were arbitrarily held in pre-trial detention or have completed their prison sentences, are required to report to NSA offices regularly after their release. This practice has been described by local and international NGOs as “extrajudicial probation measures.”¹⁵⁶ In addition to the high level of impunity enjoyed by NSA officers, this practice underlines the NSA’s significant authority.

Prison officials also bear responsibility for the medical neglect that prisoners face, which has resulted in the death of hundreds of prisoners in detention.¹⁵⁷ In a recent report, Amnesty International concluded that prison authorities, particularly the Prisons Sector’s medical services administration, deliberately deny HRDs and others perceived as political opponents access to medical care with the apparent purpose of punishing dissent, causing the victims additional pain and suffering that could amount to torture.¹⁵⁸ In 2019, UN experts had expressed concern that the denial of medical treatment appeared to be an intentional tool wielded against political opponents and others.¹⁵⁹ In its most recent Concluding observations, the HRC reiterated its concern over the deliberate denial of medical care against detainees held for political reasons.¹⁶⁰

Medical experts at the FMA under the Ministry of Justice are also directly and indirectly involved in the perpetration of acts of torture against detainees in Egypt.¹⁶¹ In this regard, one crucial form of evidence used in criminal cases in Egypt is evidence collected through forensic medicine – a role aptly summarised by a former Chief Medical Examiner who observed that, “the role of the department is to examine the story narrated by the prosecutor

148 Human Rights Watch, “We Do Unreasonable Things Here”, 5 September 2017.

149 Amnesty International, “Egypt: ‘Officially, you do not exist’”, 2016.

150 Committee for Justice, *Justice Watch Archive - Database*, filtered for detention place.

151 For detailed accounts of the patterns of torture in Egypt see TIMEP, “Projects and Reports”, [n.d.].

152 Human Rights Watch, “We Do Unreasonable Things Here”, 5 September 2017.

153 The Guardian, “Giulio Regeni: Trial of Egyptian Security charged over death begins in Rome”, 14 October 2021.

154 Between 2013 and 2018, approximately 106 detainees with political profiles had filed complaints with the Prosecutors and courts about prison administrations’ failure to provide them adequate medical care. See Amnesty International, “What do I care if you Die? Negligence and Denial of Health Care in Egyptian Prisons”, 25 January 2021, p. 39.

155 Committee for Justice, “With No Accountability”, 10 December 2019.

156 Amnesty International, “Egypt: End National Security Agency’s web of fear controlling activists’ lives”, 16 September 2021.

157 Egyptian Task Force for Human Rights, “A Crisis by Design”, Mid-Term UPR Report, January 2023.

158 Amnesty International, “What do I care if you Die? Negligence and Denial of Health Care in Egyptian Prisons”, 25 January 2021, pp. 46 to 52.

159 OHCHR, “UN experts denounce Morsi ‘brutal’ prison conditions, warn thousands of other inmates at severe risk”, 8 November 2019.

160 HRC, “Concluding Observations on the Fifth Periodic Report of Egypt”, UN Doc. CCPR/C/EGY/CO/5, 14 April 2023, para. 29.

161 See Cody Cichowitz et al., “Forced anal examinations to ascertain sexual orientation and sexual behaviour: An abusive and medically unsound practice”, *PLOS Medicine*, Vol 15, Issue 3, 2018; Scott Long, “When Doctors Torture: The Anus and the State in Egypt and Beyond”, *Health and Human Rights*, Vol. 7, No. 2, 2004, pp. 114–40 at pp. 116; and Jeanelle de Gruchy & Julie Fish, “Doctors’ involvement in human rights abuses of men who have sex with men in Egypt”, *The Lancet*, Vol. 363, Issue 9424, 2004, p. 1903.

in his warrant”.¹⁶² Methods used by forensic doctors to collect such evidence can amount to torture. These methods include, for example, forced “anal examinations” against gay men and transgender women, among others, charged with debauchery; and “virginity tests” against female protestors and activists.¹⁶³ Although a Cairo administrative court declared “virginity tests” to be illegal in December 2011,¹⁶⁴ women have faced obstacles in pursuing claims against doctors for the harm they experienced after being forcibly subjected to these tests.¹⁶⁵ The practice of “virginity tests” continues, with women also being targeted after protests in 2014.¹⁶⁶ The evidence provided by the medical experts at the FMA is relied upon by the State Prosecution and the Egyptian Judiciary to convict individuals on false charges.¹⁶⁷

In addition, the FMA has issued medical reports falsifying the cause of death in a number of cases where detainees died in custody. For example in the case of Ayman Hadhoud the prosecution’s investigation, with the aid of a forensic doctor, concluded that the cause of death was “cardiac arrest.”¹⁶⁸ However, an independent investigation by Amnesty International concluded that there was strong evidence that Hadhoud was tortured or ill-treated before his death.¹⁶⁹ In a report published in June 2022 about violations against the detainees who leaked videos of police violence and torture at al-Salam Police Station,¹⁷⁰ the Egyptian Front for Human Rights observed that the FMA had mischaracterised the cause of the injuries of 18 people, concluding that there was insufficient evidence to indicate the infliction of physical abuse.¹⁷¹

Prison officials, including guards and prison physicians, are also implicated in the commission of torture. Prison officials have directly participated in the torture and other ill-treatment of prisoners held in prison facilities under their supervision. For example, the recent beating of four prisoners (two political activists, a lawyer, and a blogger) at Badr 1 prison where they were stripped after being beaten and placed in ‘disciplinary cells’ overnight without food or water.¹⁷²

In 2013, *The Guardian* published information from a leaked presidential report which investigated military, police and doctors’ violations against protesters since 2011.¹⁷³ While the report has never been made public, the leaked information indicated that senior military doctors ordered subordinates to operate on wounded protesters without the use of anaesthetics or sterilisation.¹⁷⁴ In addition, the report showed that doctors and nurses, together with senior officers, beat up some of the wounded protesters.¹⁷⁵

The other organ implicated in the commission of torture in Egypt is the SSSP – a branch of the Public Prosecution, within the judicial branch. The Public Prosecution serves both investigatory and prosecutorial functions and is

162 Hebatullah Mahmoud Khalil, “Access Denied: Institutional Barriers to Justice for Victims of Torture in Egypt”, *Torture*, Vol 23, No. 1, 2013, pp. 28-46 at p. 38

163 REDRESS, case before the African Commission on Human and Peoples’ Rights, Samira Ibrahim and Rasha Abdel-Rahman, 2014.

164 *The Guardian*, “Virginty tests on Egypt protesters are illegal, says judge”, 27 December 2011.

