

A PAST STILL PRESENT

**Addressing Discrimination
and Inequality in Egypt**

Equal Rights Trust



EQUAL RIGHTS TRUST

A Past Still Present

Addressing Discrimination and Inequality in Egypt

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The Equal Rights Trust is the global centre for excellence in equality law. Our vision is an equal world and our mission is to eliminate discrimination and ensure everyone can participate in society on an equal basis. We work in partnership with equality defenders to secure the adoption and implementation of equality laws.

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Revolution until triumph!

A day will come when justice will be done!

The dawn of freedom has arrived.

Slogans of the 2011 Egyptian revolution

Compared to major revolutions in the history of mankind, the January 25–June 30 Revolution is a unique revolution, because of the heavy popular participation involved – which was estimated to be in the tens of millions – and the significant role of youth who aspire to a brighter future, the masses who transcended class and ideology to reach out to more expansive patriotic and human horizons, the manner in which the people’s army protected the popular will and the blessings granted to it by Al-Azhar and the patriotic church. It is also unique because of its peacefulness and ambition to achieve freedom and social justice together. This revolution is a sign and a good omen. It is a sign of a past that is still present and a good omen of a future to which all humanity aspires.

Constitution of the Republic of Egypt 2014, Preamble

The current political system feels dangerous and threatening for any community organisation with a specific goal and able to convey a message, especially the message of democracy and freedom and human rights (...) Independent human rights organisations are a bitter enemy of the current system, which they aim to disrupt (...) Organisations of ordinary people have been targeted, and their coordinators have been imprisoned. The current regime wants to shape the society in the form it wants, which is the military form.

Equal Rights Trust interview, 2017

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The coordinator of the project which led to this publication was Camilla Alonzo, Senior Legal and Programmes Officer at the Equal Rights Trust, who oversaw the production of this report. The research and drafting of the report was undertaken by a team of Equal Rights Trust consultants, working under the supervision of Camilla Alonzo. The substantive research on the legal framework in Egypt was undertaken by a legal expert based in Egypt, and was supplemented by research undertaken by Pouya Fard. In addition, desk-based research for Part 3 of the report was undertaken by Equal Rights Trust consultants Sabina Garahan and Catriona Harris. Camilla Alonzo compiled and edited the complete draft, with assistance from Jarlath Clifford in relation to Part 3. Sam Barnes, Legal and Programmes Assistant at the Trust, provided research, drafting and editorial assistance in the finalisation of the report. Substantive editorial oversight was provided by the Trust's Co-Director Jim Fitzgerald, who also authorised the report for publication in English and translation into Arabic. Chaimaa Tayssir and Yaaser Azzayyat translated the Arabic-language version for publication.

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ACRONYMS AND ABBREVIATIONS

ACHR	Arab Charter on Human Rights
ACHPR	African Charter on Human and Peoples' Rights
ACmHPR	African Commission of Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
CAPMAS	Central Agency for Public Mobilization and Statistics
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAT Committee	Committee against Torture
CAT-OP	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW-OP	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CRC-OP	Optional Protocol I to the Convention on the Rights of the Child (involvement of the children in armed conflict)
CRPD	Convention on the Rights of Persons with Disabilities
CRPD-OP	Optional Protocol to the Convention on the Rights of Persons with Disabilities
CRPD Committee	Committee on the Rights of Persons with Disabilities
CSO	Civil Society Organisation
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP	Optional Protocol I to the International Covenant on Civil and Political Rights

ICCPR-OP II	Optional Protocol II to the International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICESCR-OP	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearances
ICRC	International Committee of the Red Cross
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
ICRMW Committee	Committee on Migrant Workers
ILO	International Labour Organization
IOM	International Organisation for Migration
LGBT	Lesbian, Gay, Bisexual and Transgender
OHCHR	Office of the United Nations High Commissioner for Human Rights
NCHR	National Council for Human Rights
NCPD	National Council for Persons with Disability
NCW	National Council for Women
NGO	Non-Governmental Organisation
UN	United Nations
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNSC	United Nations Security Council
USAID	United States Agency for International Development
US\$	United States Dollars
UPR	Universal Periodic Review
WHO	World Health Organization

EXECUTIVE SUMMARY

On 25 January 2011, revolution erupted in Egypt as the Arab Spring swept the Middle East. After decades of political repression and economic decline under the presidency of Hosni Mubarak, thousands of protesters gathered in public spaces calling for dignity, freedom and the fall of the regime. After 18 days of protests, President Mubarak was deposed, bringing an end to his 29 years in office. On 2 June 2012, following democratic elections, Muhammad Morsi of the Muslim Brotherhood was sworn in as President. His time in power was short-lived, however: in July 2013, he was ousted by the military in a *coup d'état*. Abdel Fattah Saeed Hussein Khalil al-Sisi was subsequently elected President in May 2014.

In January 2014, a new Constitution of the Republic of Egypt was adopted by referendum. The preamble to the Constitution acknowledges the significance of the 2011 revolution in the context of Egypt's history, noting that the 2011 uprising was unique in its "ambition to achieve freedom and social justice", and that it served as "a sign of a past that is still present and a good omen of a future to which all humanity aspires". The preamble goes on to emphasise the promise of the post-revolutionary era, noting that the Constitution "embodies the dream of generations of a prosperous united society and of a fair state" and "achieves equality (...) in rights and duties with no discrimination".¹

This report, which draws upon extensive desk-based and primary in-field research, finds that these high aspirations have not been fulfilled: far from being a "united society" and a "fair state", Egypt is a country in which inequality remains widespread and discrimination rife. This report finds evidence of discrimination arising on a wide range of different grounds and in many different areas of life, finding in particular that individuals and groups of individuals considered to be a threat to established social and political norms are subjected to discriminatory treatment by both state and non-state actors. It concludes that these patterns of discrimination and inequality are perpetuated by: a weak legal framework protecting the rights to equality and non-discrimination; the absence of effective implementation and enforcement mechanisms; and the maintenance of laws and policies that directly discriminate against groups on account of their personal characteristics.

1 Constitution of the Arab Republic of Egypt 2014, Preamble.

Part 1: Introduction

Purpose and Structure

The purpose of this report is to highlight and analyse discrimination and inequality in Egypt and to recommend steps aimed at combating discrimination and promoting equality. The report explores long-recognised human rights issues, while also seeking to shed light on less well-known patterns of discrimination in the country. The report brings together – for the first time – evidence of the lived experience of discrimination and inequality in its various forms with an analysis of the laws, policies, practices and institutions established to address them. It is intended to serve as a reference point and evidence base for all those in Egypt working to promote equality and improve protection from discrimination.

This report takes as its conceptual framework the unified human rights perspective on equality, which emphasises the integral role of equality in the enjoyment of all human rights and seeks to overcome fragmentation in the field of equality law and policies. The unified human rights framework on equality is a holistic approach which recognises both the uniqueness of each different type of inequality and the overarching aspects of different inequalities. The unified framework brings together:

- a. Types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others;
- b. Types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education, provision of goods and services, among others; and
- c. Status-based inequalities and socio-economic inequalities.

The report comprises four parts. **Part 1** sets out the purpose and structure of the report, the conceptual framework which has guided the work and the research methodology. It also provides basic information about Egypt, its history and current political and economic situation. **Part 2** analyses the legal and policy framework in Egypt as it relates to equality and non-dis-

crimination, setting out Egypt's international obligations before analysing state legislation for compliance with international law and best practice. This part goes on to examine the functioning of Egypt's judicial system, and to consider issues of enforcement, including access to justice, the legal aid system, evidence and proof and remedies and sanctions. **Part 3** presents the principal patterns of inequality and discrimination affecting groups in Egypt, focusing on the characteristics of political opinion, religious belief, gender, race and ethnicity, nationality and citizenship, disability, health status and sexual orientation and gender identity. **Part 4** contains recommendations aimed at ensuring respect, protection and fulfilment of the rights to equality and non-discrimination in Egypt, drawn from an analysis of the gaps, weaknesses and inconsistencies in the legal and policy framework identified in Part 2, and the patterns of inequality and discrimination examined in Part 3.

Conceptual Framework

The report takes as its conceptual framework the unified human rights perspective on equality, which emphasises the integral role of equality in the enjoyment of all human rights and seeks to overcome fragmentation in the field of equality law and policies.

The unified human rights framework on equality is expressed in the Declaration of Principles on Equality ("the Declaration"), a statement of international best practice adopted in 2008, signed initially by 128, and subsequently by hundreds more, experts and activists on equality and human rights from all over the world. Under the Declaration, the right to equality is understood as the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. The right to non-discrimination is a freestanding right subsumed within the right to equality. It encompasses four prohibited forms of discrimination: direct discrimination; indirect discrimination; harassment; and failure to provide reasonable accommodation. In order to be effective, the right to equality requires states to take positive action measures in order to remove disadvantage caused to particular groups by underlying structural inequalities.

Research Methodology

The Equal Rights Trust has been working to support civil society to combat discrimination in Egypt since 2015, in the context of the project *Empowering civil society in Egypt to combat discrimination through documentation, litigation and advocacy*, funded by the European Union through its European Instrument for Democracy and Human Rights.

The Trust worked closely with a local partner – an Egyptian civil society organisation, the identity of which cannot be disclosed for security reasons – to develop and implement a plan for primary field research to document the experience of groups exposed to discrimination, and for the conduct of desk-based research into patterns of discrimination and the legal and policy framework on equality. Four groups of field researchers were appointed to conduct primary field research on discrimination and inequality between 1 June 2017 and 31 May 2018. Despite considerable security challenges, the research teams collectively managed to record the testimony of 201 victims of discrimination. This primary field research was supplemented by extensive desk-based research on both the legal and policy framework and patterns of discrimination, undertaken by researchers working under the direction of the Trust between October 2017 and August 2018.

In order to ensure the accuracy of the report's findings and conclusions, a draft of this report was exposed to a validation process. Between June and August 2018, sections of the draft were reviewed by a select group of experts with in-depth knowledge and understanding of the legal and political context, in addition to being subject to close editorial review and scrutiny by the Trust and our partner. The feedback, comments and criticism received from the experts were addressed and incorporated into the final draft of the report.

Scope and Limitations of this Report

This report does not attempt to provide an exhaustive account of discrimination and inequality in Egypt; rather, it aims to provide a broad overview of the principal patterns of discrimination and inequality felt to be most significant, alongside an assessment of the legal framework on equality and non-discrimination.

Due to a lack of disaggregated statistical data or other forms of reliable published information pertaining to the situation of certain groups and certain areas of life, some issues are not discussed in great depth. Any omissions in this respect should not be interpreted as an indication that there is no disadvantage in the omitted areas, or in respect of the omitted groups. On the contrary, a lack of evidence in respect of a particular group could in itself indicate a gap in protection and/or missing articulation of experience of inequality.

The pace at which the political, security and legislative context in Egypt has changed over recent months has created certain challenges in representing the principal patterns of discrimination and inequality. Whilst the report has attempted to map the most recent developments in this regard, due to the constantly evolving human rights situation a cut-off date of 1 September 2018 had to be applied for the purposes of updating factual information in the report.

Country Context

Section 1.5 of the report provides basic contextual information about the country. The Arab Republic of Egypt is one of the largest countries in the Middle East North Africa region, with an area of 1,002,450 km². With a population of 97,553,151 as of 2017, Egypt is the 14th most populous country in the world and the most populous in the Middle East.

Recent studies estimate that ethnic Egyptians constitute 91% of the total population, with the remaining 9% belonging to diverse ethnic minority groups such as Turks, Greeks, Abazas, Nubian people, Siwis (also known as Berbers or Amazighs) and Bedouin Arab tribes. The country hosts a large immigrant population, recorded as 491,643 persons in 2015, alongside 233,045 registered refugees and asylum seekers comprising 58 nationalities, and an estimated 70,000 unregistered Palestinian refugees.

While official data is lacking, estimates suggest that around 90% of the Egyptian population is Muslim, the majority of whom belong to the Sunni branch of Islam, in addition to small groups of Quranist Muslims, Ahmadi Muslims and Dawoodi Bohras. Approximately 10% of the population is Christian. The Constitution designates the official state language of Egypt as Arabic, though a number of minority languages are also spoken within the country, including Nobiin by the Nubian people and Coptic by Coptic Christians.

Egypt has experienced sustained economic growth since the 1960s: national gross domestic product increased from US \$17 billion in 1960 to \$30.2 billion in 1975, and to \$271.7 billion in 2017. With a gross national income of \$10,064 and 13.1 years of expected schooling, Egypt is ranked 111th in the Human Development Index with a score of 0.691.

History

Section 1.6 provides an overview of Egypt's history. Egypt was home to one of the world's great ancient civilisations, with evidence of widespread settlement as far back as around 6000 BCE. The country was conquered by the Romans in 30 BCE, and then again during the Arab conquest of 636 CE, which led to the gradual establishment of Islam as the country's major religion. The Ottoman-Mamluk War (1516–1517 CE) saw control of Egypt's territory transferred from the Mamluk dynasty (1250–1517 CE) to the Ottoman Empire. Ottoman control was to last almost uninterrupted for over 350 years.

The end of the nineteenth century marked a crucial point in the country's history. From 1882, Egypt came under the control of the British Empire: whilst it was still formally ruled by Muhammad Ali Pasha's dynasty under the *khedive* of the Ottoman Empire, it was controlled by the British government for all practical purposes. Following the outbreak of the First World War in 1914, Britain officially proclaimed Egypt a British Protectorate.

Egypt became independent in 1922. The country's first constitution was adopted in 1923 and first democratic elections in 1924. Over the next 20 years, power shifted between the Wafd Party and Liberal Constitutionalists, while several new parties were formed.

In 1952 a group of young army officers, led by Anwar al-Sadat, Gamal Abdel Nasser and General Muhammad Naguib, seized power in a coup. Following a showdown between Naguib and Nasser in 1954, Nasser prevailed and assumed the leadership of the military government and the title of President in 1956, which he retained until his death on 28 September 1970. Nasser was succeeded by his vice-President, Anwar al-Sadat. Al-Sadat was succeeded in turn by Hosni Mubarak, who remained in power until he was deposed in 2011.

On 11 February 2011, following weeks of protests and the deaths of hundreds of protestors, President Mubarak was deposed. Powers were assumed by a Supreme Council of Armed Forces which dissolved Parliament and suspended the Constitution. Subsequent elections saw the Muslim Brotherhood's "Freedom and Justice Party" take control, with Muhammad Morsi elected President. A subsequent military coup in 2013 saw Morsi ousted and replaced by Abdel Fattah Saeed Hussein Khalil al-Sisi, who remains President at the time of writing, having been elected in elections regarded as suspect in March 2018. In the years since al-Sisi's ascendancy to the Presidency the human rights situation in Egypt has deteriorated, with a resulting impact on the exercise of rights by minority groups.

Government and Politics

Section 1.7 of the report provides an overview of Egypt's government and political system. It notes that the Constitution establishes Egypt as a sovereign state and a democratic republic, and divides power between three branches of government: the executive, headed by the President; the legislature, comprising the House of Representatives; and the judiciary.

Part 2: Legal and Policy Framework

The second part of the report examines Egypt's international legal obligations and the domestic legal and policy framework on equality and non-discrimination. It also considers the extent to which there is adequate enforcement of the legal framework and effective access to justice for victims of discrimination.

Section 2.1 of the report assesses Egypt's participation in **international instruments**. Egypt has ratified all of the core United Nations human rights treaties with the exception of the International Convention for the Protection of all Persons from Enforced Disappearances. In many cases, however, the state has made wide-ranging reservations and declarations which seek to severely limit the application of the rights to equality and non-discrimination, in some cases to the point of incompatibility with the purpose of the treaty itself. Moreover, Egypt has yet to accept the competence of any treaty body to receive individual communications and has a poor record of compliance with its reporting obligations. Egypt has a mixed record in relation to the ratifica-

tion of other international treaties relevant to the rights to equality and non-discrimination. It has failed to ratify either of the major Statelessness Conventions and has made significant reservations to the Refugee Convention. By contrast, it has ratified all eight of the fundamental International Labour Organization conventions. Egypt similarly has a mixed record in relation to regional instruments: it has ratified the African Charter on Human and Peoples' Rights and the Arab Charter on Human Rights, but has failed to ratify protocols to the African Charter. As in relation to other international treaties, Egypt maintains reservations to regional instruments that seek to limit the application of the rights to equality and non-discrimination. Egypt is a monist state, meaning that the international treaties, once ratified and published in the Official Gazette, have direct effect in the national legal order without the need for enabling legislation. In 1986, the Supreme Constitutional Court of Egypt ruled that generally recognised principles of human rights, including the Universal Declaration of Human Rights, must be considered constitutional norms within the domestic legal framework. However, the Constitution is silent on the hierarchy between domestic law and international law.

Section 2.2 of the report evaluates Egypt's domestic legal framework on equality and non-discrimination, beginning with a detailed examination of the **Constitution**, which was adopted by referendum in January 2014. Article 53, the main equality provision, prohibits discrimination on an open list of grounds. However, the provision suffers from significant defects. First, while providing an open-ended list of protected characteristics, the provision does not explicitly list several personal characteristics that are recognised under international law. Discrimination is not defined, creating uncertainty regarding the range of prohibited conducts which it encompasses. Furthermore, the right to non-discrimination is only afforded to citizens. While the Constitution makes provision for a limited selection of specific positive action measures, Article 53 does not create a general requirement to take positive action measures in cases of substantive inequalities. Finally, discrimination is explicitly defined as a criminal matter, an approach which runs counter to international standards. Other articles of the Constitution purport to promote equality, though these are limited in effect, and in some cases reinforce stereotypes; Article 11, for example, which purports to promote gender equality, does so by referencing the "duties of a woman toward her family". More broadly, the aspiration of the preamble to the Constitution that it should be one that "achieves equality between us in rights and duties with no discrimi-

nation” is critically undermined by provisions which discriminate on the basis of religion and gender.

Section 2.2.2 addresses **specific legislation on equality and anti-discrimination**, noting that the state has not enacted specific and comprehensive equality legislation, despite the international obligation to do so. The section discusses the only domestic law that specifically aims to advance the rights to equality and non-discrimination for a group with a protected characteristic: the recently enacted Law No. 10 of 2018 “on Persons with Disabilities”. The analysis finds that the definition of disability under the law, whilst an improvement on previous attempts, still falls short of international standards. It also finds that the definition of discrimination, while broadly consistent with that in the Convention on the Rights of Persons with Disabilities (CRPD), does not state clearly that all forms of discrimination recognised in international law are prohibited. The Law contains several provisions aimed at achieving equality of participation for persons with disabilities in different areas of life, including education, employment and access to justice. However, many of these provisions fall short of the standards of the CRPD. Moreover, some provisions reinforce negative stereotypes, while others – such as Article 10, dealing with equality of access to education – are undermined by other laws which limit their scope. However, arguably the most significant defects of the Law are in respect of the enforcement or implementation procedures and the treatment of discrimination as a criminal offence.

Beyond the Law on Persons with Disabilities, Egypt has no specific anti-discrimination laws, meaning that those experiencing discrimination are forced to rely upon the flawed and vague constitutional provision, or on isolated **equality or non-discrimination provisions provided in other laws**. These provisions, which are discussed in **section 2.2.3** include, for example, non-discrimination provisions in other legal fields, including criminal, employment and education law. The analysis of these legal provisions identifies numerous problems, ranging from labour law provisions that limit the economic opportunities of women, to criminal law provisions which fail to adequately define and prohibit rape. More broadly, none of these provisions appropriately defines and elaborates the right to non-discrimination, and taken together, these provisions fail to provide comprehensive legislative protection for the rights to equality and non-discrimination, as Egypt is required to do.

Section 2.3 examines **national policies** that have a bearing on the rights to equality and discrimination. Egypt's 2030 Sustainable Development Strategy establishes several policy objectives under the pillars of economic development, social justice and education that ostensibly seek to improve the rights of marginalised and discriminated groups. Further, ground-specific policies establish goals for ensuring the rights of women, families with children, elderly people and persons with disabilities. This section notes that none of these policies give rise to enforceable rights, nor impose any specific obligations on the state, and consequently, the objectives and goals – laudable though they may be – remain merely aspirational in nature.

Section 2.4 discusses the **enforcement and implementation of laws relating to equality**, beginning, in section 2.4.1, with an overview of the Egyptian judicial system. This section finds numerous problems with the judicial system, including the operation of special state security and military courts which violate the right of access to justice and the high degree of influence which the executive exercises in matters relating to the organisation and functioning of the courts. Several national councils have been established to increase access to justice for human rights violations, although some criticism has been levelled at the relatively weak investigative and prosecutorial powers of such bodies. Section 2.4.2 goes on to discuss the mechanisms which are in place to enable victims of discrimination to access justice and secure appropriate remedies. In the absence of comprehensive anti-discrimination law, it finds a system which is wholly inadequate to meet Egypt's international obligations and to ensure the effective functioning of the right to non-discrimination as provided in the Constitution and other areas of law. Specific problems which are highlighted include: the lack of a right to individual petition before the Supreme Constitutional Court for a violation of constitutional rights; the lack of practical access to legal aid; and the lack of specific provisions regarding the transfer of the burden of proof in discrimination cases.

Part 3: Patterns of Discrimination and Inequality

This part of the report presents evidence of discrimination and inequality arising on the basis of: (i) political opinion; (ii) religion or belief; (iii) gender; (iv) ethnicity or race; (v) nationality and citizenship; (vi) disability; (vii) health status; and (viii) sexual orientation and gender identity. It does not seek to provide an exhaustive picture of all the observed patterns of discrimi-

nation in Egypt. Rather, it aims to provide an insight into what appear to be the most important issues pertaining to the most significant grounds of discrimination in the country. In respect of each ground, the report discusses the ways in which people experience discrimination and inequality in a range of areas of life including: as a result of discriminatory laws and policies; the actions of the government and agents of the state; exposure to discriminatory violence; and inequality and discrimination in areas such as employment, education, healthcare and access to goods and services.

Section 3.1 addresses discrimination on the basis of **political opinion**. It finds that the suppression of political dissent, affected both through the application of discriminatory laws and through extra-legal means including discriminatory violence, torture and detention, is the principal, and overarching pattern of discrimination on the basis of political opinion. In the four years since President al-Sisi's election, human rights defenders have been subject to prosecution, asset freezes and travel bans, a highly restrictive law regulating civil society organisations has been promulgated, peaceful protests have been effectively banned, journalists have been arbitrarily detained, and thousands of civilians have been tried before military courts. The rights to freedom of association, expression and assembly and to freedom of movement have eroded as state authorities have launched a campaign of arrests and violence against individuals for expressing dissenting political beliefs. This in turn has led to a deterioration in the equal enjoyment of political freedoms, including the right to vote and stand in free and fair elections.

Section 3.2 considers discrimination on the basis of **religion or belief**. The overwhelming majority of the population of Egypt identify as members of the Sunni branch of Islam. Nonetheless, there are a number of religious minorities, with millions of adherents between them, who experience discrimination and denial or limitation of rights due to the maintenance of discriminatory laws and discrimination by both state and private actors. The legal framework is directly and systematically discriminatory on the basis of religion. Islam is afforded legal primacy under the Constitution, while the freedom to practice religious rituals is restricted to Islam, Christianity and Judaism. These three "revealed religions" are given preferential treatment within Egypt's legal framework, including in respect of personal status laws and laws governing the establishment of places of worship. The state maintains criminal blasphemy provisions which violate the rights to freedom of religion and

freedom of expression. State policies against atheism directly discriminate against non-believers. Beyond the existence of discriminatory laws there are a number of other important patterns of discrimination. Significant patterns of discriminatory violence and torture committed against Coptic Christians and members of the Bahá'í faith have been recorded. Meanwhile, religious minorities face harassment and inequality in employment and exclusion from the education system.

Section 3.3 explores patterns of discrimination committed on the basis of **gender**, a key area of concern in a country which consistently ranks towards the bottom of global indicators for gender equality. Gender stereotypes and patriarchal attitudes are prevalent and contribute to the exclusion of women from the labour market, political system, education and healthcare. Discriminatory social norms are reinforced by laws and policies that directly discriminate against women. Women lack equal marriage and divorce rights, rights to inheritance, equal rights to work and equality in the conferral of citizenship. Criminal law provisions prohibiting sex outside marriage are applied disproportionately against women, cementing traditional understandings of gender difference and sexual stereotypes. The failure of the Egyptian legal framework to fully criminalise rape, alongside laws that permit reduced sentences for individuals accused of so-called “honour crimes”, perpetuate damaging social beliefs that contribute to high levels of discriminatory violence and the persistence of harmful traditional practices, including honour killings, child marriage, polygamy and female genital mutilation, which are widespread in the state. Women experience discrimination and inequality in other areas of life, including education, employment, healthcare and participation in political and public life.

Section 3.4 addresses discrimination and inequality on the basis of **ethnicity or race**. Evidence suggests that around 9% of the Egyptian population is made up of non-ethnic Egyptian minorities, including the Nubian people in the Upper Nile region and the Bedouin Arab tribes in the Sinai Peninsula. Although Article 53 of the Constitution prohibits discrimination on the basis of origin, race, colour and language, this section of the report finds evidence of continuing human rights violations committed against Nubian and Bedouin people, including forced relocations, the violent dispersal of peaceful protests and the arbitrary detention of human rights defenders. There is also evidence that the Bedouin face discrimination in obtaining registration documents,

leading to difficulties in accessing services such as healthcare and education. Nubians are unable to access education in the Nubian language and face difficulties accessing healthcare facilities.

Discrimination on the basis of **nationality and citizenship** is addressed in **section 3.5** of this report. There are currently over 230,000 refugees and asylum seekers registered in Egypt, in addition to an estimated 70,000 refugees of Palestinian origin who are not subject to refugee status determination and registration with the UNHCR due to discriminatory state policies. Egypt has failed to adopt comprehensive legislation on refugees and asylum seekers and maintains reservations to the Refugee Convention which seek to limit its application. The Constitution and other domestic laws contain a number of legal provisions that discriminate against, or restrict the rights of, non-nationals, including provisions of the Nationality Act 1975. Non-citizens in Egypt – including refugees, migrants and asylum seekers – face considerable social stigma and are vulnerable to various forms of discriminatory violence, ill-treatment in detention centres and the denial of due process guarantees. Evidence collected for this report further suggests that refugees and asylum seekers face barriers to education and employment, thus contributing to their socio-economic marginalisation.

Section 3.6 discusses discrimination on the basis of **disability**. It begins by noting that Egypt's legal framework relating to the rights of persons with disabilities is stronger than that governing other forms of discrimination. Nonetheless, persons with disabilities face considerable societal stigma and are subject to discrimination in a range of areas of life. There is evidence that persons with disabilities have been subject to discriminatory torture and ill-treatment including, for example, reports of forced hysterectomies being performed on adolescent girls with intellectual disabilities. Notwithstanding the adoption of a new Disability Rights Law in 2018, persons with disabilities face discrimination in employment, both during the recruitment process and whilst at the workplace, and in education. The new Law, whilst representing a significant improvement on previous legislation, falls short of the standards set in the CRPD, despite being enacted after its ratification.

Section 3.7 considers discrimination on the basis of **health status**. The number of people living with HIV in Egypt has risen over the past 20 years, with an estimated 40% annual rate of growth, which is attributed to high levels of

social stigma and the maintenance of discriminatory laws. Research suggests that persons living with HIV face exclusion and prejudice in society. Persons living with HIV are prohibited from working in certain industries; in other fields individuals may be refused work or face dismissal should their HIV status become known. Evidence also suggests that persons living with HIV face significant levels of discrimination in accessing healthcare. Concerningly, Egyptian law requires foreign workers to produce a medical certificate demonstrating that they do not have HIV. Those who fail to do so are prevented from working or residing within the state. Such measures further increase stigma, with a resulting impact on rates of transmission and the prevalence of HIV within Egypt.

Finally, **section 3.8** examines discrimination on the basis of **sexual orientation and gender identity** in a country which has been described as one of the most “hostile states to LGBTI people on the planet”. Whilst homosexuality is not explicitly criminalised in Egypt, several legal provisions, such as those concerning debauchery and indecency, are applied in such a way as to provide a *de facto* prohibition of same-sex sexual conduct. Social attitudes towards LGBTI persons are overwhelmingly negative, with over 95% of people questioned in a 2013 poll stating that they do not accept the concept of homosexuality. There are numerous reports of cases of violence, intimidation and other human rights abuses, including torture, arbitrary detention and ill-treatment, committed against LGBTI persons. Alongside the broader crackdown on human rights, discrimination against the LGBTI community has increased since 2013. Furthermore, surgery is required for legal gender recognition and is often denied to patients.

Part 4: Recommendations

This Part sets out recommendations aimed at ensuring enjoyment of the rights to equality and non-discrimination. The purpose of these recommendations is to strengthen protection from discrimination and to enable Egypt to meet its obligations under international law to respect, protect and fulfil the rights to non-discrimination and equality. All recommendations are based on international law related to equality, and on the Declaration of Principles on Equality. The report makes recommendations in nine areas:

1. Strengthening International Commitments Related to Equality
2. Reforming Discriminatory Legal Provisions
3. Introducing Comprehensive Equality Legislation
4. Improving the Interpretation and Enforcement of Existing Equality Provisions
5. Ensuring the Independence and Effectiveness of Equality Bodies and Human Rights Institutions
6. Taking Action to Address Discrimination against Specific Groups
7. Data Collection
8. Education on Equality; and
9. Prohibition of Regressive Interpretation

1. INTRODUCTION

On 25 January 2011, revolution erupted in Egypt as the Arab Spring swept the Middle East. After decades of political repression and economic decline under the presidency of Hosni Mubarak, thousands of protesters gathered in public spaces calling for dignity, freedom and the fall of the regime. After 18 days of protests, President Mubarak was deposed, bringing an end to his 29 years in office. On 2 June 2012, following democratic elections, Muhammad Morsi of the Muslim Brotherhood was sworn in as President. His time in power was short-lived, however: in July 2013, he was ousted by the military in a *coup d'état*. Abdel Fattah Saeed Hussein Khalil al-Sisi was subsequently elected President in May 2014.

In January 2014, a new Constitution of the Arab Republic of Egypt was adopted by referendum. The preamble to the Constitution acknowledges the significance of the 2011 revolution in the context of Egypt's history, noting that the 2011 uprising was unique in its "ambition to achieve freedom and social justice", and that it served as "a sign of a past that is still present and a good omen of a future to which all humanity aspires". The preamble goes on to emphasise the promise of the post-revolutionary era, noting that the Constitution "embodies the dream of generations of a prosperous united society and of a fair state" and "achieves equality (...) in rights and duties with no discrimination".¹

Yet this report finds that these high aspirations have not been fulfilled: far from being a "united society" and a "fair state", Egypt is a country in which inequality remains widespread and discrimination rife, and where individuals and groups of individuals considered to be a threat to established social and political norms are subjected to discriminatory laws and treatment by both state and non-state actors.