165 BBC, “Egypt unrest: Court clears ‘virginity test’ doctor”, 11 March 2012.

166 CNN, “Virginty test allegations re-emerge in Egypt’s ‘climate of fear’”, 21 February 2014.

167 Human Rights Watch, “Dignity Debased”, 12 July 2016.

168 Human Rights Watch, “Egypt: Flawed Investigation Into Death in Custody”, 7 July 2022.

169 Amnesty International, “Egypt: Investigate the suspicious death in custody of economist Ayman Hadhoud following his enforced disappearance”, 14 April 2022.

170 Egyptian Front for Human Rights, “An Analytical Report on the Main Violations Against the Accused in Case 95/2022 known as Al-Salam Police Station Detainees” (in Arabic), 28 June 2022.

171 *Ibid.*

172 Various Egyptian human rights organisations, “Joint Statement: After the attack on activists and HRDs by the Badr 1 prison administration Security forces arrest Neama Hesham from her home in the today’s hours”, 17 April 2023

173 *The Guardian*, “Egyptian doctors ordered to operate on protesters without anaesthetic”, 11 April 2013.

174 *Ibid.*

175 *Ibid.*

the only institution with the authority to investigate crimes, indict suspects, and refer cases to trial.¹⁷⁶ The Public Prosecution also has authority to issue travel bans and asset freezing orders. The SSSP exercises the mandates conferred on the Public Prosecution in relation to crimes concerning internal and external state security, explosives, assembly, and strikes.¹⁷⁷ When el-Sisi took office, the mandate of the SSSP was extended to offences falling under the Counter-Terrorism Law and Emergency Law.¹⁷⁸ According to the Code of Criminal Procedures and the 2015 Counter-Terrorism Law, in cases relating to State security crimes, SSSP prosecutors have the authority to order that suspects be held in pre-trial detention for up to 150 days. They can also order the monitoring of communications and censoring of online platforms, as well as the examination of financial records and the closing of buildings for the purposes of investigating ‘terrorism’ cases. Typically, these powers would reside with judges instead of prosecutors.¹⁷⁹

The Ministry of Interior, which has direct oversight of the NSA and National Police, collaborates closely with the Public Prosecution, including the SSSP, in fulfilling executive functions such as arrests, searches and seizures of evidence that are necessary to carry out Public Prosecution investigations.¹⁸⁰ After an arrest, the NSA transfers the individual and any evidence from their preliminary investigations and interrogations to the SSSP, which has the authority to remand the ‘suspect’ into pre-trial detention. The SSSP relies on torture-tainted evidence to prosecute individuals, frequently on false terrorism charges.¹⁸¹

While acts of torture may occur without formal SSSP involvement or authorisation, the SSSP is complicit in practice, as it collaborates closely with the NSA and National Police during the implementation of any steps taken in a criminal case based on evidence gained through the torture of a suspect¹⁸² – a practice which is extremely concerning partly because of the continued existence of the death penalty in Egypt’s legal frameworks. In fact, in 2018 the UN human rights experts expressed concern about the continued pattern of death sentences handed out on the basis of evidence obtained through torture and/or other ill treatment often during a period of enforced disappearance.¹⁸³ Between 2013 and 2019 Egyptian courts have upheld 1,451 death sentences.¹⁸⁴

The SSSP not only relies on evidence obtained through torture, but it also fails to address any complaints from detainees alleging torture, resulting in the tacit approval of criminal conduct on the part of law enforcement officials involving the torture and/or other ill-treatment of detainees. The failure of State authorities to respond to complaints of torture and/or other ill treatment can only exacerbate the suffering of victims. Additionally, the SSSP regularly charges activists, human rights lawyers, and others with politically motivated charges, including “terrorism” and “spreading false news”, in response to the exercise of their freedoms of expression and association. The SSSP also constantly blocks the detainees’ attempts to appeal their detention and the renewal of their

176 TIMEP, “The Egyptian Prosecution: A Fact Sheet”, 4 May 2020.

177 Egyptian Ministry of Justice, Decree establishing the SSSP, 1953.

178 The mandate of the SSSP has been incrementally expanded through anti-terrorism and criminal laws. For a detailed analysis of the mandate of the SSSP, see TIMEP, “The Egyptian Prosecution: A Fact Sheet”, 4 May 2020.

179 Article 206 bis of the Code of Criminal Procedures and Article 42 of Law no. 94/2015 on counter-terrorism (counter-terrorism law), also Article 46 of the counter-terrorism law and Article 1597 of the Guidelines to the Public Prosecution (GPP).

180 A number of prosecutors at the SSSP are former NSA officers, and some are relatives of President al-Sisi and other top government officials: see Amnesty International, “Egypt: Permanent State of Exception: Abuses by the Supreme State Security Prosecution”, 27 November 2019.

181 Amnesty International, “Egypt: Permanent State of Exception: Abuses by the Supreme State Security Prosecution”, 27 November 2019.

182 On 20 February 2019, the government of Egypt executed 9 men (Ahmed Mohamed Taha Wahdan; Abu el-Qasem Ahmed Ali Youssef; Mahmoud el-Ahmady Abdul Rahman; Abdul Rahman Soliman Mohamed; Ahmed Mahrous el-Sayed; Islam Mohamed Ahmed Mekawy; Abu Bakr el-Sayed Abdul Mageed Mohamed; Ahmed el-Degwi and Ahmed Gamal Hegazy) who were convicted on the basis of evidence obtained under torture under case 7122/2016 (Case of the assassination of the public prosecutor): see OHCHR, “Egypt: UN experts condemn execution of nine men after ‘confessions under torture’”, 25 February 2019.

183 OHCHR, “Egypt must halt executions, say human rights experts”, 26 January 2018.

184 OHCHR, “Egypt: UN experts condemn execution of nine men after ‘confessions under torture’”, 25 February 2019.

detention orders. According to the Egyptian Front for Human Rights, the SSSP contested every single appeal against detention orders between December 2018 and September 2019.¹⁸⁵

In sum, responsibility for the systematic and widespread use of torture and other ill-treatment in Egypt is variously shared by the NSA, the National Police, the MI, the SSSP, and is attributable to the specific individuals leading and supervising all these institutions, as well as medical experts at the department of medical forensics and prison officials including prison guards and prison physicians. Liability for torture as a crime against humanity in relation to the heads of these institutions and other superiors can be pursued using the ‘superior and commander responsibility’ mode of criminal liability prescribed in Article 28 of the Rome Statute, which allows for military commanders and civilian superiors to be held accountable for crimes committed by their subordinates if the superior knew or should have known that their subordinates were committing or about to commit a crime.¹⁸⁶

D. A widespread or systemic attack against a civilian population

Under the Rome Statute, in order to prove torture as a crime against humanity, it is necessary to show that torture has occurred and or is occurring within the context of a “widespread or systematic attack on the civilian population” and that it is being perpetrated with “knowledge” of the attack.¹⁸⁷