This report finds evidence of discrimination and disadvantage on the basis of a range of prohibited grounds. Those who are, or are perceived to be, in opposition to the government face repression and discriminatory rights violations, including torture, ill-treatment and arbitrary detention. Members of religious minorities are vulnerable to various forms of discrimination, in-

1 Constitution of the Arab Republic of Egypt 2014, Preamble.

cluding as a result of discriminatory provisions in the Constitution and other laws, while atheists are under increasing threat from state authorities. Gender inequality is pervasive: women are subject to many different forms of gender-based violence and experience discrimination in various areas of life, from education to participation in political and public life. Ethnic and racial minorities and non-nationals face discrimination in accessing services and have been subject to discriminatory violence and arbitrary detention. Persons with disabilities and individuals with HIV/AIDS experience high levels of societal stigma and, as a result, face considerable discrimination in a range of areas of life. Lesbian, gay, bisexual and transgender (LGBT) persons are subjected to prosecution under the criminal law, with provisions prohibiting indecency and debauchery being interpreted to criminalise same-sex relations, with the threat increasing as a result of legislative proposals to explicitly criminalise homosexuality.

Our assessment of Egypt's legal framework on equality finds that it is wholly inadequate to ensure enjoyment of the rights to equality and non-discrimination. Whilst the Constitution includes a guarantee of equality of rights and non-discrimination, this guarantee falls short of international standards in a number of important ways. The state has not enacted specific, comprehensive anti-discrimination legislation, as required to meet its obligations under the international conventions to which it is party. The single specific anti-discrimination law – the Disability Rights Law – does not properly define or prohibit discrimination. Whilst a number of other national laws contain provisions which aim to prevent discrimination in particular areas of life, taken together, these do not provide comprehensive protection. National policies directed at issues of equality and non-discrimination are not binding and there is a lack of financial resources needed for effective implementation. The weak legislative framework on equality and non-discrimination is further undermined by laws which discriminate – whether directly or indirectly – against certain groups, including provisions of the Penal Code and the Labour Law which directly discriminate against women.

Thus, this report finds that Egypt today is far from a “united society and (...) fair state”. The authorities have failed to take the steps – repealing discriminatory laws and adopting comprehensive anti-discrimination legislation – which are the necessary foundations to create an equal and fair society. Moreover, through the maintenance and enforcement of discriminatory laws and policies,

and through the discriminatory actions of its agents, the state remains one of – if not the – principal sources of discrimination and inequality. If Egypt is to fulfil the ambitions of its Constitution, the state must take decisive action to respect, protect and fulfil the rights to equality and non-discrimination.

1.1 Purpose and Structure of this Report

The purpose of this report is to highlight and analyse discrimination and inequality in Egypt and to recommend steps aimed at combating discrimination and promoting equality. The report explores long-recognised human rights issues, while also seeking to shed light on less well-known patterns of discrimination in the country. The report brings together – for the first time – evidence of the lived experience of discrimination and inequality in its various forms with an analysis of the laws, policies, practices and institutions established to address them, and is intended to serve as a reference point and evidence base for all those in Egypt working to promote equality and improve protection from discrimination.

This report takes as its conceptual framework the unified human rights perspective on equality, which emphasises the integral role of equality in the enjoyment of all human rights and seeks to overcome fragmentation in the field of equality law and policy. The unified human rights framework on equality is a holistic approach which recognises both the uniqueness of each different type of inequality and the overarching aspects of different inequalities. The unified framework brings together:

- a. Types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others;
- b. Types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education, provision of goods and services, among others; and
- c. Status-based inequalities and socio-economic inequalities.

The report comprises four parts. **Part 1** sets out the purpose and structure of the report, the conceptual framework which has guided the work and the re-

search methodology. It also provides basic information about Egypt, its history and current political and economic situation. **Part 2** analyses the legal and policy framework in Egypt as it relates to equality and non-discrimination, setting out Egypt's international obligations before analysing state legislation for compliance with international law and best practice. This section goes on to examine the functioning of Egypt's judicial system, and to consider issues of enforcement, including access to justice, the legal aid system, evidence and proof and remedies and sanctions. **Part 3** presents the principal patterns of inequality and discrimination affecting groups in Egypt, focusing on the characteristics of political opinion, religious belief, gender, race and ethnicity, nationality and citizenship, disability, health status and sexual orientation and gender identity. **Part 4** contains recommendations aimed at ensuring respect, protection and fulfilment of the rights to equality and non-discrimination in Egypt, drawn from an analysis of the gaps, weaknesses and inconsistencies in the legal and policy framework identified in Part 2, and the patterns of inequality and discrimination examined in Part 3.

1.2 Conceptual Framework

This report uses the concepts of equality and discrimination law set out in the **Declaration of Principles on Equality** ("the Declaration")² as the conceptual framework for its analysis of Egypt's legal and policy framework in **Part 2**, and its discussion of the principal patterns of discrimination and inequality in **Part 3**.

The Declaration was drafted in 2008 by a number of human rights and equality experts from different regions across the world, and is a statement of international best practice "based on concepts and jurisprudence developed in international, regional and national contexts".³ It promotes a unified approach to equality and non-discrimination, emphasising the integral role of equality in the enjoyment of all human rights, and encompasses equal participation in all areas of life in which human rights apply. Since its adoption, the standards set out in the Declaration have been reflected in the interpretations of the rights to equality and non-discrimination by numerous UN treaty

2 *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008.

3 *Ibid.*, p. 2.

bodies,⁴ and have also informed the development of anti-discrimination laws in numerous countries.

Principle 1 of the Declaration defines the **right to equality** as follows:

*The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.*⁵

Thus defined, the right to equality has a broad scope, and its content is richer than that of the right to non-discrimination. The right to equality has as its elements the equal enjoyment of all human rights, as well as the equal protection and benefit of the law. Most importantly, it encompasses equal participation in all areas of life in which human rights apply. This holistic approach to equality recognises the interconnected nature of disadvantages arising in different contexts, which makes it necessary to take a comprehensive approach to inequalities in all areas of life. It goes beyond poorer notions of equality found in many legal systems, by understanding equality not only as a right to be free from all forms of discrimination, but also as a right to substantive equality in practice. This report takes this expression of the right to equality as the baseline against which it assesses the presence or degrees of inequality.

Regarding the relationship between the rights to equality and non-discrimination, the Declaration construes the right to non-discrimination as a free-

4 See, *inter alia*: Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)*, UN Doc. E/C.12/GC/20, 2009; Committee on the Elimination of Discrimination Against Women, *General Comment No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28, 2010; Committee on the Rights of Persons with Disabilities (CRPD), *General Comment No. 6 on the right of persons with disabilities to equality and non-discrimination (article 5)*, UN Doc. CPRD/C/GC/6, 2018.

5 See above, note 2, Principle 1.

standing right subsumed in the right to equality.⁶ Thus, when examining the situation of a particular group of persons, the report looks both at examples of discrimination and at inequality in participation in areas such as employment or public life, differential access to goods and services and socio-economic disadvantage.

Principle 5 of the Declaration identifies an extensive list of grounds on which discrimination must be prohibited, drawing together the characteristics protected under various international and regional instruments:

***Discrimination** must be prohibited where it is on grounds of race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds.*

(...)

Discrimination must also be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies or the perception, whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.⁷

The Declaration also provides a “test” for the inclusion of further prohibited grounds of discrimination, according to which “candidate grounds” should meet at least one of three listed conditions:

Discrimination based on any other ground must be prohibited where such discrimination (i) causes or per-

6 *Ibid.*, Principle 4.

7 *Ibid.*, Principle 5.

petuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.⁸

Most modern legal systems which provide protection against discrimination recognise that discriminatory treatment includes both **direct** and **indirect discrimination**. Principle 5 of the Declaration defines direct and indirect discrimination as follows:

***Direct discrimination** occurs when for a reason related to one or more prohibited grounds a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.*

***Indirect discrimination** occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.*

Importantly, intention is not required for discrimination on a particular ground to be found: an act of discrimination may be committed intentionally or unintentionally.⁹ Furthermore, **harassment** may constitute discrimination:

[W]hen unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating

8 *Ibid.*

9 *Ibid.*, Principle 5.

the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.¹⁰

The right to be free from discrimination also implies a right to **reasonable accommodation**, which arises in relation to all protected characteristics (not simply in relation to disability). Principle 13 of the Declaration elaborates on what is required to accommodate difference, and from whom it is required:

To achieve full and effective equality it may be necessary to require public and private sector organisations to provide reasonable accommodation for different capabilities of individuals related to one or more prohibited grounds.

Accommodation means the necessary and appropriate modifications and adjustments, including anticipatory measures, to facilitate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others. It should not be an obligation to accommodate difference where this would impose a disproportionate or undue burden on the provider.

In line with international law in this area, the approach taken in this report is that a denial of reasonable accommodation constitutes discrimination.¹¹

The right to equality also gives rise to a requirement on the state to institute **positive action** (also known as affirmative action, or special measures) in order to remove disadvantage caused to particular groups by underlying structural inequalities, where this is necessary to ensure equal participation in all areas of economic, social, cultural, political and civil life. As with other princi-

¹⁰ *Ibid.*

¹¹ See, for example: Convention on the Rights of Persons with Disabilities, 2515 U.N.T.S. 3, 2006, Article 2; CESCR, *General Comment No. 5: Persons with Disabilities*, UN Doc. E/1995/22, 1995, Para 15, which provides that “disability-based discrimination” includes the denial of “reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights”; CRPD, *General Comment No. 4 on the right to inclusive education*, UN Doc. CRPD/C/GC/4, 2016, Para 31.

ples in the Declaration, this principle draws upon established approaches to the interpretation of international and regional human rights law, in this case with regard to the concepts of special measures in the various instruments.¹² Principle 3 of the Declaration states:

*To be effective, the right to equality requires positive action. Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.*¹³

The notion of positive action plays an important role in the unified perspective on equality, and, therefore, in the approach of this report. Positive action is key to addressing those inequalities which are not attributable solely to discrimination.

The review of laws and policies in Part 2 of this report is based on an assessment against those parts of the Declaration which set out the **obligations of the state** with regard to the rights to equality and non-discrimination, including in particular Principle 11. In this regard, the Declaration applies the understanding of state obligations in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as explained, *inter alia*, in General Comment No. 3 of the Committee on Economic, Social and Cultural Rights and General Comment No. 31 of the Human Rights Committee. As stated in the commentary on the Declaration:

By analogy with the interpretation of States' obligations set out in General Comment 3 of the UN Committee on Economic, Social and Cultural Rights, States are required to take all necessary steps, including legislation, to give effect to the right to equality in the domestic order and in their international cooperation programmes.

12 See, for example: International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, 1965, Article 1(4); and the Convention on the Elimination of All Forms of Discrimination against Women, 1249 U.N.T.S. 13, 1979, Article 4(1).

13 See above, note 2, Principle 3.

*The right to full and effective equality may be difficult to fulfil; however, the State does not have an excuse for failing to take concrete steps in this direction. The requirement to take such steps is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to cultural, economic, political, security, social or other factors.*¹⁴

Application of the Unified Human Rights Framework on Equality

Applying the unified human rights framework on equality to our research has a number of implications for the content, structure and methodology of this report. The **first implication** is reflected in the subject and scope of the report: the presentation of discrimination and inequality on a number of different grounds in the same study. Thus, the report reviews evidence of discrimination arising on the basis of a number of different grounds, ranging from political opinion to gender to health status. It also examines evidence of multiple discrimination, looking for example at the intersectional discrimination experienced by Nubian human rights defenders and Christian women. While it is clearly beyond the scope of the report to provide a detailed analysis of discrimination and inequality arising on every ground, the aim has been to present what appear to be the most significant patterns of discrimination and inequality found in the Egyptian context.

The **second implication** of applying the unified human rights framework relates to the material scope of application of the right to equality, which encompasses all areas of life regulated by law. The report seeks to assess people's experience of discrimination across the full range of areas of life, including in respect of personal safety, employment, education and healthcare. In this respect, the evidence is uneven, as there is little evidence of discrimination or inequality in particular areas of life for certain disadvantaged groups. This may be because persons within these groups do not experience disadvantage in a particular area of life, but it may also be because evidence of such disadvantage was not forthcoming in the course of the research. For example, the report contains no evidence of discrimination on the basis of political opinion or religious belief in

14 Petrova, D., "The Declaration of Principles on Equality: A Contribution to International Human Rights", in *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, p. 38.

areas such as housing and healthcare, as no such evidence was identified during the development of the report. However, it should be noted that, in the context in which the research was undertaken, a lack of evidence of a particular manifestation of discrimination does not enable us to conclude that it does not take place.

The **third implication** of applying the unified framework is to require an analysis of both violations of the right to non-discrimination and the right to equality. The report takes the right to equality, as defined in the Declaration, as the standard against which it assesses the degree of inequality. Thus, the report investigates patterns of substantive inequality, looking in particular at “participation on an equal basis with others in economic, social, political, cultural or civil life”,¹⁵ thereby extending beyond experiences of discrimination.

The **fourth implication** of applying the unified framework is the definition of discrimination used, which – reflecting best practice in prohibiting discrimination on grounds that have come to be regarded as unfair in modern society, rather than the list of grounds protected by law in Egypt – provides the basis for consideration of the range of identity-based groups included in the report. Thus, the report examines discrimination on grounds of political opinion, religious belief, gender, race, ethnicity, nationality and citizenship, disability, health status, sexual orientation and gender identity. Furthermore, the report examines some patterns of discrimination – such as the discrimination experienced by Christian women – which do not fall within one specified ground alone, but which are examples of multiple discrimination.

The **final implication** of this approach is to present evidence of factual patterns of discrimination and inequality alongside an analysis of the legal and policy framework related to equality. The existence and enforcement of laws and policies prohibiting discrimination and promoting equality is a critical factor – though by no means the only one – in ensuring enjoyment of the rights to non-discrimination and equality. Protecting people from discrimination by enacting such laws is a key state obligation in respect of these rights. Thus, this report seeks to match an assessment of the lived experience of discrimination and inequality with a review of Egypt’s legal and policy framework, in order to establish where the law discriminates, where gaps and inconsistencies in legal protection exist and where laws are inadequately enforced.

15 See above, note 2, Principle 1.

1.3 Research Methodology

The Equal Rights Trust has been working to support civil society to combat discrimination in Egypt since 2015, in the context of the project *Empowering civil society in Egypt to combat discrimination through documentation, litigation and advocacy*, funded by the European Union through its European Instrument for Democracy and Human Rights. This report, which is one of the outcomes of this project, was developed in several stages.

The Equal Rights Trust worked closely with a local partner – an Egyptian civil society organisation (CSO), the identity of which cannot be disclosed for security reasons – to develop and implement a plan for primary field research to document the experience of groups exposed to discrimination, and for the conduct of desk-based research into patterns of discrimination and the legal and policy framework in Egypt. This plan sought to balance the need for objectivity, corroboration and verification of research evidence with the need for measures to mitigate the risks inherent in human rights monitoring in the context of the current security and political environment in Egypt.

The research process began in 2015, with desk-based research to identify and map the principal patterns of discrimination and produce an initial audit of the legal and policy framework on equality and non-discrimination. Following this exercise, four groups of field researchers were appointed in 2017; these researchers received financial and technical support to conduct research between 1 June 2017 and 31 May 2018. The researchers were commissioned to undertake primary field research on discrimination and inequality through conducting semi-structured interviews with the groups identified through the mapping exercise as being most exposed to discrimination and other human rights violations. Detailed guidance was provided to the researchers regarding the conduct of the field research and the presentation of their findings. The field researchers faced significant security challenges in conducting their research as a result of the increasingly repressive environment for CSOs operating in Egypt following the enactment of Law No. 70/2017 on Associations and Other Foundations Working in the Field of Civil Work, which prohibits the unauthorised conduct of field research in Egypt. Nonetheless, the research teams collectively managed to record the testimony of 201 victims of discrimination.

Throughout the report, in presenting the first-hand testimony of victims of discrimination and their families, all names and other personal identifying information have been withheld out of respect for the victims' wishes for anonymity and to eliminate any personal risk to the victims in disclosing their identity. Each interview referenced or quoted in Part 3 has been given a unique code, in order to preserve anonymity. Information regarding the identities of the individuals interviewed is kept on file by the Equal Rights Trust.

Between October 2017 and August 2018, desk-based research was undertaken by researchers working under the direction of the Trust. Research on Egyptian law and policy for Part 2 was undertaken by an Egyptian legal expert, working in line with detailed research guidelines provided by the Equal Rights Trust, and with editorial support from the Trust and our local partner. Research on Egypt's international legal obligations benefited from the UN treaty collection database¹⁶ and the website of the Office of the High Commissioner for Human Rights.¹⁷ Research on Egyptian law, including the Constitution and national legislation, consisted of reviewing primary sources, accessed online including via a database of laws on the Government Services Portal,¹⁸ and was further supplemented through a review of state reports to the UN treaty bodies and documents gathered from government websites.

In addition to the aforementioned primary field research, research for Part 3 of the report included desk-based review of existing published sources, helping to identify and elaborate the major patterns of discrimination in Egypt. This involved a review of relevant literature on discrimination and inequality in Egypt, including reports by both the government and by non-governmental organisations (NGOs) to UN treaty bodies and the Universal Periodic Review process; government and intergovernmental data and reports; and research published by international and national NGOs, academics and media institutions. Wherever possible, statistical data was used to improve understanding of inequalities. Thus, Part 3 of the report relies on a variety of data sources.

16 United Nations, *United Nations Treaty Collection*, visited 31 October 2018, available at: <https://treaties.un.org/pages/ParticipationStatus.aspx>.

17 Office of the High Commissioner for Human Rights, *Home*, visited 31 October 2018, available at: <https://www.ohchr.org/EN/pages/home.aspx>.

18 Egyptian Government Services Portal, *Laws and Constitution*, visited 31 October 2018, available at: <http://www.egypt.gov.eg/english/laws/default.aspx>.

Relevant first-hand testimony gathered through interviews is complemented by review and analysis of the research and publications produced by others, together with statistical data where possible.

In order to ensure the accuracy of the report's findings and conclusions, a draft of this report was exposed to a validation process. Between June and August 2018, sections of the draft were reviewed by five experts with in-depth knowledge and understanding of the legal and political context in Egypt, in addition to being subject to close editorial review and scrutiny by the Equal Rights Trust and our partner. Due to the security situation, the validation process took place online, with the relevant experts sharing their written comments on the draft via email. The feedback, comments and criticism received from the experts were addressed and incorporated into the final draft of the report.

1.4 Scope and Limitations of this Report

It is not possible for any report to provide an exhaustive account of discrimination and inequality in a given country, and this report is no exception. The reality of discrimination and inequality is such that experiences are as many and varied as the population of Egypt itself. Each person will have their own experiences of discrimination and inequality, arising in different areas of life, in different circumstances, in interaction with different persons, institutions or organisations and as a result of any aspect of their identity, or any combination of these aspects. For these reasons, the aim of Part 3 of this report is to provide a broad overview of the principal patterns of discrimination and inequality felt to be most significant in Egypt.

The research for this report was constrained by a lack of disaggregated statistical data or other forms of reliable published information pertaining to the situation of certain groups and certain areas of life. Consequently, certain issues, such as discrimination on the grounds of health status, are not covered in great depth. More broadly, the absence of disaggregated data in relation to certain areas of life, such as housing, education and employment, has limited the extent to which the authors have been able to discuss inequalities in all areas of life for every group we have covered in the report. These omissions should not be interpreted as an indication that there is no disadvantage in the omitted areas, or in respect of the omitted groups. Rather, the decision not to include an assessment of discrimination or inequality in a particular area

or for a particular group was motivated simply by a lack of evidence during the desk and field research stages of producing this report. Indeed, a lack of evidence in respect of a particular group could in itself indicate a gap in protection and/or missing articulation of experience of inequality.

The pace at which the political, security and legislative context in Egypt has changed over recent months has created certain challenges in representing the principal patterns of discrimination and inequality. With discrimination faced by certain groups – such as journalists and human rights defenders, or sexual and gender minorities, for example – the situation has been evolving and, whilst this report has attempted to map the most recent developments in this regard, a cut-off date of 1 September 2018 had to be applied for the purposes of updating factual information in the report.

1.5 Country Context

The Arab Republic of Egypt is a large country located in northern Africa. With an area of 1,002,450 km²,¹⁹ Egypt is one of the largest countries in the Middle East and North Africa region; it is bordered to the east by Libya, to the south by Sudan, to the north by the Mediterranean Sea, and to the east by Israel and the Red Sea. With a population of 97,553,151 as of 2017,²⁰ Egypt is the 14th most populous country in the world and the most populous in the Middle East as at the end of 2017.²¹

Egypt is divided into twenty-seven governorates, with five cities – Cairo, Alexandria, Port Said, Suez and Luxor – having governorate status.²² Cairo and Alexandria, the two largest cities in the country, have a population of 9,278,441²³ and 5,812,186²⁴

19 World Bank, *Data: Surface Area (sq. km)*, 2017, available at: <https://data.worldbank.org/indicator/AG.SRF.TOTL.K2?locations=EG>.

20 World Bank, *Data: Population*, 2017, available at: <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=EG>.

21 *Ibid.*

22 Arab Republic of Egypt, Central Agency for Public Mobilization and Statistics, *Egypt in Figures 2015*, 2015, available at: <http://www.sis.gov.eg/newvvr/EgyptinFigures2015/EgyptinFigures/Tables/PDF/1-%20%D8%A7%D9%84%D8%B3%D9%83%D8%A7%D9%86/pop.pdf>.

23 *Ibid.*

24 *Ibid.*

respectively. The vast majority of the population – approximately 95% – lives along the Nile River, which accounts for less than 5% of Egypt's landmass; as such, the Nile Valley is one of the world's most densely populated areas.²⁵ It is estimated that only 43.22% of the population lives in urban areas, whilst the remainder inhabit the rural areas scattered throughout the Nile Valley.²⁶

According to data from the World Bank, the population growth rate has fallen from 2.8 in 1960 to 1.9 in 2017.²⁷ In 2016, the birth rate was 26.5 per 1,000 people,²⁸ and the death rate was 5.9 per 1,000 people.²⁹ The average life expectancy in 2016 was 71.5 years,³⁰ with the life expectancy being 69.3 years for men and 73.8 years for women.³¹

A lack of official disaggregated data makes it difficult to accurately assess the ethnic composition of the country. However, recent studies estimate that ethnic Egyptians constitute 91% of the total population.³² Ethnic minority groups include Turks, Greeks, Abazas and Bedouin Arab tribes in the Sinai Peninsula and the deserts to the east of the country, as well as the Siwis (also known as Berbers or Amazighs) in the Siwa Oasis, and the Nubian people in the Upper Nile region.³³

25 United Nations Development Programme, *About Egypt*, visited 17 September 2018, available at: <http://www.eg.undp.org/content/egypt/en/home/countryinfo.html>.

26 World Bank, *Data: Urban Population (% of the total)*, 2017, available at: <https://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS>.

27 World Bank, *Data: Population Growth (annual %)*, 2017, available at: <https://data.worldbank.org/indicator/SP.POP.GROW?locations=EG>.

28 World Bank, *Data: Birth Rate, Crude (per 1,000 people)*, 2017, available at: <https://data.worldbank.org/indicator/SP.DYN.CBRT.IN?locations=EG>.

29 World Bank, *Data: Death Rate, Crude (per 1,000 people)*, 2017, available at: <https://data.worldbank.org/indicator/SP.DYN.CDRT.IN?locations=EG>.

30 World Bank, *Data: Life expectancy at birth, total (years)*, 2017, available at: <https://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=EG>.

31 World Bank, *Data: Life expectancy at birth, male (years)*, 2017, available at: <https://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=EG>; World Bank Data, *Life expectancy at birth, female (years)*, 2017, available at: <https://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=EG>.

32 World Population Review, *Egypt Population 2018*, updated 30 September 2018, available at: <http://worldpopulationreview.com/countries/egypt-population/>.

33 *Ibid.*

Between 1962 and 2017, net migration increased fivefold; 275,000 more people left the country than entered in 2017.³⁴ In 2015, the total immigrant population was 491,643.³⁵ As at August 2018, the United Nations High Commissioner for Refugees (UNHCR) reported that there were 233,045 refugees and asylum seekers of 58 nationalities registered in Egypt, over half of whom were Syrian.³⁶ This figure does not include some 70,000 Palestinian refugees whom are unregistered with UNHCR.³⁷

The Constitution designates the official state language of Egypt as Arabic,³⁸ though a number of minority languages are also spoken within the country, including Nobiin by the Nubian people,³⁹ and Coptic by Coptic Christians.⁴⁰ The colonisation of Egypt throughout its history also facilitated the spread of western languages such as English and French, which are associated with the affluent elite.⁴¹

A lack of official census data makes it difficult to be precise about the numbers and size of different religious communities in Egypt. However, estimates suggest around 90% of the population is Muslim, the majority of whom are Sunni Muslim, while around 10% are Christian. There are also small groups of Quranist Muslims, Ahmadi Muslims and a small Dawoodi (a branch of Ismaili Shia Islam) Bohra community.⁴²

34 World Bank, *Data: Net Migration*, 2017, available at: <https://data.worldbank.org/indicator/SM.POP.NETM?locations=EG>.

35 World Bank, *Data: International migrant stock*, 2017, available at: <https://data.worldbank.org/indicator/SM.POP.TOTL?locations=EG>.

36 United Nations High Commissioner for Refugees (UNHCR), *Egypt Fact Sheet 2018*, 2018, available at: <http://reporting.unhcr.org/sites/default/files/UNHCR%20Egypt%20Fact%20Sheet%20-%20August%202018.pdf>.

37 UNHCR, *Global Focus: Egypt*, 2018, available at: <http://reporting.unhcr.org/node/2540?y=2018#year>.

38 Constitution of the Arab Republic of Egypt 2014, Article 2.

39 Minority Rights Group International, *Minorities and Indigenous Peoples in: Egypt*, updated October 2017, available at: <https://minorityrights.org/country/egypt/>.

40 Gamil, M., "Coptic: Ancient language still spoken today", *Egypt Today*, 8 August 2017, available at: <http://www.egypttoday.com/Article/4/16207/Coptic-Ancient-language-still-spoken-today>.

41 See above, note 32.

42 United States Department of State, *Egypt 2017 International Religious Freedom Report*, 2017, p. 3, available at: <https://www.state.gov/documents/organization/281224.pdf>.

Egypt has experienced sustained economic growth since the 1960s: national gross domestic product increased from US \$17 billion in 1960 to \$30.2 billion in 1975, and to \$271.7 billion in 2017.⁴³ With a gross national income of \$10,064 and 13.1 years of expected schooling, Egypt is ranked 111th in the Human Development Index, with a score of 0.691.⁴⁴

1.6 History

Egypt was home to one of the world's ancient civilisations, with evidence of widespread settlement as far back as around 6000 BCE.⁴⁵ The first pharaoh took power in approximately 3100 BCE, leading to a reign of thirty-one dynasties.⁴⁶ Egypt was conquered by the Romans in 30 BCE, and periods of great prosperity were followed by improvements such as the expansion of administration and irrigation systems, though wealth was monopolised by the ruling class.⁴⁷ The Byzantines, descendants of the Romans, were defeated by the Arabs in a swift conquest in 636 CE.⁴⁸ By the time of the Arab conquest, Egypt had become heavily Christianised, though the conquest signalled the beginning of the conversion of the population to Islam.⁴⁹ Yet the Arabisation and Islamisation of the country was not immediate: it was a gradual process which took place over several centuries.⁵⁰ A significant milestone in this process was a 706 CE edict by the governor of Egypt requiring all government decrees to be written in Arabic.⁵¹ The transformation continued under the Fatimid dynasty which ruled Egypt from 969 to 1171, during which time the

43 World Bank, *GDP (constant 2010 US\$)*, 2017, available at: <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD?locations=EG>.

44 United Nations Development Programme, *Egypt: Human Development Indicators*, visited 17 September 2018, available at: <http://hdr.undp.org/en/countries/profiles/EGY>.

45 Khan Academy, *Ancient Egyptian Civilization*, visited 31 July 2018, available at: <https://www.khanacademy.org/humanities/world-history/world-history-beginnings/ancient-egypt-hittites/a/egypt-article>.

46 Tignor R., *Egypt: A Short History*, Princeton University Press, 2010, p. 29.

47 *Ibid.*, p. 102.

48 *Ibid.*, p. 130.

49 *Ibid.*, p. 124.

50 *Ibid.*, p. 133.

51 *Ibid.*

country became one of the centres of the Islamic world,⁵² and continued under the Mamluks (1250–1517).⁵³

Encroachment into Arab territories by Ottoman forces resulted in the brutal Ottoman-Mamluk War (1516–1517), during which Ottoman forces plundered, raped and killed an estimated 10,000 inhabitants of Cairo.⁵⁴ Control of Egypt's territory was transferred from the Mamluks to the Ottoman Empire, and the country remained the largest *eyalet* (province) of the Ottoman Empire for over 350 years, other than a short period of French occupation between 1798 and 1801.⁵⁵

The defeat of the French in 1801 resulted in a civil war in which Muhammed Ali Pasha, a military commander of Albanian origin, emerged victorious; in 1805, he was nominated *wali* (governor) of Egypt.⁵⁶ During his 43 year reign, Muhammad Ali Pasha pursued the project of an increasingly independent and modernised Egypt that would set the ground for the establishment of the Egyptian monarchy.⁵⁷ Ismail Pasha, Muhammad Ali Pasha's grandson and eventual successor, unsuccessfully attempted to have the Ottomans declare Egypt independent; however, he was able to convince the Ottomans to officially recognise him as *khedive* (ruler), a title unofficially used by his grandfather, thus differentiating his position from previous Ottoman governors who had not exercised the same degree of autonomy.⁵⁸

The end of the nineteenth century marked a crucial point in Egypt's history. In 1869, the Suez Canal was inaugurated, reinvigorating the desire of Western

52 *Ibid.*, p. 147.

53 *Ibid.*, p. 162.

54 *Ibid.*, p. 176.

55 Hathaway, J., "The Military Household in Ottoman Egypt", *International Journal of Middle East Studies*, Vol. 27, No. 1, 1995.

56 Goldschmidt, A., *History of Modern Egypt: The Formation of a Nation State*, Hachette UK, 2004, p. 38.

57 Abir, M., "Modernisation, Reaction and Muhammad Ali's 'Empire'", *Middle Eastern Studies*, Vol. 13, No. 3, 2006.

58 Marsot, S. and Lutfi, A., *A History of Modern Egypt: From the Arab Conquest to the Present*, Cambridge University Press, 2012, p. 82.

powers to control this strategic area.⁵⁹ From 1882, Egypt came under the control of the British Empire: whilst it was still formally ruled by Muhammad Ali Pasha's dynasty under the *khedive* of the Ottoman Empire, it was controlled by the British government for all practical purposes.⁶⁰ Britain's consul general in Egypt was the effective ruler of the country, backed by a large British army of occupation.⁶¹ With the outbreak of the First World War in 1914, and the British declaration of war against the Ottomans, Britain officially proclaimed Egypt a British Protectorate.⁶²

By the end of the First World War in 1918, nationalist sentiment had begun to increase throughout the country.⁶³ On 28 February 1922 the British government issued a unilateral declaration recognising Egypt as a fully independent sovereign State, though the British army remained in control of the Suez Canal.⁶⁴ Following the declaration, the official ruler of Egypt, known as the *khedive* prior to the First World War, and the sultan during and just after the war, now became king;⁶⁵ thus Sultan Fuad became King Fuad.⁶⁶

Egypt's first Constitution was adopted in 1923 against a backdrop of conflict between the liberal aspirations of a significant part of the population and the autocratic tendencies of King Fuad, who was backed by the British.⁶⁷ The first democratic elections in 1924 saw a landslide victory for the nationalist Wafd Party led by Saad Zaghlul. However, Zaghlul's government was affected by violence and unrest; the assassination of the commander of the Egyptian army, an Englishman, Sir Lee Stack, by Egyptian nationalists was met with protests by the British Government and the eventual dissolution of Zaghlul's parliament by the King.⁶⁸ The years which followed were

59 Crabités, P., *Ismail: The Maligned Khedive*, Routledge and Sons, 1933.

60 Tignor, R.L., *Modernization and British Colonial Rule in Egypt, 1882–1914*, Princeton University Press, 2015, p. 50.

61 See above, note 46, p. 228.

62 See above, note 58, p. 95.

63 Jankowski, J., *Egypt: A Short History*, Oneworld Publications, 2000.

64 See above, note 58, p. 98.

65 See above, note 46, p. 243.

66 See above, note 58, p. 96.

67 *Ibid.*, p. 98.