An “attack” is a course of conduct involving violence against or mistreatment of a civilian population.¹⁸⁸ This means the attack does not need to be of military nature or involve the use of armed force.¹⁸⁹

To qualify as an attack for the purposes of crimes against humanity, this course of conduct must involve multiple acts of violence against, or mistreatment of, a civilian population.¹⁹⁰ This requirement serves to limit crimes against humanity to cases involving “a series or overall flow of events”, as opposed to a single isolated act or “mere aggregate of random acts”.¹⁹¹ Nevertheless, a single incident or operation that involves the commission of multiple underlying acts may constitute an attack.¹⁹² An attack may be a combination of various underlying acts.¹⁹³

Analysis of the nature of attacks considered “widespread” or “systematic” should occur on a case-by-case basis and may consider the consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities, and any identifiable patterns of crimes.¹⁹⁴

185 Egyptian Front for Human Rights, “The principle is for your detention to continue” (in Arabic), 15 July 2019.

186 ICC, Rome Statute, Article 28.

187 ICC, Rome Statute, Article 7(1).

188 ICC, Rome Statute, Article 7(2)(a): “Attack directed against any civilian population’ means a course of conduct [....]”.

189 ICC, “Elements of Crimes”, Article 7 - Crimes against humanity, Introduction, para. 3 (“The acts need not constitute a military attack”); ICC, *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Judgment, 21 March 2016, para. 149; ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Judgment, 7 March 2014, para. 1101.

190 ICC, Rome Statute, Article 7(2)(a) (an attack directed against any civilian population is “a course of conduct involving the multiple commission of [underlying prohibited] acts”); ICTY, *Prosecutor v. Dragoljub Kunarac et al.*, IT-96-23-T & IT-96-23/1-T, Judgment, 22 February 2001, para. 415; ICTY, *Prosecutor v. Dragoljub Kunarac et al.* (Appeal), IT-96-23 & IT-96-23-A, Appeal Judgment, 12 June 2002, para. 89 (confirming the Trial Chamber’s interpretation of the attack); ICTR, *Prosecutor v. Ferdinand Nahimana et al.* (Appeal), ICTR-99-52-A, Judgment, 28 November 2007, paras. 916-918.

191 ICC, *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Judgment, 21 March 2016, para. 149. See also ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Judgment, 7 March 2014, para. 1101.

192 ICC, *Prosecutor v. Bosco Ntaganda* (Appeal), ICC-01/04-02/06 A A2, Judgment, 30 March 2021, para. 381 (“a single incident or operation in which multiple crimes are committed could amount to a crime against humanity provided that the relevant contextual elements are met”); ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Judgment, 7 March 2014, para. 1101.

193 ICTR, *Prosecutor v. Clément Kayishema et Obed Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, para. 122; ICTR, *Prosecutor v. Ferdinand Nahimana et al.* (Appeal), ICTR-99-52-A, Judgment, 28 November 2007, para. 918.

194 ICTY, *Prosecutor v. Radovan Karadžić*, Judgment, IT-95-5/18-T, 24 March 2016, para. 477, citing ICTY, *Prosecutor v. Dragoljub Kunarac et al.* (Appeal), IT-96-23 & IT-96-23-A, Appeal Judgment, 12 June 2002.

The contextual element of the terms “widespread” or “systematic” is disjunctive, meaning that it suffices that the attack is either widespread *or* systematic.¹⁹⁵ Nonetheless, as illustrated in this section, torture in Egypt is both widespread *and* systematic.

1. The systematic and widespread nature of torture in Egypt

Under UNCAT, a State party may be asked to cooperate with the CAT in an Article 20 investigation if the Committee “receives reliable information that appears to contain well-founded indications that torture is being systematically practiced in the territory” of the State.¹⁹⁶ Egypt is the only State party to UNCAT that has been investigated by the CAT twice under Article 20, in 1996 and in 2017.¹⁹⁷ In both investigations, the Committee found that torture in Egypt is practised systematically, specifically stating in its 2017 report that:

Torture appears to occur particularly frequently following arbitrary arrests and is often carried out to obtain a confession or to punish and threaten political dissenters. [...] Perpetrators of torture almost universally enjoy impunity, although Egyptian law prohibits and creates accountability mechanisms for torture and related practices, demonstrating a serious dissonance between law and practice. In the view of the Committee, all the above lead to the inescapable conclusion that torture is a systematic practice in Egypt.¹⁹⁸

In 1996, the CAT for the first time explicitly declared torture to be a systematic and widespread problem in Egypt. The Committee concluded that “torture is systematically practiced by the security forces in Egypt, in particular by State Security Intelligence.”¹⁹⁹ The Committee found that, despite the presence of a “legal and judicial infrastructure that should enable [Egypt] to combat the phenomenon of torture in an effective way,” reported cases of torture seemed to be “habitual, widespread and deliberate in at least a considerable part of the country.”²⁰⁰ Then, as now, torture was used “not only to obtain information and extort confessions, but also as a form of retaliation to destroy the personality of the person arrested.”²⁰¹

In the years after 1996, the CAT continued to raise the issue of “widespread” torture in Egypt in its Concluding observations on the State’s periodic reports.²⁰² Despite the Committee’s concern, the issue of torture has remained prevalent, and NGO reports led to the Committee’s second Article 20 inquiry into the practice of torture in Egypt in 2017, which again emphasised the widespread and systematic nature of torture in the country.

A Human Rights Watch report published that same year supported the CAT’s conclusion, stating that the decades-long commission of identical types of torture in “police stations, security directorates, and National Security offices across the country” indicated that the practice of torture was “systematic and widespread”. This conclusion led Human Rights Watch to argue that torture in Egypt constituted a crime against humanity.²⁰³

195 ICTY, *Prosecutor v. Dragoljub Kunarac et al. (Appeal)*, IT-96-23 & IT-96-23-A, Appeal Judgement, 12 June 2002, paras. 93, 97; ICTR, *Prosecutor v. Clément Kayishema et Obed Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, fn. 63; ICC, *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges, 15 June 2009, para. 82; International Law Commission, “Report: Chapter IV Crimes Against Humanity”, UN Doc. A/72/10, 2017, para. 46.

196 UNCAT, Article 20.

197 The CAT has expressed serious concern about the widespread and systematic nature of torture. See CAT, *Report*, UN Doc A/44/46, 1989, paras. 123-144.

198 CAT, “Summary Account of the Results of the Proceedings Concerning the Inquiry on Egypt”, UN Doc A/72/44, 2017, para. 69.

199 *Ibid.*, paras. 215, 220.

200 *Ibid.*, paras. 206, 220.

201 *Ibid.*, para. 204.

202 CAT, *Report*, UN Doc A/54/44, 26 June 1999, paras. 206, 207; CAT, “Consideration of Reports Submitted by States Parties Under Article 19 of the Convention”, UN Doc CAT/C/CR/29/4, 2002, para. 4.