68 *Ibid.*, p. 101.

characterised by political turmoil in which power changed hands between the Wafd Party and the Liberal Constitutionalists, a party whose interests were vested with the wealthy,⁶⁹ with the King eventually installing a Liberal cabinet under Ismail Sidqi.⁷⁰

By the 1930s, Sidqi's policies had aggravated the already precarious economic situation, and rumours of profiteering and the use of torture on the part of the government prompted public outrage; in 1933 Sidqi resigned, signalling a return to power for the Wafd Party.⁷¹ Disillusion with traditional parties and persistent British interference influenced the creation of new political parties to challenge the hegemony of the Wafd Party;⁷² in 1928 the Muslim Brotherhood was founded,⁷³ while in 1933 the far-right al-Fatat party (Young Egypt) was created.⁷⁴ This notwithstanding, the Wafd Party won elections again in 1936.⁷⁵

In the midst of the Second World War, in 1942, the German army crossed the Egyptian border and made for the country's population centres, though the British army, backed by the government, ultimately stopped the German advances.⁷⁶ Prior to this, the British – fearful that the government might try to negotiate with the Germans – pressured King Farouk, successor to Fuad, to install a pro-British Wafdist government.⁷⁷

In 1948, Egypt was among a group of Arab countries which declared war on the new state of Israel.⁷⁸ A four-week truce between the two sides, brokered

69 *Ibid.*, p. 99.

70 *Ibid.*, p. 104.

71 *Ibid.*, p. 108.

72 *Ibid.*, p. 104.

73 Wickham, C.R., *The Muslim Brotherhood: Evolution of an Islamist Movement*, Princeton University Press, 2013.

74 Gershoni, I., "Egyptian Liberalism in an Age of 'Crisis of Orientation': Al-Risala's Reactions to Fascism and Nazism", *International Journal of Middle East Studies*, Vol. 31, No. 4, pp. 551–576.

75 See above, note 46, p. 251.

76 *Ibid.*

77 *Ibid.*, p. 254.

78 See above, note 58, p. 121.

by the UN and fronted by mediator Count Folke Bernadotte,⁷⁹ was agreed and began on 11 June 1948.⁸⁰

In 1952, a group of young army officers, led by Anwar al-Sadat, Gamal Abdel Nasser and General Muhammad Naguib, seized power in a *coup d'état*.⁸¹ Three days after the military *coup*, King Farouk left Egypt. A year later, the monarchy was dissolved entirely, signalling Egypt's transformation into a republic, with General Muhammad Naguib elected its first president.⁸² This transformation was overseen by the Revolutionary Command Council, a body vested with full powers by a provisional constitution during a three-year transitional period.⁸³

Following a showdown between Naguib and Nasser in 1954, Nasser prevailed and assumed the leadership of the military government.⁸⁴ In 1956, Nasser was officially elected president,⁸⁵ and launched the country into a period of rapid modernisation.⁸⁶ Relations with the West deteriorated when Nasser nationalised the Suez Canal, jeopardising British commercial interests.⁸⁷ As a result, on 29 October 1956, French, British and Israeli forces attacked Egypt, though condemnation from the United States of America and the Union of Soviet Socialist Republics resulted in a UN ceasefire being brokered on 6 November 1956.⁸⁸ Egypt endured a period of economic hardship in the mid-1960s under Nasser,⁸⁹ whose presidency ended with his death on 28 September 1970.⁹⁰

79 Morris, B., *1948: A History of the First Arab-Israeli War*, Yale University Press, 2008. p. 264.

80 *Ibid.*, p. 267.

81 See above, note 46, pp. 254–259.

82 See above, note 58, p. 126.

83 *Ibid.*, p. 129.

84 See above, note 46, p. 259.

85 See above, note 58, p. 138.

86 Hahn, P.L., *The United States, Britain and Egypt 1945–1956: Strategy and Diplomacy in the Early Cold War*, University of North Carolina Press, 1991.

87 Osman, T., *Egypt on the Brink: From Nasser to the Muslim Brotherhood*, Yale University Press, 2013, p. 58.

88 *Ibid.*, p. 60.

89 See above, note 58, p. 150.

90 *Ibid.*, p. 151.

Nasser's Vice President Anwar Sadat succeeded him on his death. Sadat sought to transform Egypt into a liberal, capitalist country and pursued a privatisation programme to attract foreign capital.⁹¹ However, Sadat's popularity was irreparably damaged by the 1978 signing of the Camp David Accords, a ceasefire with Israel under which Egypt made concessions including the exchange of ambassadors and the "normalisation" of relations; the ceasefire antagonised other Arab countries and the Egyptian public,⁹² and in 1981 Sadat was assassinated by a member of a militant Muslim minority group.⁹³

Hosni Mubarak succeeded Sadat as President. In the early period of his rule, political parties of all persuasions (with the exception of religious parties) were allowed to form, while the press became more liberal, with opposition papers flourishing.⁹⁴ However, the enjoyment of human rights deteriorated during the course of Mubarak's presidency, with Egyptian lawyers and international human rights groups documenting the widespread and systematic use of torture and ill-treatment to obtain confessions or punish detainees throughout Mubarak's presidency.⁹⁵ These acts were committed with impunity, with the government failing to provide any redress for victims.⁹⁶ The Mubarak regime was also responsible for suppressing political opposition, including by imposing restrictions on political parties, NGOs, professional associations, trade unions and the media, with critics of the government being subjected to intimidation, arrest and torture.⁹⁷

91 Aoudé, I.G., "From National Bourgeoise Development to 'Infitah': Egypt 1952–1992, *Arab Studies Quarterly*, Vol. 16, No. 1, p. 11.

92 See above, note 58, p. 160.

93 *Ibid.*, p. 165.

94 *Ibid.*, p. 171.

95 Human Rights Watch, "Work on Him Until He Confesses": *Impunity for Torture in Egypt*, 30 January 2011, available at: <https://www.hrw.org/report/2011/01/30/work-him-until-he-confesses/impunity-torture-egypt>.

96 *Ibid.*

97 Amnesty International, *Egypt: Submission to the UN Universal Periodic Review: Seventh Session of the UPR Working Group*, February 2010, p. 3, available at: https://www.upr-info.org/sites/default/files/document/egypt/session_7_-_february_2010/aiupregys072010amnestyinternational.pdf.

Arab Spring: the 2011 Revolution

By 2010, popular support for Mubarak had diminished, and many Egyptians were living in poverty: according to the World Bank, 25.2% of Egyptians were reportedly living below the national poverty line,⁹⁸ although some have estimated the percentage to be significantly higher.⁹⁹ Furthermore, it was estimated that by 2011, approximately 45% of workers were employed in the informal sector and were therefore unable to avail themselves of any form of social security.¹⁰⁰

On 25 January 2011, in the context of growing unrest, the “Arab Spring” erupted in Egypt: thousands of protesters gathered in Tahrir Square in Cairo, denouncing the security forces and calling for dignity (*karama*) and freedom (*hurriyyah*).¹⁰¹ On 11 February 2011, following 18 days of mass protests, during which at least 840 protesters were killed and over 6,000 were injured by the security forces, President Mubarak was deposed.¹⁰² He had been in office for 29 years.

Presidential powers were immediately assumed by the Supreme Council of Armed Forces (SCAF), which dissolved the Parliament and suspended the Constitution on 13 February 2011.¹⁰³ Demonstrations continued throughout 2011, with protesters demanding a radical cleansing of all the members of the former government and adoption of a clear roadmap for democratic elections.¹⁰⁴ Parliamentary elections, held in stages between November 2011 and

98 World Bank, *DataBank: World Development Indicators: Egypt*, updated 18 October 2018, available at: <http://databank.worldbank.org/data/reports.aspx?source=World-Development-Indicators>.

99 See, for example: Sabry, S., *Poverty Lines in Greater Cairo: Underestimating and Misrepresenting Poverty*, 2009, p. 10, available at: <http://pubs.iied.org/10572IIED>.

100 Achcar, G., *The People Want: A Radical Exploration of the Arab Uprising*, University of California Press, 2013, p. 52.

101 Lesch, A.M., *Egypt's Spring: Causes of the Revolution*, 2011, available at: <https://www.mepec.org/egypts-spring-causes-revolution>.

102 Amnesty International, *The 'Arab Spring': Five Years On*, 2016, available at: <https://www.amnesty.org/en/latest/campaigns/2016/01/arab-spring-five-years-on>.

103 El-Bendary, M., *Egyptian Revolution: Between Hope and Despair, Mubarak to Morsi*, Algora Publishing 2013, p. 129.

104 *Ibid*.

January 2012, saw the Muslim Brotherhood's "Freedom and Justice Party" win overwhelming victories,¹⁰⁵ and on 2 June 2012, following the country's first fully free presidential election, Muhammad Morsi of the Muslim Brotherhood was sworn in as President.¹⁰⁶

Public opposition to President Morsi began to grow in November 2012, after he issued a Presidential Decree granting himself extensive powers which *inter alia* exempted his decisions from legal challenge,¹⁰⁷ and allowed him to "fast-track a controversial, Islamist-slanted Constitution", which was subsequently adopted on 22 December 2012.¹⁰⁸ Opposition also grew within the army, which was opposed to any challenge to the corrupt system which had thrived under the previous political regime,¹⁰⁹ and which was antagonised by the decision of the Muslim Brotherhood to reduce the role of the military in the country's political life.¹¹⁰ In July 2013, after only a year in office, President Morsi was ousted by the military in a *coup d'état* led by Abdel Fattah Saeed Hussein Khalil al-Sisi, who was then serving as Chief of Staff and Defence Minister.

Following the *coup*, an interim civilian government was formed.¹¹¹ In the following months, the Muslim Brotherhood's members and supporters were targets of government suppression. Security forces arrested at least 3,000 people – mostly supporters or members of the Muslim Brotherhood – in July and August 2013.¹¹² On 14 August 2013, police and army officers killed 817

105 Carnegie Endowment for International Peace, *2012 Egyptian Parliamentary Elections*, 2015, available at: <https://carnegieendowment.org/2015/01/22/2012-egyptian-parliamentary-elections-pub-58800>.

106 See above, note 87, p. 4.

107 Beaumont, P., "Protests erupt across Egypt after presidential decree", *The Guardian*, 23 November 2012, available at: <https://www.theguardian.com/world/2012/nov/23/protests-egypt-presidential-decree>.

108 Kingsley, P., "How Mohamed Morsi, Egypt's first elected president, ended up on death row", *The Guardian*, 1 June 2015, available at: <https://www.theguardian.com/world/2015/jun/01/mohamed-morsi-execution-death-sentence-egypt>.

109 Achcar, G., *Morbid Symptoms: Relapse in the Arab Spring*, Saqi Books, 2016, p. 15.

110 *Ibid.*, p. 48.

111 Hessler, P., "Egypt's Failed Revolution", *The New Yorker*, 2 January 2017, available at: <https://www.newyorker.com/magazine/2017/01/02/egypts-failed-revolution>.

112 Amnesty International, "Egypt: Detained Morsi supporters denied their rights", *Amnesty International*, 12 September 2013, available at: <https://www.amnesty.org/en/press-releases/2013/09/egypt-detained-morsi-supporters-denied-their-rights>.

supporters or members of the Muslim Brotherhood who were participating in an open-ended sit-in calling for the reinstatement of former President Morsi in Rab'a Square, Cairo.¹¹³ In December 2013, the Muslim Brotherhood was designated a terrorist group,¹¹⁴ meaning that any individual who showed support for the party could face charges of terrorism.¹¹⁵

In May 2014, Sisi won a presidential election which was criticised for: failing to meet international democratic standards;¹¹⁶ low turnout;¹¹⁷ intimidation of voters;¹¹⁸ and the denial of access to poll monitors.¹¹⁹ Parliamentary elections that followed resulted in the pro-Sisi coalition winning all 120 seats,¹²⁰ though many parties boycotted the elections due to the threatening atmosphere against opposition political parties.¹²¹

In the years that have followed President al-Sisi's election, he has shown a "flagrant disregard for human rights", with Human Rights Watch asserting in 2018

113 Human Rights Watch, "All According to Plan: The Rab'a Massacre and Mass Killings of Protesters in Egypt", *Human Rights Watch*, 12 August 2014, available at: <https://www.hrw.org/report/2014/08/12/all-according-plan/raba-massacre-and-mass-killings-protesters-egypt>.

114 BBC News, "Egypt's Muslim Brotherhood declared 'terrorist group'", *BBC News*, 25 December 2013, available at: <http://www.bbc.com/news/world-middle-east-25515932>.

115 Nasralla, S., "Egypt designates Muslim Brotherhood as terrorist group", *Reuters*, 25 December 2013, available at: <https://www.reuters.com/article/us-egypt-explosion-brotherhood/egypt-designates-muslim-brotherhood-as-terrorist-group-idUSBRE9B008H20131225>.

116 Kirkpatrick, D.K., "International Observers Find Egypt's Presidential Election Fell Short of Standards", *The New York Times*, 29 May 2014, available at: <https://www.nytimes.com/2014/05/30/world/middleeast/international-observers-find-fault-with-egypt-vote.html>.

117 Kalin, S., and Fick, M., "After Egypt's terribly low voter turnout, Sisi wins presidential election", *Public Radio International*, 29 May 2014, available at: <https://www.pri.org/stories/2014-05-29/after-egypts-terribly-low-voter-turnout-sisi-wins-presidential-election>.

118 Loveluck, L., "A landslide for Egypt's Sisi in an 'undemocratic' election", *The Christian Science Monitor*, 29 May 2014, available at: <https://www.csmonitor.com/World/Middle-East/2014/0529/A-landslide-for-Egypt-s-Sisi-in-an-undemocratic-election>.

119 Fadel, L., "No Surprise Here: Sisi Rolls to Victory in Egypt's Election", *NPR*, 29 May 2014, available at: <https://www.npr.org/sections/parallels/2014/05/29/317050568/no-surprise-here-sisi-rolls-to-victory-in-egypts-election>.

120 Al-Araby Al-Jadeed, "Egyptian officials say 29.83 percent turnout in parliamentary elections", *Al-Araby Al-Jadeed*, 26 November 2015, available at: <https://www.alaraby.co.uk/english/news/2015/11/26/egyptian-officials-say-29-83-percent-turnout-in-parliamentary-elections>.