203 Human Rights Watch, “We Do Unreasonable Things Here”, 2017.

In its latest Concluding observations on Egypt, the HRC noted the “systematic use of torture and cruel, inhuman or degrading treatment at the hand of law enforcement personnel” and expressed concern that “torture and ill-treatment are prevalent within places of deprivation of liberty and that such acts are widely practised by the police and State security services during the arrest, interrogation and investigation phases, often as a method of coercion to elicit information or to punish or intimidate opponents and critics, despite constitutional and legislative guarantees”.²⁰⁴

This report reprises this conclusion and reiterates that the nature of torture in Egypt is sufficiently widespread and systematic to establish, at a minimum, a ‘course of conduct’ of repeat violations comprising an ‘attack’ against the civilian population.

2. Torture in Egypt ‘in furtherance of a State policy’

According to the Rome Statute, torture as a crime against humanity is established when the course of conduct is systematic or widespread in furtherance of a State or organisational policy.²⁰⁵ This element does not mean that a formal design or policy should be proven to exist. In the *Katanga* case, the ICC found that “...in the majority of situations amenable to the Court, some aspects of the policy pursued against a civilian population will only crystallise and develop as actions are set in train and undertaken by the perpetrators”.²⁰⁶

In determining whether an “attack” was committed in furtherance of a State policy, the ICC in the *Bemba case* held that an inference could be drawn from the following factors:

- (i) that the attack was planned, directed, or organised; (ii) a recurrent pattern of violence;
- (iii) the use of public or private resources to further the policy; (iv) the involvement of the State or organisational forces in the commission of crimes; (v) statements, instructions or documentation attributable to the State or the organisation condoning or encouraging the commission of crimes; and/or (vi) an underlying motivation.²⁰⁷

As shown in the previous sections, torture in Egypt follows similar patterns and *modus operandi*, including its commission in State-run detention centres and prisons. Further, over the years human rights NGOs have, clearly documented and illustrated how torture in Egypt has extended beyond random and individual instances to disclose conclusive evidence indicating an actual State policy,²⁰⁸ where the security apparatus purposefully and routinely “acts with the intention to torture”.²⁰⁹

The Egyptian government constantly uses measures such as states of emergency to create loopholes and circumvent rights recognised in the Constitution and international law, allowing for the systematic commission of torture. Similarly, the framework of ‘fighting terrorism’ in Egypt has generated a pretext for various human rights violations, including torture, with almost complete impunity. The unsanctioned acts and omissions of the judiciary allowing for arbitrary arrests and *incommunicado* detentions, as well as impunity in cases of reported torture, further show the existence of a State policy that encourages and enables the use of torture and other violations to suppress dissent.

204 HRC, “Concluding Observations on the Fifth Periodic Report of Egypt”, UN Doc CCPR/C/EGY/CO/5, 14 April 2023, para. 27.

205 ICC, Rome Statute, Article 7(2)(a).

206 ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Judgment, 7 March 2014, para. 1108.

207 ICC, *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Judgment, 21 March 2016, para 160.

208 Cairo Institute for Human Rights Studies, “Egypt: Torture is Systematic and Those Who Perpetrate It Enjoy Complete Impunity” 21 October 2021.

209 Dignity, “#38: Torture in Egypt: Systemic and Systematic”, 2021, p. 7.

a) Legal frameworks that enable torture as a State policy

1. State of emergency framework

From 1981 until 2012, Egypt was under a continuous state of emergency, which precipitated serious and systematic violations of human rights. As first noted by the CAT in its 1993 observations to Egypt's periodic report, "the state of emergency proclaimed in Egypt without interruption since 1981 is one of the main obstacles to the full application of the provisions of the Convention".²¹⁰ Similarly, in its 1999 observations to Egypt's periodic report, the Committee expressed concern that the then ongoing state of emergency "seemed to have created a culture of violence among certain elements of the police and security forces".²¹¹

After the 2011 Egyptian revolution, between 2012 and 2017, President Morsi and President el-Sisi declared a number of states of emergency. In 2017, after the bombing of two churches in Alexandria and Tanta, President el-Sisi declared a new state of emergency for three months. The state of emergency was constantly renewed until October 2021.²¹² While, President el-Sisi announced the purported end of the state of emergency on 25 October 2021, this decision has had little, if any, impact on the legal system, as many of the legal provisions establishing exceptional measures under the state of emergency, such as the anti-terrorism laws, remain in effect.²¹³

Any declaration of a state of emergency in Egypt automatically brings the 1958 law on states of emergency into effect.²¹⁴ According to this law, once a state of emergency is declared, it is enforceable without any further legal procedure.²¹⁵

Article 2 of the 2017 Presidential decree re-declaring a state of emergency directs that "armed forces and the police are to take the necessary measures to counter the threat of terrorism and its financing; to maintain security in the country; and to protect public and private property and the safety of citizens".²¹⁶ Egyptian security forces have used such provisions to impose restrictions on the freedoms of association, expression and assembly, as well as to facilitate blatant derogations from constitutional rights and due process, including the right to be free from torture or cruel, inhuman or degrading treatment or punishment.²¹⁷

Additionally, the 1958 state of emergency law provides for the establishment of the ESSSCs, which conduct speedy criminal proceedings characterised by gross violations of fair trial rights.²¹⁸ As exceptional courts, the ESSSCs' decisions are not subject to appeal. Only the President can reduce or suspend the implementation of the decision of an ESSSC or order a retrial before another ESSSC – a system that leaves defendants/victims of torture at the mercy of the ESSSCs or the whims of the President. The 2017 state of emergency decree placed a number of crimes, which would typically fall under the jurisdiction of ordinary courts, under the jurisdiction of ESSSC for the duration of the state of emergency, including "offences" related to protest, assembly, terrorism and labour laws.²¹⁹ Even after President el-Sisi's purportedly announcement ending the state of emergency in

210 CAT, Report, UN Doc A/49/44, 1994, para 85.

211 CAT, Report, UN Doc A/54/44, 26 June 1999, para 206.

212 TIMEP, "Egypt Lifted its State of Emergency: What Now?", 10 November 2021.

213 ICJ, "Egypt: Further Measures Needed to Bring A Real End to the 'State of Emergency'", 28 October 2021.

214 International Labour Organization, "Database of national labour, social security, and related human rights legislations: Egypt", [n.d.].

215 ICJ, "Egypt: A Return to a Permanent State of Emergency?", June 2018.

216 Ibid.

217 Ibid. See also, State of Finland and ors., "General Debate Item No 4: Human Rights Situations that Require the Council's Attention: Joint Statement on Egypt", 46th Session of the UNHRC, 12 March 2021.

218 Ibid.

219 Ibid.

October 2021, the ESSSCs have continued to hear all the cases previously referred to them under the emergency law.²²⁰

In its decision on the *El Sharkawi* case, the ACommHPR highlighted that the Emergency Law in Egypt is overbroad and unclear on what constitutes acts that endanger security and public order, thus lacking predictability and precision.²²¹ The Commission further found that “the Emergency Law sets aside the regulations [for arrest and pre-trial] stipulated in the Criminal Procedure Code, thus removing certain safeguards and, in effect allowing law enforcement officials to bypass some of the basic protections afforded to arrested and detained persons.” The Commission therefore concluded that Egypt’s emergency law does not conform to the ACHPR and fails to fully respect the rights of arrested and detained persons.²²²

In short, the emergency legal framework has long been used to facilitate the commission of serious human rights violations against activists, HRDs and others, including arbitrary arrests, enforced disappearances, torture, and other ill-treatment, as well as sham criminal proceedings based on fabricated charges. Concurrently, whilst using such repressive methods to implement emergency laws and decrees, security forces have enjoyed almost absolute impunity for decades.

2. Counter-terrorism laws

Egyptian authorities deploy anti-terrorism laws as a tool to silence any voices critical of the regime’s policies and actions. In 2015, the government adopted both the Counter-Terrorism Law and the Terrorist Entities Law. The Counter-Terrorism Law uses overly broad and vague terms to define the term “terrorist” and what constitutes an “act of terrorism” or “terrorism financing”.²²³ This has allowed security forces, such as the NSA, to commit serious human rights violations on a wide scale unchecked.

In a similar vein, the Terrorist Entities Law gives the prosecution the authority to issue a “terrorist list” and a “terrorist entities list” without clear criteria for inclusion.²²⁴ Consequently, this law has been used as a tool for the persecution of government critics and HRDs, as well as to justify arbitrary arrests, torture and other ill-treatment.²²⁵ The fear of being included on the terrorist list is a dark cloud that hangs over civil society in Egypt, and is one of the major reasons for the ever-shrinking civic space in the country.

Following amendments to the Counter-Terrorism Law and Terrorists Entities Law approved by the Parliament’s Legislative Committee on 10 February 2020, UN experts sent a communication to the Egyptian government expressing serious concerns about the amendments, which toughened the penalties for terrorism-related crimes,

220 EIPR, “Lifting State of Emergency positive step, but more action required to dismantle repressive laws”, 31 October 2021.

221 ACommHPR, *Mohammed Abderrahim El Sharkawi v. the Republic of Egypt*, Communication 391/11, 2020.

222 Ibid., paras. 276- 285.

223 TIMEP, “TIMEP Brief: Counter-terrorism Law”, 15 August 2018.

224 TIMEP, “TIMEP Brief: Terrorist Entities Law”, 4 April 2019.

225 OMCT, “Egypt: Mohamed El-Baqer and Alaa Abdel Fattah’s detention is ongoing”, 25 November 2021.

expanded the definition of financing of terrorism,²²⁶ and imposed the death penalty for the crime of funding terrorist groups and activities.²²⁷

In their communication, the UN experts highlighted how the amendment of the Counter-Terrorism Law effectively codified enforced disappearances by allowing individuals to be arrested and held for up to 28 days with no communication allowed with the individual's family, friends or lawyer.²²⁸

Similarly, in April 2020, the UN Special Rapporteur on human rights and counter-terrorism issued a statement on the revised Counter-terrorism legal framework. She noted that:

The intersection of these multiple legislative enactments enables increasing practices of arbitrary detention with the heightened risk of torture, the absence of judicial oversight and procedural safeguards, restrictions on freedom of expression, the right to freedom of association and the right to freedom of peaceful assembly.²²⁹

In March 2021, a group of 31 States at the UNHRC expressed deep concern in relation to Egypt's application of terrorism legislation against HRDs, LGBTI persons, journalists, politicians, and lawyers, as well as other measures to punish individuals for exercising their rights.²³⁰

In July 2021, the UN Special Rapporteur on the situation of human rights defenders issued a statement in which she expressed dismay at the misuse of anti-terrorism and national security laws to criminalise the work of human rights defenders in Egypt. In her statement, she noted that since the implementation of the Counter-Terrorism Law,

...[M]ore human rights defenders have been placed in pre-trial detention under investigation for crimes under these provisions, which carry aggravated sentences. Many of those who were detained continue to be held in deplorable conditions in prison with seriously negative impacts on their physical and mental health.²³¹

In December 2021, UN experts condemned Egypt's misuse of counter-terrorism measures against civil society activists, lawyers, journalists, and human rights defenders.²³² They also emphasised that the provisions of the Counter-Terrorism Law go beyond the scope necessary to combat terrorism and 'severely limit civic space and the exercise of fundamental freedoms in Egypt.' In their statement, the experts stated:

226 The proposed amendments to the Anti-Terror legislation will reportedly expand the definition of terrorist funding to include providing suspected terrorists with documents in any way or form, as well as supporting or financing the travels of an alleged terrorist, even if the provider does not have a direct link to the terrorist crime. Harsher sentences for those accused of funding terrorist groups, including life sentences and capital punishment, were also announced. See mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary execution, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders; *Communication*, OL EGY 4/2020, 28 February 2020.

227 Ibid.

228 Ibid.

229 OHCHR, "Egypt's updated terrorism law opens the door to more rights abuses, says UN expert", 9 April 2020.

230 See also, State of Finland and ors., "General Debate Item No 4: Human Rights Situations that Require the Council's Attention: Joint Statement on Egypt", 46th Session of the UNHRC, 12 March 2021.

231 OHCHR, "Egypt: Human rights defenders held incommunicado, face spurious charges, says UN expert", 15 July 2021.

232 OHCHR, "UN experts urge release of rights defenders in Egypt, condemn misuse of counter-terrorism measures", 1 December 2021.

The systemic justification of such egregious measures under the guise of implementing United Nations Security Council resolutions is a grave threat to the legitimacy of international counter-terrorism framework and laws, the promotion and protection of human rights and fundamental freedoms, and the long-term peace and stability of Egypt.²³³

In April 2023, the HRC reiterated its concern that the Egyptian authorities were using the anti-terrorism framework “to silence actual or perceived critics of the Government, including peaceful protesters, lawyers, journalists, political opponents and human rights defenders”²³⁴. The Committee noted that under the Terrorist Entities Law, thousands of individuals are listed “on the ‘terrorist list’ without court hearings or any form of due process and subjected them to lengthy travel bans, asset freezes and, in the case of public sector employees, automatic dismissal”.²³⁵

3. The use of the judicial system to allow enforced disappearances and prolonged pre-trial detention

There are numerous documented cases of *incommunicado* detention and enforced disappearance as part of the government’s crackdown against dissidents, political activists, and HRDs.²³⁶ In the majority of cases, the detainees are subjected to various forms of torture and ill-treatment during their enforced disappearance, mainly to extract false confessions to terrorism-related acts.²³⁷