121 Afifi, H., "Egypt elections: Some aren't running, some are boycotting, and this is why", *Ahram Online*, 19 October 2015, available at: <http://english.ahram.org.eg/NewsContentP/1/155967/Egypt/Egypt-elections-Some-arent-running-some-are-boyco.aspx>.

that he “has led the country into its worst rights and political crisis in decades”.¹²² The country has seen a wave of arrests, with research indicating that the security forces are responsible for “widespread and systematic torture in police stations and National Security Agency’s offices”, as well as severe restrictions on freedom of expression, freedom of movement and freedom of association.¹²³ Many of these abuses have been perpetrated under the guise of counterterrorism measures. A nationwide state of emergency was declared by President al-Sisi in April 2017 in the wake of two suicide bombings in Coptic churches in Tanta and Alexandria, which killed at least 45 people and injured at least 126 others.¹²⁴ The state of emergency remains in force as at the date of this report.¹²⁵

In April 2018, President al-Sisi won a second presidential election, with 97% of the votes cast, following a campaign of intimidation against members of the opposition, including the arrest of other potential candidates.¹²⁶

1.7 Government and Politics

The current Constitution of the Arab Republic of Egypt was approved by referendum in 2014, replacing the 2012 Constitution which was suspended after the *coup* which ousted President Morsi. The 2014 Constitution was drafted by a 50-member committee convened by the interim administration which took power following Morsi’s ouster.¹²⁷

The Constitution establishes Egypt as a sovereign state and a democratic republic based on citizenship and the rule of law.¹²⁸ It further stipulates that

122 Human Rights Watch, “Egypt: Al-Sisi Should End Rights Abuses”, *Human Rights Watch*, 10 April 2018, available at: <https://www.hrw.org/news/2018/04/10/egypt-al-sisi-should-end-rights-abuses>.

123 Human Rights Watch, “Human Rights Watch Letter to UK Foreign Secretary”, *Human Rights Watch*, 27 July 2018, available at: <https://www.hrw.org/news/2018/07/27/human-rights-watch-letter-uk-foreign-secretary>.

124 See further discussion in Part 3.2.

125 Hosny, H., “Egyptians Divided as Sisi continues to Extend State of Emergency”, *Al-Monitor*, 1 July 2018, available at: <https://www.al-monitor.com/pulse/originals/2018/06/egypt-state-of-emergency-extension-terrorism.html>.

126 See above, note 122.

127 BBC News, “Egypt referendum: 98% back new constitution”, *BBC News*, 19 January 2014, available at: <https://www.bbc.co.uk/news/world-middle-east-25796110>.

128 Constitution of the Arab Republic of Egypt 2014, Article 1.

the political system is based on “political and partisan multiplicity” and the “separation and balance of powers”.¹²⁹ The Republic is characterised by a presidential form of Government, with the President established as the head of state and head of the executive branch,¹³⁰ as well as the SCAF.¹³¹ The President assigns a Prime Minister to form the government,¹³² which is the supreme executive and administrative body of the state.¹³³ Legislative authority within Egypt is vested in the House of Representatives, which exercises oversight over the executive.¹³⁴ The Constitution further provides that the judicial branch is independent.¹³⁵

The President is chosen in elections held every four years, and is only eligible for re-election once.¹³⁶ Elections take the form of direct secret ballot, with the winner being the candidate with an absolute majority of votes.¹³⁷ The President, jointly with the Cabinet, sets the general policy of the state and oversees its implementation,¹³⁸ represents the state in foreign relations, and is responsible for concluding and ratifying treaties.¹³⁹ Additionally, the President can, in the absence of the House of Representatives and when urgent, issue decrees which have the force of law, though they must be approved by the House within 15 days.¹⁴⁰

The House of Representatives is entrusted with approving the general policy of the state, the general plan of economic and social development and the state budget.¹⁴¹ The Constitution states that the House is to be comprised

129 *Ibid.*, Article 2.

130 *Ibid.*, Article 139.

131 *Ibid.*, Article 152.

132 *Ibid.*, Article 146.

133 *Ibid.*, Article 163.

134 *Ibid.*, Article 101.

135 *Ibid.*, Article 184.

136 *Ibid.*, Article 140.

137 *Ibid.*, Article 143.

138 *Ibid.*, Article 150.

139 *Ibid.*, Article 151.

140 *Ibid.*, Article 156.

141 Constitution of the Arab Republic of Egypt 2014, Article 101.

of no less than 450 members elected directly by secret ballot,¹⁴² for a term of five years.¹⁴³ Additionally, the President can appoint up to 5% of members.¹⁴⁴ The House can be dissolved by the President, though only following a public referendum.¹⁴⁵

Following a Presidential Decree, it was stipulated that the first House of Representatives would consist of 448 seats through the individual list system, and 120 through the closed party list systems, with independent candidates and party members able to stand as candidates in either system.¹⁴⁶ Under the individual list system, individual candidates are elected on the basis of an absolute majority. Under the closed party list system, the country is divided into four constituencies, with all of the seats in each constituency being allocated to the list which gains an absolute majority.¹⁴⁷ In the most recent elections held in 2015, 351 of the seats available in the House of Representatives were won by independent candidates, though the turnout was low at just 28%.¹⁴⁸

In its 2018 review, Freedom House determined Egypt's status as "not free", giving the country an overall freedom rating of 6 (with 1 being most free and 7 being least free), and specific ratings of 6 for political rights and civil liberties.¹⁴⁹ It noted that President al-Sisi continues to govern Egypt in an authoritarian manner and that political opposition is "virtually non-existent".¹⁵⁰

142 *Ibid.*, Article 102.

143 *Ibid.*, Article 106.

144 *Ibid.*, Article 102.

145 *Ibid.*, Article 137.

146 Presidential Decree Law No. 92 of 2015, Article 2.

147 International Foundation for Electoral Systems, *Elections in Egypt: 2015 House of Representatives Elections, Frequently Asked Questions*, 2015, p. 1, available at: https://www.ifes.org/sites/default/files/2015_ifes_egypt_hor_elections_faq_final.pdf.

148 ElectionGuide, *Election for Egyptian People's Assembly*, 2015, available at: <http://www.electionguide.org/elections/id/2840>.

149 Freedom House, *Freedom in the World 2018: Egypt*, 2018, available at: <https://freedomhouse.org/report/freedom-world/2018/egypt>.

150 *Ibid.*

2. THE LEGAL FRAMEWORK RELATED TO EQUALITY

This Part of the report examines the legal framework related to equality in Egypt. It examines both Egypt's international legal obligations and the domestic legal framework. In respect of domestic law, it examines the Constitution, specific anti-discrimination laws and non-discrimination provisions in other areas of law, before going on to discuss national policies on equality and non-discrimination. Next, it assesses the enforcement and implementation of existing laws and policies aimed at ensuring equality. In order to assess the full picture of Egypt's legal framework as it relates to equality, this Part should be read together with, and in the context of, Part 3 of this report, which contains an appraisal of laws that discriminate overtly or are subject to discriminatory application, alongside a discussion of patterns of discrimination in practice.

Although Egypt has ratified a number of the key international treaties relevant to equality and non-discrimination, the protection of the rights to equality and non-discrimination in the domestic legal framework does not meet international standards. Whilst the Constitution guarantees equality and prohibits discrimination, the scope of the right is limited, discrimination itself is not defined, and the list of prohibited grounds explicitly included in the Constitution is not consistent with the range of grounds recognised under international law. The state has not enacted comprehensive equality law and has enacted only one specific law dealing with the rights of a group commonly exposed to discrimination – a law on the rights of persons with disabilities – which is itself not consistent with international law. Beyond this, the protections under the Constitution are supplemented by a number of provisions in different areas of law directed at promoting equality and non-discrimination, but this patchwork of protection from discrimination fails to meet the standards required by international law. The analysis below reveals the need for comprehensive anti-discrimination legislation in Egypt.

The enforcement and implementation of the legal framework related to equality is also weak. There are concerns about the independence of the judiciary, with recent years seeing the executive taking an increasingly prominent role in appointing judges and a resurgence of civilian trials before military and emergency security courts under the direct supervision of the executive. The national human rights institution has a limited mandate, and there is current-

ly no equality body, despite a requirement to establish such a body under the Constitution. In addition, individuals do not have effective access to justice to enforce their rights to equality and non-discrimination and contrary to best practice, individuals bear the burden of proof in bringing a claim for discrimination. In summary, Egypt's legal framework relating to equality falls short of the standards required by the international treaties to which it is party.

2.1 International Law

This section provides an overview of Egypt's international obligations with respect to the rights to equality and non-discrimination. Egypt has ratified or acceded to eight of the nine core UN human rights treaties and has thereby expressly agreed to respect, protect and fulfil the rights contained in these instruments and to be bound by the legal obligations contained therein. In addition to these obligations, Egypt is bound by rules of customary international law which provide important protection in relation to the right to non-discrimination on certain grounds.

2.1.1 Major United Nations Treaties Relevant to Equality

On a superficial level, Egypt has a relatively good record of participation in international human rights instruments, having ratified all core UN human rights treaties except the International Convention for the Protection of all Persons from Enforced Disappearance.¹

Table 1: Ratification of International Human Rights Treaties by Egypt

Instrument Relevant to Equality	Signed	Ratified/Accessed/ Succeeded
International Covenant on Civil and Political Rights (1966) (ICCPR)	4 August 1967	Ratified 14 January 1982
Optional Protocol to the International Covenant on Civil and Political Rights (1976) (ICCPR-OP)	N/A	N/A
International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR)	4 August 1967	Ratified 14 January 1982

¹ The nine core human rights treaties are shaded grey in Table 1.

Instrument Relevant to Equality	Signed	Ratified/Acceeded/ Succeeded
Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights (2008) (ICESCR-OP)	N/A	N/A
Convention on the Elimination of All Forms of Discrimination Against Women (1979) (CEDAW)	16 July 1980	Ratified 18 September 1981
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999) (CEDAW-OP)	N/A	N/A
International Convention on the Elimination of All Forms of Racial Discrimination (1965) (ICERD)	28 September 1966	Ratified 1 May 1967
Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984) (CAT)	N/A	Acceded 25 June 1986
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002) (CAT-OP)	N/A	N/A
Convention on the Rights of the Child (1989) (CRC)	5 February 1990	Ratified 6 July 1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000) (CRC-OP)	N/A	Acceded 6 February 2007
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)	N/A	Acceded 12 July 2002
Convention on the Rights of Persons with Disabilities (2006) (CRPD)	04 April 2007	14 April 2008
Optional Protocol of the Convention on the Rights of Persons with Disabilities (2006) (CRPD-OP)	N/A	N/A
International Convention for the Protection of all Persons from Enforced Disappearance (2006) (ICCPED)	N/A	N/A
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) (ICRMW)	N/A	Acceded 19 February 1993

However, the state maintains several reservations to international human rights treaties that undermine the protection of the rights to equality and

non-discrimination. On ratifying the ICCPR and ICESCR, Egypt articulated a general interpretative declaration², stating that “[t]aking into consideration the provisions of the Islamic Sharia and the fact that they do not conflict with the text annexed to the instrument, we accept, support and ratify it”.³ Where an interpretative declaration has the effect of “undermin[ing] the legal effect of one of the provisions of the treaty or the treaty as a whole”, it is considered to have the same function as a reservation.⁴ Jasmine Moussa has submitted that, whilst Egypt’s declaration with respect to the ICCPR and ICESCR is ambiguously worded, it is likely to have the effects of a reservation.⁵

Egypt has also issued reservations with respect to two material provisions of the CEDAW. The first reservation concerns Article 16 CEDAW, which requires states to eliminate discrimination against women in all matters relating to marriage and family relations, including by ensuring equal rights and responsibilities between men and women with respect to children and entering or dissolving marriage. The reservation to Article 16 provides as follows:

Reservation to the text of article 16 concerning the equality of men and women in all matters relating to marriage and family relations during the marriage and upon its dissolution, without prejudice to the Islamic Sharia’s provisions whereby women are accorded rights equivalent to those of their spouses so as to ensure a just balance between them. This is out of respect for the sacrosanct nature of the firm religious beliefs which govern marital relations in Egypt and which may not be called in question and in view of the fact that one of the most

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- 2 According to the International Law Commission, an “[i]nterpretative declaration’ means a unilateral statement, however phrased or named, made by a State or an international organisation, whereby that State or that organisation purports to specify or clarify the meaning or scope of a treaty or of certain of its provisions.” See: International Law Commission, *Fourteenth report on reservations to treaties by Alain Pellet, Special Rapporteur*, UN Doc. A/CN.4/614/ADD.1, 2009, Para 134.
 - 3 United Nations Treaty Collection, *Chapter IV: Human Rights: 3. International Covenant on Economic, Social and Cultural Rights*, updated 27 November 2018, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en#EndDec.
 - 4 See above, note 2.
 - 5 See: Moussa, J., “Competing Fundamentalisms and Egyptian Women’s Family Rights”, *Brill*, 2011, p. 115.

important bases of these relations is an equivalency of rights and duties so as to ensure complementary which guarantees true equality between the spouses. The provisions of the Sharia lay down that the husband shall pay bridal money to the wife and maintain her fully and shall also make a payment to her upon divorce, whereas the wife retains full rights over her property and is not obliged to spend anything on her keep. The Sharia therefore restricts the wife's rights to divorce by making it contingent on a judge's ruling, whereas no such restriction is laid down in the case of the husband.⁶

The second reservation concerns Article 2 CEDAW, which requires states to condemn and eliminate discrimination against women in all its forms. Egypt has stated that it “is willing to comply with the content of this Article, provided that such compliance does not run counter to the Islamic Sharia”.⁷ Article 19(c) of the Vienna Convention on the Law of Treaties of 1969 states that reservations must “not be incompatible with the object and purpose of the treaty”; in 2010, the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) declared that it considered Egypt’s reservations to Articles 2 and 16 to be incompatible with the object and purpose of the CEDAW and urged it to withdraw them.⁸ In its national report to the 2014 Universal Periodic Review (UPR), Egypt stated that it would consider withdrawing its reservation to Article 2 CEDAW, but not that to Article 16.⁹

Egypt has also issued an interpretative declaration with respect to Article 12(2) CRPD, which requires states to “recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life”. The

6 United Nations Treaty Collection, *Chapter IV: Human Rights: 8. Convention on the Elimination of All Forms of Discrimination against Women*, updated 27 November 2018, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en.

7 *Ibid.*

8 Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Concluding Observations: Egypt*, UN Doc. CEDAW/C/EGY/CO/7, 2010, Para 14.

9 Human Rights Council, Universal Periodic Review, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Egypt*, UN Doc. A/HRC/WG.6/20/EGY/1, 22 July 2014, Paras 13–14.

declaration states that “persons with disabilities enjoy the capacity to acquire rights and assume legal responsibility (‘ahliyyat al-wujub) but not the capacity to perform (‘ahliyyat al-‘ada’) under Egyptian law”.¹⁰ These two forms of legal capacity derive from an interpretation of Islamic Sharia: the former, also known as “receptive legal capacity”, refers to the ability of an individual to acquire rights and obligations, and every individual is considered to possess such capacity by birth; the latter, also known as “active legal capacity”, refers to an individual’s ability to fulfil his or her rights and discharge obligations, for example through conducting financial transactions and entering into a legal contract.¹¹ The Committee on the Rights of Persons with Disabilities (CRPD Committee) clarified in its first General Comment that legal capacity in the sense of Article 12(2) confers “the ability to hold rights and duties (legal standing) and to exercise those rights and duties (legal agency)”.¹² Egypt’s declaration, which has the effect of excluding persons with disabilities’ legal agency, is inconsistent with the objects and purposes of Article 12.

Egypt has entered reservations to the ICRMW, the first of which rejects the definition of “members of the family” under Article 4, without offering an alternative definition. Egypt has also articulated a reservation not to be bound by Article 18(6) ICRMW, which guarantees the right to compensation in cases of a miscarriage of justice. The state has failed to provide reasoning for either reservation. However, it has been argued that the reservation to Article 4 may be explained by reference to Egypt’s adherence to Islamic Sharia principles which do not recognise any other form of union between partners other than marriage.¹³

In addition to the maintenance of interpretative declarations and reservations which seek to limit its obligations under international human rights treaties to which it is party, Egypt has a poor record of allowing individual complaints to be made to the relevant treaty bodies. As at the date of final-

10 United Nations Treaty Collection, *Chapter IV: Human Rights: 15. Convention on the Rights of Persons with Disabilities*, updated 27 November 2018, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en.

11 Information provided to the Equal Rights Trust by an Egyptian lawyer, 4 September 2018.

12 Committee on the Rights of Persons with Disabilities (CRPD Committee), *General Comment No. 1: Article 12: Equal recognition before the law*, UN Doc. CRPD/C/GC/1, 2014, Para 13.