As mentioned in section A above, after a period of enforced disappearance, detainees will appear before the SSSP, which will often remand the individual into custody pending trial. The SSSP allows for a series of pre-trial detention periods by bringing new charges against the detainees to circumvent the legally-mandated maximum period for pre-trial detention.²³⁸

The use of the emergency and anti-terrorism legal framework, as well as the patterns of violations that are perpetrated systematically, including enforced disappearance, torture, and other ill-treatment, indicate a State policy to use torture as a means of crushing dissent in Egypt.

b) Impunity for torture in Egypt

The culture of impunity for torture in Egypt is an integral part of the State policy that allows for the perpetration of torture without fear of penalty. The majority of torture survivors in Egypt do not pursue domestic claims against their torturers for fear that reporting will bring more abuse or because they do not think justice and accountability are possible.²³⁹ Claims by survivors who do report to State Prosecutors are often ignored and are rarely officially investigated.²⁴⁰ In the few cases where they are not ignored, survivors are referred to a forensic pathologist to determine whether their injuries are consistent with torture; however, these referrals are often made after the signs of torture have healed.²⁴¹ In the very rare instances where survivors’ claims of torture make

233 OHCHR, “UN experts urge release of rights defenders in Egypt, condemn misuse of counter-terrorism measures”, 1 December 2021.

234 HRC, “Concluding Observations on the Fifth Periodic Report of Egypt”, UN Doc. CCPR/C/EGY/CO/5, 14 April 2023, para. 13.

235 Ibid.

236 Egyptian Commission for Rights and Freedoms, “Continuous violation and absent justice Forced Disappearance – A five-year report”, 2020.

237 Ibid.

238 Mena Rights Group, “The practice of ‘rotation: how Egypt keeps its dissidents in indefinite detention”, 14 December 2021. See also, State of Finland and ors., “General Debate Item No 4: Human Rights Situations that Require the Council’s Attention: Joint Statement on Egypt”, 46th Session of the UNHRC, 12 March 2021.

239 Human Rights Watch, “We Do Unreasonable Things Here”, 5 September 2017.

240 Ibid; Egyptian Taskforce for Human Rights, Joint Submission relating to Egypt’s UPR, 13 November 2019, para 24.

241 Ibid.

it to court, they face a sluggish judicial process that, after many delays, often leads to impunity for the perpetrators of torture.²⁴²

UNCAT requires State Parties to affirm explicitly the absolute prohibition of torture,²⁴³ criminalise torture as a separate and specific crime,²⁴⁴ and ensure that the penalty for torture is commensurate to the grave nature of the crime.²⁴⁵ However, the Egyptian legal framework falls short of meeting these requirements, which helps to sustain the prevalent impunity for torture. Under Article 126 of the Penal Code, the definition of “torture” is limited to torture against an accused person for the purpose of inducing confessions.²⁴⁶ This limited criminalisation of torture excludes acts of torture against individuals detained without charge, and acts of torture committed to obtain information or as a punishment.²⁴⁷ Furthermore, considering the limited scope of Article 126, prosecutors tend to charge perpetrators of torture with ‘use of cruelty’ under Article 129, instead of torture. The penalty for ‘the use of cruelty’ in the case of conviction is up to one year of imprisonment or a maximum of 200 Egyptian Pounds [5.19GBP]²⁴⁸ an inadequate and incommensurate sanction given the gravity of the crime of torture. In addition, in the case of death resulting from torture, perpetrators are commonly charged with ‘manslaughter’, instead of homicide.²⁴⁹

In its analysis in support of its decision in the *El Sharkawi* case, the ACommHPR analysed Article 126 of the Egyptian Penal Code in light of Article 1 of UNCAT, concluding that Article 126 does not sufficiently capture the elements enshrined under the UNCAT provision. The Commission stated,

... Article 126 does not mention severe mental or physical suffering; it limits the purpose of torture to the attainment of a forced confession while UNCAT is open-ended; and it limits responsibility for torture to those who order the act or those who carry out the act, whereas UNCAT includes public officials who consent or acquiesce to the act.²⁵⁰

Accordingly, the Commission found that Egypt’s legal framework failed to ensure that all acts of torture and involvement in acts of torture were offences under its criminal law, which had hindered the victims’ rights to obtain redress.²⁵¹ Furthermore, the Commission aligned itself with the position of the CAT, stating that “the definition of torture (at domestic levels) must at a minimum include all the elements enshrined under Article 1 of UNCAT, and that disparities between UNCAT’s definition and that incorporated into domestic law create actual or potential loopholes for impunity”.²⁵²

Despite overwhelming evidence to the contrary, the Egyptian government continues to deny the existence of impunity for torture. During Egypt’s UPR in 2014, Egypt argued that “the Office of the Public Prosecutor investigates all cases brought to its attention on claims of torture or harsh treatment”.²⁵³ Any incidents of torture that the

242 CAT, *Report*, UN Doc A/49/44, 1994, para 87; CAT, *Report*, UN Doc A/51/44 (SUPP), para 206.

243 UNCAT, Article 2.

244 *Ibid.*, Article 4 (1.).

245 *Ibid.*, Article 4 (2).

246 Egypt Penal Code No. 58 of 1937, August 1937, Article 126.

247 Cairo Institute for Human Rights Studies, “Egypt: Systematic torture is a state policy”, 29 October 2019. Also see Egypt Penal Code No. 58 of 1937, August 1937, Article 126.

248 This is the equivalent of the amount in GBP as at 11 September 2023.

249 Cairo Institute for Human Rights Studies, “Egypt: Systematic torture is a state policy”, 29 October 2019.

250 ACommHPR, *Mohammed Abderrahim El Sharkawi v. the Republic of Egypt*, Communication 391/11, 2020.

251 *Ibid.*, para. 246.

252 *Ibid.*, para. 244.

253 UNHRC, “Report of the Working Group on the Universal Periodic Review: Egypt”, UN Doc. A/HRC/28/16, 24 December 2014.

Egyptian government cannot outright deny are said to “constitute exceptional individual cases”.²⁵⁴ The Egyptian government instead argues that its laws do not authorise torture, and therefore it is not an issue in the State²⁵⁵ – a position that has encouraged and facilitated the institutionalisation of torture by security forces because they are shielded from prosecution by the State.

The Egyptian police also enjoy *de facto* immunity from accountability for torture given the State practice of shielding perpetrators from prosecution. This is often done through blatant denial of the use of torture by the police, as illustrated recently by the government’s response to a video of torture in a Cairo police station, published by *The Guardian* on 24 January 2022.²⁵⁶ After the release of the video, instead of holding the perpetrators to account, the SSSP opened new investigations against the detainees depicted in the video for, *inter alia*, “spreading false news” and “aiding a terrorist group”.²⁵⁷ The policemen – the perpetrators of torture – remain employed in their positions.²⁵⁸ The case illustrates the blind eye prosecutors often turn towards police misconduct in Egypt.²⁵⁹ Although there have been some successful prosecutions of low-ranking police officers for torture, these trials are often isolated, with the perpetrators receiving overly lenient sentences that are not commensurate to the gravity of the crime (e.g. three to five years of imprisonment for direct involvement in torturing an inmate to death).²⁶⁰ Because prosecutions against the police for torture are very rare and the sentences low, many Egyptians believe these prosecutions to be merely “or show” and not for holding perpetrators accountable for torture.²⁶¹

As a result of the existing impunity, in 1994 the CAT recommended that the Egyptian government establish an independent review mechanism of “interrogation rules, methods and practices”, intensify training on the UNCAT obligations for all individuals with arrest and detention powers, and investigate alleged police misconduct and torture. Noting that no action had been taken to implement these recommendations, the Committee reiterated its call on Egypt to set up an independent monitoring body for allegations of torture in its 1996 Article 20 inquiry. No action was taken. In its 2017 Article 20 inquiry, the Committee made a similar recommendation. Yet, Egypt rejected the recommendation.

In recent years, the Egyptian government has not only failed to prosecute perpetrators of torture and to establish an independent mechanism to investigate and address allegations of torture, as recommended by the CAT,²⁶² but – as explained throughout this report – it has actively targeted NGOs and individuals who have previously investigated and documented incidences of torture in Egypt. The lack of accountability for torture and the intensified closing of spaces for civil society engagement on the issue of accountability for torture have contributed to the widespread and institutionalised use of torture in Egypt.

254 *Ibid.*, para. 205; CAT, “Summary Account of the Results of the Proceedings Concerning the Inquiry on Egypt”, UN Doc A/72/44, 2017, para. 62.

255 CAT, *Report*, UN Doc A/44/46, 1989, paras. 125, 138.

256 *The Guardian*, “‘We’re next’: Prisoner’s Secret Filming Appears to Show Torture in Cairo Police Station”, 24 January 2022.

257 Amnesty International, “Egypt: Investigate the Police Officers, Not the Detainees, for Leaked Torture Videos”, 14 March 2022.

258 Human Rights Watch, “Egypt’s Response to Torture: Punish the Victims”, 10 June 2022.

259 Human Rights Watch, “We Do Unreasonable Things Here”, 5 September 2017.

260 See Carnegie Endowment for International Peace, “The Prevalence of Torture in Egypt”, 6 March 2018; Egyptian Taskforce for Human Rights, *Joint Submission* relating to Egypt’s UPR, 13 November 2019, para. 28.

261 *Ibid.*, Carnegie Endowment for International Peace, “The Prevalence of Torture in Egypt”, 6 March 2018.

262 In its concluding observations on Egypt (CAT, *Report*, UN Doc A/49/44, 1994), the CAT recommended *inter alia* that the Egyptian government establish and operationalise an independent review mechanism to address allegations of torture.

The absence of an independent judiciary

The absence of an independent judiciary in Egypt is directly related to the issue of impunity for torture. It has been the practice of the Egyptian government to reward public prosecutors and judges who are complicit in the perpetration of torture, while punishing those who seek reform.²⁶³ For example, in May 2015, Judge Hisham Raouf and Judge Assem Abd al-Gabbar were investigated for drafting legislation that would have expanded the definition of torture under the Egyptian Penal Code, and would have required prosecutors to open investigations into allegations of torture when reported.²⁶⁴ Notably, the issues that would have been addressed by the proposed amendments have been continuously highlighted, by both Egyptian judges and members of the Office of the Public Prosecutor, as obstacles to holding perpetrators of torture to account.²⁶⁵ However, as a result of their work on the bill, Judge Raouf and Judge Abd al-Gabbar were referred by the Supreme Judicial Council to a ‘Competency Board’ hearing in March 2017, a move that was aptly referred to by the Cairo Institute for Human Rights Studies as “political retaliation” for anti-torture work.²⁶⁶

In its latest Concluding observations, the HRC noted the lack of judicial independence and politicisation of judicial and prosecutorial authorities, which result in “politically motivated cases, against actual or perceived critics and political opponents, characterised by prolonged pretrial detention and violations of fair trial guarantees”.²⁶⁷

3. ‘Knowledge of the context’ of torture in Egypt

Under the Rome Statute, for an act to constitute a crime against humanity the perpetrator must know that the conduct was, or intended the conduct to be part of, a widespread or systematic attack directed against a civilian population.²⁶⁸

The knowledge element of the crime against humanity of torture relates to the context of the attack and not to the intention of the attack.²⁶⁹ According to the ICTR Appeals Chamber in the *Augustin Ndingiyimana et al* case:

...with respect to the *mens rea*, the perpetrator must have acted with knowledge of the broader context of the attack, with knowledge that his acts (or omissions) formed part of the widespread or systematic attack against the civilian population.²⁷⁰

The required knowledge can be inferred from circumstantial evidence, such as “the accused’s position in the military hierarchy; his assuming an important role in the broader criminal campaign; his presence at the scene of the crimes; his references to the superiority of his group over the enemy group; and the general historical and political environment in which the acts occurred”.²⁷¹

263 Cairo Institute for Human Rights Studies, “Egypt: Torture is Systematic and Those Who Perpetrate It Enjoy Complete Impunity”, 21 October 2021.

264 Human Rights Watch, “We Do Unreasonable Things Here”, 5 September 2017; Cairo Institute for Human Rights Studies, “Rights Groups: The Referral of Judges Hisham Raouf and Assem Abd al-Gabbar to a Competency Hearing is Political Retaliation”, 4 February 2018.

265 ICJ, “Egypt’s Judiciary: A Tool of Repression”, September 2016, p. 129.

266 Cairo Institute for Human Rights Studies, “Rights Groups: The Referral of Judges Hisham Raouf and Assem Abd al-Gabbar to a Competency Hearing is Political Retaliation”, 4 February 2018.

267 HRC, “Concluding Observations on the Fifth Periodic Report of Egypt”, UN Doc. CCPR/C/EGY/CO/5, 14 April 2023, para. 37.

268 ICC, “Elements of Crimes”, Article 7 - Crimes against humanity, Article 7(1)(f), para. 5.

269 ICTY, *Prosecutor v. Dragoljub Kunarac et al.* (Appeal), IT-96-23 & IT-96-23-A, Appeal Judgement, 12 June 2002, paras. 102 – 103; see also *Prosecutor v. Jadranko Prlić et al.*, IT-04-74-T, Judgment, para. 45.