13 Badawy, T, European University Institute, *Egypt and the 1990 Convention on the Protection of Migrant Workers*, 2010, pp. 2 and 8, available at: http://cadmus.eui.eu/bitstream/handle/1814/14046/CARIM_ASN_2010_41.pdf?sequence=1&isAllowed=y.

ising this report, it has yet to accept the competence of any treaty body to receive individual communications. As a result of the failure to ratify the relevant Optional Protocols or make the necessary declarations under Article 14 ICERD or Article 22 CAT, individual victims of discrimination in Egypt are unable to submit complaints to the treaty bodies which monitor the implementation and enforcement of the instruments.

A number of treaty bodies have urged Egypt to accept their jurisdiction to receive individual complaints. For example, the CEDAW Committee called on Egypt to accede to the CEDAW-OP during its review of the country in 2010.¹⁴ Similarly, the Committee on Economic, Social and Cultural Rights (CESCR) has encouraged Egypt to ratify ICESCR-OP.¹⁵ In 2014, at the second UPR of Egypt by the UN Human Rights Council, four states recommended that Egypt ratify the ICESCR-OP to enable the CESCR to consider individual complaints.¹⁶ In addition, one state recommended that Egypt ratify the CRPD-OP, whilst three states urged it to accede to the CEDAW-OP.¹⁷ Egypt responded by taking note of these recommendations, neither accepting nor explicitly rejecting them, without providing explanation.¹⁸ Whilst Egypt has acceded to the ICERD, it has not made a declaration under Article 14 allowing for individual complaints to be made. The Committee on the Elimination of Racial Discrimination (CERD) noted this failure and recommended that Egypt make a declaration under Article 14 ICERD recognising the Committee's competence to consider such complaints when it conducted its review of Egypt in 2016.¹⁹

Egypt has a poor record of compliance with its reporting obligations under the treaties it has ratified. The Human Rights Committee's (HRC) last review of the country occurred in 2002. Egypt's national reports to the HRC and to

14 See above, note 8, Para 53.

15 Committee on Economic, Social and Cultural Rights (CESCR), *Concluding Observations: Egypt*, UN Doc. E/C.12/EGY/CO/2-4, 13 December 2013, Para 25.

16 Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Egypt*, UN Doc. A/HRC/WG.6/20/L.13, 7 November 2014.

17 *Ibid.*

18 Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Egypt: Addendum*, UN Doc. A/HRC/28/16/Add.1, 7 November 2014, pp. 3–4.

19 Committee on the Elimination of Racial Discrimination (CERD), *Concluding Observations: Egypt*, UN Doc. CERD/C/EGY/CO/17-22, 6 January 2016, Para 42.

the Committee against Torture (CAT Committee) for its latest reporting cycles were due in 2004 but had not been submitted in September 2018.²⁰ Moreover, as at the date of finalising this report, the state has failed to submit its state report to the CRPD Committee, the CEDAW Committee, the Committee on the Rights of the Child (CRC Committee) and the CERD, which were due in 2010, 2014, 2016, and January 2018 respectively.²¹ Egypt's failure to adhere to its reporting obligations inhibits the treaty bodies' ability to assess the country's progress in implementing and enforcing obligations with respect to equality and non-discrimination.

2.1.2 Other Treaties Related to Equality

Egypt has a mixed record in relation to the ratification of other international treaties relevant to the rights to equality and non-discrimination. While the state has ratified the Convention relating to the Status of Refugees (Refugee Convention) and its Protocol, the United Nations Educational, Scientific and Cultural Organisation (UNESCO) Convention Against Discrimination in Education and the International Labour Organization (ILO) Conventions most relevant to the right to non-discrimination, it has failed to ratify either of the statelessness conventions or the Rome Statute on the International Criminal Court.

Table 2: Ratification of International Human Rights Treaties by Egypt

Instrument	Signed?	Ratified/Acceded/ Succeeded/Acceptance
Convention relating to the Status of Refugees (1951)	N/A	Acceded 22 May 1981
Protocol relating to the Status of Refugees (1967)	N/A	Acceded 22 May 1981
Convention relating to the Status of Stateless Persons (1954)	N/A	N/A
Convention on the Reduction of Statelessness (1961)	N/A	N/A

20 Office of the High Commissioner for Human Rights, *Reporting status for Egypt*, visited 18 May 2018, available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=EGY&Lang=EN.

21 *Ibid.*

Instrument	Signed?	Ratified/Acceeded/ Succeeded/Acceptance
UNESCO Convention Against Discrimination in Education (1960)	N/A	Acceptance 28 March 1962
Rome Statute on the International Criminal Court (1960)	26 December 2000	N/A
Freedom of Association and Protection of the Right to Organise Convention (ILO Convention No. 87) (1948)	N/A	Ratified 6 November 1957
Equal Remuneration Convention (ILO Convention No. 100) (1951)	N/A	Ratified 26 July 1960
Discrimination (Employment and Occupation) Convention (ILO Convention No. 111) (1958)	N/A	Ratified 10 May 1960
Worst Forms of Child Labour Convention (ILO Convention No. 182) (1999)	N/A	Ratified 6 May 2002
Forced Labour Convention (ILO Convention No. 29) (1930)	N/A	Ratified 29 November 1955
Right to Organise and Collective Bargaining Convention (ILO Convention No. 98) (1949)	N/A	Ratified 3 July 1954
Abolition of Forced Labour Convention (ILO Convention No. 105) (1957)	N/A	Ratified 23 October 1958
Minimum Age Convention (ILO Convention No. 138) (1973)	N/A	Ratified 9 June 1999

Egypt has made several reservations to provisions of the Refugee Convention that weaken the equality and anti-discrimination guarantees of the instrument. In particular, it has made a general reservation to Articles 20, 22(1), 23 and 24 which guarantee that refugees must be accorded the same treatment as nationals in respect of national rationing systems, the provision of elementary education, public relief and assistance and labour relations and society security.²² Thus, the reservation significantly undermines the protection provided by the Convention and undermines the commitment to respecting refugees' right to non-discrimination. Egypt has stated that it does not consider refugees to be equal to nationals and prefers to maintain discretionary authority "to grant priv-

22 United Nations Treaty Collection, *Chapter V: Refugees and Stateless Persons: 2. Convention relating to the Status of Refugees*, updated 27 November 2018, available at: https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en.

ileges to refugees on a case-by-case basis”.²³ In its 2014 UPR submission to the UN Human Rights Council, the UN High Commissioner for Refugees (UNHCR) recommended that Egypt immediately withdraw all reservations to the Refugee Convention in order to ensure the rights of asylum-seekers and refugees.²⁴

The state’s record on endorsing labour standards is positive, as Egypt has ratified all eight of the fundamental ILO Conventions including the Equal Remuneration Convention and the Discrimination (Employment and Occupation) Convention.

2.1.3 Regional Instruments

Egypt has a mixed record in relation to regional instruments relevant to equality and non-discrimination. The state has ratified the African Charter on Human and Peoples’ Rights (ACHPR), though it has made a reservation to it, as discussed below. Moreover, it has to date only signed (rather than ratified) the Protocol which establishes the African Court on Human and Peoples’ Rights (ACtHPR). As a result of its failure to ratify this Protocol, individuals and other member states of the African Union are unable to bring proceedings against Egypt for violations of the Charter. However, the African Commission of Human and Peoples’ Rights (ACmHPR) may hear complaints from individuals in Egypt by virtue of the state’s ratification of the Charter; unlike the ACtHPR, the ACmHPR issues non-binding decisions pursuant to complaints of human rights violations.

Egypt has failed to ratify the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, and whilst it has ratified the African Charter on the Rights and Welfare of the Child (ACRWC) it has entered several reservations to it, as discussed below.

Egypt is a founding member of the League of Arab Nations and has ratified the Arab Charter on Human Rights (ACHR), which entered into force in 2008. As such, Egypt is subject to review by the Arab Human Rights Committee, which is tasked with monitoring and overseeing compliance with the ACHR. When

²³ *Ibid.*

²⁴ United Nations High Commissioner for Refugees (UNHCR), *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report – Universal Periodic Review: EGYPT*, 2014, UN Doc. UNHCR_UPR20_EGY_E_Main, pp. 6–7.

the Charter entered into force, it was severely criticised by the then UN High Commissioner for Human Rights, Louise Arbour, who expressed concerns about “the approach to the death penalty for children and the rights of women and non-citizens [...and the...] extent that it equates Zionism with racism”.²⁵ Whilst the ACHR emphasises in Article 3 that states parties shall take measures “to guarantee effective equality in the enjoyment of all the rights and freedoms enshrined in the present Charter in order to ensure protection against all forms of discrimination”, the closed list of grounds of discrimination set out in Article 3(1) is not comprehensive and provisions regarding the treatment of women and non-citizens are inconsistent with the rights to equality and non-discrimination as guaranteed by international human law.²⁶

Table 3: Ratification of Regional Human Rights Instruments by Egypt

Instrument	Signed?	Ratified/Acceded/ Succeeded
African Charter on Human and Peoples’ Rights (1981)	16 November 1981	Ratified 20 March 1984
Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights (1998)	17 February 1999	N/A
Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2005)	N/A	N/A
African Charter on the Rights and Welfare of the Child (1990)	30 June 1999	Ratified 9 May 2001
African Union Convention Governing Specific Aspects of Refugee Problems in Africa (1969)	N/A	Ratified 12 June 1980
African Charter on Democracy, Elections and Governance (2011)	N/A	N/A
Arab Charter on Human Rights (1994)	N/A	Ratified 7 March 1994

25 UN News, “Arab rights charter deviates from international standards, says UN official”, 30 January 2008, available at: <https://news.un.org/en/story/2008/01/247292-arab-rights-charter-deviates-international-standards-says-un-official>.

26 *Ibid.*; Rishmawi, M., “The Arab Charter on Human Rights”, *Carnegie Endowment for International Peace*, 6 October 2009, available at: <http://carnegieendowment.org/2009/10/06/arabcharter-on-human-rights/2z1r>.

Egypt has entered a general reservation to Articles 8 and 18(3) ACHPR, maintaining that these provisions must “be implemented in accordance with the Islamic Law”.²⁷ Article 8 guarantees freedom of conscience and the free practice and profession of religion, and bars any domestic measure restricting the exercise of these freedoms, whilst Article 18(3) requires states to eliminate every form of discrimination against women and ensure the protection of the rights of the woman and the child. Egypt has also entered a reservation to the right to receive information as guaranteed in Article 9 ACHPR, qualifying that such information may only be “obtained within the limits of the Egyptian laws and regulations”.²⁸

Similarly, Egypt maintains several reservations to the ACRWC. The state does not consider itself bound by Article 24 ACRWC, which requires states that recognise a system of adoption to ensure regulatory safeguards in the best interest of the child.²⁹ However, the state is reviewing this reservation and has already removed a similar reservation to the CRC.³⁰ Egypt maintains its reservation to Article 30 ACRWC, which obliges states “to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law”,³¹ and it has also made reservations which exclude the competence of the African Committee of Experts on the Rights and Welfare of the Child to receive complaints from individuals, groups and non-governmental organisations (NGOs),³² and to investigate by “any appropriate method” violations of the ACRWC.³³

Cairo Declaration on Human Rights in Islam

As one of the members of the Organisation of Islamic Cooperation, Egypt is a signatory to the Cairo Declaration on Human Rights in Islam (the “Cairo Decla-

27 African Commission on Human and Peoples’ Rights, *African Charter on Human and Peoples’ Rights*, visited 18 May 2018, available at: <http://www.achpr.org/instruments/achpr/#a8>.

28 *Ibid.*

29 African Committee of Experts on the Rights and Welfare of the Child, *Reservations: Reservation to Article 44 African Charter on the Rights and Welfare of the Child*, visited 18 May, available at: <http://www.acerwc.org/reservations>.

30 *Ibid.*

31 *Ibid.*

32 *Ibid.*

33 *Ibid.*, *Reservation to Article 45(1) African Charter on the Rights and Welfare of the Child*.

ration”), which was adopted in 1990 by the 19th Islamic Conference of Foreign Ministers.³⁴ The Cairo Declaration was strongly criticised on its adoption, largely for the attempt to establish an alternative to the Universal Declaration of Human Rights (UDHR), and for the apparent elevation of Islam and Islamic Sharia to a position of primacy over human rights. In a statement to the UN Commission on Human Rights in February 1992, the Secretary General of the International Commission of Jurists (ICJ), speaking on behalf of the ICJ and the International Federation for Human Rights urged the rejection of the Cairo Declaration on the basis that:

1. *It gravely threatens the inter-cultural consensus on which the international human rights instruments are based;*
2. *It introduces, in the name of the defence of human rights, an intolerable discrimination against both non-Muslims and women;*
3. *It reveals a deliberately restrictive character in regard to certain fundamental rights and freedoms, to the point that certain essential provisions are below the legal standard in effect in a number of Muslim countries;*
4. *It confirms under cover of the “Islamic sharia (Law)” the legitimacy of practices, such as corporal punishment, that attack the integrity and dignity of the human being.*³⁵

Article 1(a) of the Cairo Declaration provides a basic guarantee of equality and non-discrimination. It states:

All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief,

34 Organisation of the Islamic Conference, *Cairo Declaration on Human Rights in Islam*, UN Doc. A/CONF.157/PC/62/Add.18, 5 August 1990, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/CONF.157/PC/62/Add.18.

35 Commission on Human Rights, *Report of the UN High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights: Effective Functioning of Human Rights Mechanisms*, UN Doc. E/CN.4/2003/NGO/225, 2003, pp. 3–4, citing Dieng, A., International Commission of Jurists (ICJ), available at: [http://www.unhchr.ch/huridocda/huridoca.nsf/AllSymbols/4BFEBE8DA116E9EE_C1256CF00031CE80/\\$File/G0311990.doc?OpenElement](http://www.unhchr.ch/huridocda/huridoca.nsf/AllSymbols/4BFEBE8DA116E9EE_C1256CF00031CE80/$File/G0311990.doc?OpenElement).

sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity.

The scope and impact of this provision is limited in a number of ways. First, as a declaration, the Cairo Declaration has no legal force, and is not legally binding on the states which have signed it; victims of discrimination cannot bring a claim against the state or any other actor for violation of Article 1. By extension, the Declaration provides for no complaint mechanism and establishes no monitoring body equivalent to the treaty bodies established by the various UN instruments. Second, the scope of the right provided by Article 1(a) is limited: the application of the protection from discrimination is restricted to that necessary to ensure equality in basic human dignity, obligations and responsibilities. This does not meet the obligation to provide protection from discrimination in the enjoyment of other human rights which is imposed by Article 2(1) ICCPR and Article 2(2) ICESCR. Moreover, it falls far short of the obligation to provide protection from discrimination in all areas of life governed by law, which is provided for by Article 26 ICCPR. Third, the right – as with all other rights in the Declaration – is subject to restrictions based on a particular reading of Islamic law. The final clause of Article 1(a) states that “the true religion is the guarantee for enhancing (...) dignity”, thus reserving a special status for Islam and calling into question the effect on the protection for non-Muslims. More broadly, the Declaration explicitly places the Islamic Sharia in a position of supremacy over other bases for human rights, and indeed over human rights themselves. Article 24 of the Declaration states that: “[a]ll the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari’ah”. Article 25 goes on to state that Islamic Sharia is the “only source of reference for the explanation or clarification of any of the articles of this Declaration”.

2.1.4 Customary International Law

Under international law, binding legal obligations on states derive from customary international law as well as from treaty law, with customary international law being deduced over time from the practice and behaviour of states.³⁶

³⁶ Rome Statute of the International Criminal Court, 2187 U.N.T.S. 3, 1998, Article 38(b) provides that one of the sources of international law is “international custom, as evidence of a general practice accepted as law”.