270 ICTR, *Prosecutor v. Augustin Ndingiyimana et al.* (Appeal), ICTR-00-56-A, Judgment, 11 February 2014, para. 260.

271 ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07, Decision on the Confirmation of Charges, 30 September 2008, para. 402; ICC, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Judgment, 8 July 2019, para. 1171; ICC, *Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15, Judgment, 4 February 2021, para. 2805.

In the context of Egypt, in relation to the crime against humanity of torture, the available information shows that the Egyptian authorities have sufficient knowledge of the attack against the civilian population and that they are aware that their acts form part of such an attack.

As mentioned above, in 1996 and 2017, the CAT conducted confidential inquiries pursuant to Article 20(2) of the UNCAT. In both instances the CAT concluded that the practice of torture was widespread and systematic in Egypt. In the summary of proceedings contained in the report of the CAT, the Committee, in both cases, invited Egypt to cooperate in the examination of the information received, and to submit its observations.²⁷² At the conclusion of the inquiries the CAT duly communicated its conclusions to the Egyptian government, and also included a summary of the proceedings in its reports, which were transmitted to all State parties, including Egypt.²⁷³

Additionally, the CAT has issued Concluding observations on Egypt in 1994, 1999, and 2002 highlighting concerns about the widespread practice of torture²⁷⁴, the persistence of torture and other ill treatment of detainees,²⁷⁵ and the widespread evidence of torture and other ill-treatment in administrative premises under the control of the State Security Investigation Department.²⁷⁶ Similarly, in its Concluding observations in April 2023, the HRC expressed concern over the “reportedly systematic use of torture and cruel, inhumane or degrading treatment at the hands of law enforcement personnel”.²⁷⁷

Egypt, as a State party to the UNCAT and the International Covenant on Civil and Political Rights (ICCPR), participates in the dialogues, reviews and inquiries arising from its periodic reports to the CAT and the HRC. Additionally, the Concluding observations are duly communicated to Egypt with accompanying recommendations for action. As a result, for the last two decades, the Egyptian authorities have been fully aware of the widespread use of torture against HRDs, political opponents and other individuals who dissent or are perceived as critics.

Several human rights organisations cited in this report, such as Amnesty international, Human Rights Watch, EIPR, TIMEP, the Committee for Justice, ICJ, and others, have over the years published reports documenting the widespread practice of torture in Egypt. These reports are publicly available, many accessible in Arabic, and CSOs have repeatedly raised concerns, sought information, and communicated with specific public officials in the process of preparing such reports and following up on their recommendations.²⁷⁸

In the *El-Sharkawi* case, the ACommHPR observed that the Egyptian State had ample notice of the allegations of torture based on the numerous human rights reports, decisions and communications from international and regional bodies. In particular, the Commission found that these reports and communications revealed a pattern of allegations that should have prompted the Egyptian government’s attention for action.²⁷⁹ The ACommHPR decision in the *El Sharkawi case*, as well as other cases decided on the merits, were transmitted to the Egyptian government for implementation, in accordance with the ACommHPR’s rules of procedures.

272 See CAT, Report, UN Doc A/51/44 (SUPP), para. 184; and CAT, Report, UN Doc A/72/44, 2017, para. 60.

273 See CAT, Report, UN Doc A/51/44 (SUPP), para. 210; and CAT, Report, UN Doc A/72/44, 2017, para. 70.

274 CAT, Report, UN Doc A/49/44, 1994, para. 86.

275 CAT, Report, UN Doc A/54/44, 26 June 1999, para. 207.

276 CAT, “Consideration of Reports Submitted by States Parties Under Article 19 of the Convention”, UN Doc CAT/C/CR/29/4, 2002, para. 5(a) and (b).

277 HRC, “Concluding Observations on the Fifth Periodic Report of Egypt”, UN Doc. CCPR/C/EGY/CO/5, 14 April 2023, para. 27.

278 See for example, Amnesty International, “What do we care if you die?: Negligence and denial of healthcare in Egyptian Prisons”, 25 January 2021, p. 12; CAT, Report, UN Doc A/51/44 (SUPP), para. 183, in which the CAT notes that Egypt was in receipt of reports from human rights organisations and the report of the Special Rapporteur of the Commission of Human Rights on questions relating to torture.

279 ACommHPR, *Mohammed Abderrahim El Sharkawi v. the Republic of Egypt*, Communication 391/11, 2020, para. 231.

In sum, the Egyptian authorities cannot credibly deny knowledge of the widespread and systematic use of torture perpetrated by Egyptian officials against the civilian population, the majority of which is taking place while individuals are deprived of their liberty in State-controlled detention centres.

VI. CONCLUSION ON THE COMMISSION OF TORTURE AS A CRIME AGAINST HUMANITY

For decades, Egyptian authorities have practised torture as a political tool to suppress dissent and as a tool for discrimination. Disproportionately targeted for arrest and subsequent torture are HRDs, activists, LGBTIQ+ individuals, academics, journalists, lawyers, and opposition politicians, for their political or human rights activism. The Egyptian Government perceives their work as a ‘threat’ to the regime.

Members of the NSA and the National Police are directly responsible as perpetrators of systematic torture. Also implicated are members of the MI and the GI. In addition, the judiciary and State prosecution services (including the SSSP) directly contribute to these crimes by facilitating and creating an enabling environment for the prevalence of torture and other ill treatment of Egyptians. Torture in Egypt is so widespread and institutionalised that its commission could not happen without the involvement and/or tolerance of the highest spheres of State power.

The nature of torture in Egypt meets the threshold requirements for crimes against humanity under Article 7 of the Rome Statute. The foregoing sections established that there is a pattern in the methods of torture used by the Egyptian authorities, including beatings, electrical shocks, sexual violence such as forced anal exams and virginity tests, the denial of access to medical care and treatment, lack of family contact, and other acts that cause severe pain and suffering – and thus meet the threshold for torture codified in Article 7(1) of the Rome Statute. The methodical use of torture (physical and psychological) as a political tool to stifle dissent and for discrimination by the Egyptian authorities meets the Article 7(1) contextual requirement of a “widespread or systematic” attack. Finally, the plethora of documentation on the prevalence of torture in Egypt, including decisions from the ACommHPR, Communications and Reports from the UN human rights bodies, NGO reports, and media reports, establish that military and civilian superiors and commanders knew or should have known of the commission of torture against dissenters and others in Egypt. Due to the widely available evidence of the Egyptian government’s intolerance of dissent, State officials engaging in torture would have acted with the knowledge that these acts were being committed as part of an attack against civilian dissenters, in furtherance of a State policy.

To conclude, the widespread and systematic commission of torture in Egypt amounts to crimes against humanity under customary international law and Article 7 of the Rome Statute, and is also a grave and systematic violation of UNCAT.

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redress.org

REDRESS

87 Vauxhall Walk

London, SE11 5HJ

United Kingdom

+44 (0)20 7793 1777

info@redress.org

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