Certain principles of international law, such as the prohibition of torture, are considered to be so fundamental that no derogation from such norms is permitted; these are known as peremptory norms, or *jus cogens*.³⁷ The prohibition of racial discrimination is widely accepted to be a peremptory norm of customary international law.³⁸ In addition, it can be said that the prohibition of discrimination on other grounds, such as gender and religion, may now be part of customary international law, although not yet reaching the status of a peremptory norm.³⁹ It has been argued, including by the Inter-American Court of Human Rights, that the principle of non-discrimination is a peremptory norm of customary international law;⁴⁰ however, this remains subject to debate.⁴¹

2.1.5 Status of International Law in Domestic Law

Egypt is a monist state, meaning that the international treaties to which it is party are automatically part of national law.⁴² The status of international

37 International Criminal Tribunal for the former Yugoslavia, *Prosecutor v Anto Furundzija*, Case No. IT-95-17/1-T, 1998, Para 153; Parker, K. and Neylon, L.B., "Jus Cogens: Compelling the Law of Human Rights", *Hastings International and Comparative Law Review*, Vol. 12, 1988–1989, p. 417; See also: Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 1969, Article 53; CEDAW Committee, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, UN Doc. CEDAW/C/GC/35, 2017, Para 25.

38 See: De Schutter, O., *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, 2010, pp. 64–68, and the materials referred to therein; Pellett, A., "Comments in Response to Christine Chinkin and in Defense of Jus Cogens as the Best Bastion against the Excesses of Fragmentation", *Finnish Yearbook of International Law*, Vol. 17, 2006, p. 85; Shaw, M., *International Law*, Cambridge University Press, 2008, p. 287, who refers to it as part of customary international law with no reference to it being a peremptory norm; Tanaka, J. (in dissent), International Court of Justice, *South-West Africa Cases (Ethiopia v South Africa; Liberia v South Africa)*, 1996, pp. 293, 299–300.

39 *Ibid.*, Shaw, p. 287; *Ibid.*, Pellett, p. 85; Cassel, D., "Equal Labour Rights for Undocumented Migrant Workers", in Bayefsky, A. (ed), *Human Rights and Refugees, Internally Displaced Persons and Migrant Workers: Essays in Memory of Joan Fitzpatrick and Arthur Helton*, Martius Nijhoff Publishers, 2006, pp. 511–512.

40 Inter-American Court of Human Rights, *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03, No. 18, 17 September 2003, p. 23; See also, by way of example: Martin, F.F. et al, *International Human Rights and Humanitarian Law: Cases, Treaties and Analysis*, Cambridge University Press, 2006, pp. 34–35.

41 See: Bianchi, A., "Human Rights and the Magic of Jus Cogens", *The European Journal of International Law*, Vol. 19, 2008, p. 506; See above, note 39, Cassel and Pellett.

42 Abiad, N., *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study*, British Institute of International and Comparative Law, 2008, pp. 103–104.

treaties in the Egyptian domestic legal system is governed by Article 93 of the Constitution of the Arab Republic of Egypt of 2014 (the “Constitution”), which provides that:

The state is committed to the agreements, covenants, and international conventions of human rights that were ratified by Egypt. They have the force of law after publication in accordance with the specified circumstances.

The “specified circumstances” are the publication of the relevant instrument in the Egyptian Official Gazette.⁴³ Thus, international treaties, once ratified and published in the Official Gazette, have direct effect in the national legal order without the need for enabling legislation, unless the treaty itself requires specific implementing legislation.⁴⁴ In 1986, the Supreme Constitutional Court of Egypt ruled that generally recognised principles of human rights, including the UDHR, must be considered constitutional norms within the domestic legal framework.⁴⁵

The Constitution is silent on the hierarchy between domestic law and international law. None of its provisions clarify which law has supremacy in the event of a conflict between domestic and international law. Article 151 of the Constitution states that “[i]n all cases, no treaty may be concluded which is contrary to the provisions of the Constitution”, indicating a potential limitation of the powers of the President to enter into international agreements which are inconsistent with the provisions of the Constitution.

43 Constitution of the Arab Republic of Egypt 2014, Article 225.

44 See: Tams, C.J., *Research Handbook on the Law of Treaties*, Edward Elgar Publishing, 2014, p. 145. According to Tams et al, the direct effect of international law in the domestic legal system “appears possible” in Egypt. The authors cite Supreme Court of State Security, *Public Prosecution v Salah Aldian Mustafa Ismail (Salah Aldian)*, No. 4190/86 Ozbekia (121 Koli Shamal), 1987 as evidence. In the *Salah Aldian* ruling, the Supreme Court of State Security decided that the ICESCR was “properly incorporated into the law of Egypt” which meant that courts were obligated to apply its provisions and went on to declare several provisions of a Presidential Decree as invalid and unconstitutional for not being consistent with the ICESCR. See: Nollkaemper, A., *National Courts and the International Rule of Law*, Oxford University Press, 2012, pp. 44 and 203.

45 Supreme Constitutional Court Case No. 41 of 1986; See also: Midan Masr, *The Supreme Constitutional Court*, visited 3 May 2018, p. 3, available at: <http://www.midanmasr.com/en/datafile.aspx?FileID=31>.

2.2 The National Legal Framework on Equality and Non-Discrimination

Egypt's legal system has developed over the course of various periods in its history, including periods of colonial domination by foreign nations. It has been described as a "hybrid" system of law, due to the fact that Egyptian substantive law consists of a combination of uncodified customs and principles of Islamic law (Sharia), codified laws which have their roots in the European civil and penal codes, and legislation adopted by the state throughout the 20th century which purports to be compliant with Islamic Sharia (notably Egypt's statutory personal status laws, discussed below).⁴⁶ As regards the former, judges are instructed to have recourse to customary rules and principles of Islamic Sharia "in the absence of an applicable provision of law" in civil and family law proceedings.⁴⁷

It is important to note that there is no single interpretation or definition of Islamic Sharia throughout the Muslim world; rather it is "a combination of scholarly interpretations of revelation and decrees of ruling dynasts".⁴⁸ As discussed further below, the fact that there are a number of different interpretations of Islamic Sharia means that its applicability and interpretation within Egypt's domestic legal framework has been the subject of extensive debate.

The most recent developments to Egypt's legal system occurred following the collapse of the Mubarak regime after the 2011 revolution, and the subsequent military *coup d'état* in 2013 which deposed the post-revolutionary government of the Muslim Brotherhood.⁴⁹

46 Fadel, M., "Judicial institutions, the legitimacy of Islamic state law and democratic transition in Egypt: Can a shift toward a common law model of adjudication improve the prospects of a successful democratic transition?", *International Journal of Constitutional Law*, Vol. 11, No. 3, 2013, p. 648; British Institute of International and Comparative Law, *Protecting Education In the Middle East And North Africa Region*, June 2016, p. 50, available at: https://www.biiicl.org/documents/1263_protecting_education_in_the_mena_region_-_full_report_-_june_2016_web_version_v2.pdf?showdocument=1.

47 Law No. 131 of 1948 "on the Civil Code", Article 1; Law No. 1 of 2000 "on Certain Conditions and Procedures of Litigation in Matters of Personal Status", Article 3.

48 See above, note 46, Fadel.

49 See Part 1 for further discussion.

2.2.1 The Constitution

The current Constitution of 2014 is the latest in a series of constitutions. It was preceded by the Constitution of 2012, which was adopted following the 2011 revolution, replacing the Constitution of 11 September 1971 which had been in force during the Mubarak era.⁵⁰ As discussed in Part 1, the post-revolutionary President, Mohammad Morsi, issued a Presidential Decree in November 2012 granting himself extensive powers which exempted his decisions from legal challenge⁵¹ and allowed him to “fast-track” a new Constitution,⁵² which was aimed at “strengthening the Islamic identity of the Egyptian state”.⁵³ This Constitution was adopted on 22 December 2012. As discussed above, in July 2013, the military, under the leadership of Abdul Fatah al-Sisi, deposed President Morsi and installed an interim government, which led eventually to the drafting of a new Constitution.⁵⁴ The current Constitution of Egypt was adopted by referendum in January 2014, replacing the Constitution of 2012.⁵⁵

The preamble to the Constitution makes explicit reference to international human rights and the principle of equality and non-discrimination, declaring that “[w]e are drafting a Constitution that paves the way to the future for us, and which is in line with the Universal Declaration of Human Rights” and that the Constitution “achieves equality between us in rights and duties with no discrimination”.

50 ConstitutionNet, *Constitutional history of Egypt*, visited 18 May 2018, available at: <http://www.constitutionnet.org/country/constitutional-history-egypt>.

51 Beaumont, P., “Protests erupt across Egypt after presidential decree”, *The Guardian*, 23 November 2012, available at: <https://www.theguardian.com/world/2012/nov/23/protests-egypt-presidential-decree>.

52 Kingsley, P., “How Mohamed Morsi, Egypt’s first elected president, ended up on death row”, *The Guardian*, 1 June 2015, available at: <https://www.theguardian.com/world/2015/jun/01/mohamed-morsi-execution-death-sentence-egypt>.

53 Grote, R., “Constitutional Developments in Egypt: The New 2014 Egyptian Constitution”, *Oxford Constitutional Law*, visited 27 November 2018, available at: <http://oxcon.ouplaw.com/page/egyptian-constitution/constitutional-developments-in-egypt-the-new-2014-egyptian-constitution>.

54 See above, note 52.

55 *Ibid.*

Role of Islam and Islamic Sharia

The preamble also states that the Constitution is one “that affirms that the principles of Islamic Sharia are the principal source of legislation”. The central role of Islamic Sharia in the national legal order is reinforced by Article 2 of the Constitution, which states that “Islam is the religion of the state [and] [t]he principles of Islamic Sharia are the principal source of legislation”. This provision is consistent with Article 2 of both the 1971 and 2012 Constitutions, which also provided that the principles of Islamic Sharia were the principal source of legislation (referred to hereafter as the “Sharia clause”).⁵⁶

As noted above, there is no single interpretation or understanding of Islamic Sharia: Lombardi and Brown have explained that, in modern times, “there has been no consensus (...) about who can interpret Islamic law or about the proper methodology for Islamic legal interpretation”, and that the 1971 Constitution (which introduced the Sharia clause) did not specify which method should be used to identify the relevant “principles” of Islamic Sharia or to interpret them.⁵⁷ As such, it was left to the Supreme Constitutional Court to determine what constitutes Islamic Sharia for the purposes of the Sharia clause.⁵⁸ In its jurisprudence in the intervening decades, the Supreme Constitutional Court has developed what has been described as a “flexible” approach to interpreting Islamic Sharia,⁵⁹ creating “a pastiche of modernist approaches to identifying the universal rules and goals of shari’a that state law must respect”.⁶⁰ According to this approach, the Supreme Constitutional Court has interpreted the Sharia clause as requiring the state to develop laws that meet two criteria:

First [the state’s] legislation must not force Muslims to violate universally applicable rulings of Islamic law, which [the court] defines as rulings that are certain

56 Constitution of the Arab Republic of Egypt 1971, Article 2, as amended on 22 May 1980; Constitution of the Arab Republic of Egypt 2012, Article 2.

57 Lombardi, C. and Brown, N., “Do Constitutions Requiring Adherence to Shari’a Threaten Human Rights? How Egypt’s Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law”, *American University International Law Review*, Vol. 21, No. 3, 2006, pp. 384 and 397.

58 *Ibid.*, p. 397.

59 See above, note 46, Fadel, p. 656.

60 See above, note 57, p. 418.

*‘with respect to authenticity and meaning.’ Second, its legislation must advance the ‘goals of the shari’a’.*⁶¹

Other courts have largely followed the approach of the Supreme Constitutional Court in their interpretation of Islamic Sharia.⁶²

The short-lived 2012 Constitution did introduce a definition of the “principles” of Islamic Sharia for the purposes of the Sharia clause, stating that “[the principles of Islamic Sharia include general evidence, foundational rules, rules of jurisprudence and credible sources accepted in Sunni doctrines and by the larger community”.⁶³ Concerns were expressed at the time that this provision “could be understood to install a broad definition of Sharia that could undermine the catalogue of human rights”.⁶⁴ In addition, Article 4 introduced a general obligation to consult the Senior Scholars of Al-Azhar (“an independent scientific Islamic institution” which is “responsible for preaching Islam, theology and the Arabic language in Egypt and throughout the world”) in relation to matters pertaining to Islamic law.

The 2014 Constitution did not replicate these provisions; instead, the preamble to the Constitution states that “the reference for the interpretation of [the principles of Islamic Sharia] lies in the body of the relevant Supreme Constitutional Court Rulings”. As such, the current Constitution “restores the status quo which existed prior to the 2012 Constitution” under which “the Supreme Constitutional Court was solely competent to determine the scope of the Sharia clause”.⁶⁵ Under Article 7 of the 2014 Constitution, Al-Azhar is stated to be “the main authority for religious sciences, and Islamic affairs”.

Alongside the primacy afforded to Islam and Islamic Sharia under the Constitution, Article 3 declares that Egyptian Christians and Jews may rely on their

61 Lombardi, C., *State Law as Islamic Law in Modern Egypt: The Incorporation of the Shari’a into Egyptian Constitutional Law*, Brill, 2006, p. 256. See also, *ibid.*; See above, note 46, Fadel, pp. 656–657.

62 See above, note 57, p. 432.

63 See above, note 43, Article 219.

64 European Parliament, *Egypt: In-Depth Analysis of the Main Elements of the New Constitution*, 2014, p. 13, available at: [http://www.europarl.europa.eu/RegData/etudes/note/join/2014/433846/EXPO-AFET_NT\(2014\)433846_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2014/433846/EXPO-AFET_NT(2014)433846_EN.pdf).

65 See above, note 53.

religious principles and rules in regulating their personal status, religious affairs and selection of spiritual leaders. This provision is discriminatory, both in that it (together with Article 2) establishes a separate legal regime for followers of Islam on the one hand, and adherents of Christianity and Judaism on the other, and in that other religious minorities do not benefit from similar rights under the Constitution. Furthermore, as discussed in more detail in section 3.2 of this report, whilst Article 64 of the Constitution states that freedom of belief is “absolute”, it goes on to limit the “freedom of practising religious rituals and establishing worship places” to the “Divine Religions” – a term which is generally interpreted as referring to Islam, Christianity and Judaism, thus discriminating against members of religious minorities.

Equality and Non-Discrimination Provisions

The Constitution contains a number of provisions which are specifically aimed at guaranteeing equality and non-discrimination. Article 4 states that national unity is “based on the principle of equality, justice and equal opportunity between citizens”, although this provision appears to be declaratory in nature.

Article 9 provides that “[t]he state shall ensure equal opportunity for all citizens without discrimination”; the substance of this commitment to ensure equal opportunity and non-discrimination is elaborated upon in Article 53, which is discussed below. As discussed in more detail in respect of Article 53, the fact that the guarantee of equal opportunity in Article 9 is limited to citizens is a significant shortcoming which directly conflicts with international human rights law.⁶⁶

Article 53 is the principal equality and non-discrimination provision of the Constitution. It guarantees equality and non-discrimination in public rights and duties, providing as follows:

⁶⁶ See, for example: International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171, 1966, Article 26 which extends the non-discrimination clause to “all persons”, and Article 1 which guarantees the right to non-discrimination to “all individuals” within the state’s territory and subject to its jurisdiction; and Convention on the Rights of Persons with Disabilities (CRPD), 2515 U.N.T.S. 3, 2006, Article 5(1) which states that “all persons” are equal before and under the law and are entitled to the equal protection and benefit of the law without discrimination; See also: *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 1.

Citizens are equal before the law, possess equal rights and public duties, and may not be discriminated against on the basis of religion, belief, sex, ethnic origin, race, colour, language, disability, social class, political or geographical affiliation, or for any other reason.

Discrimination and incitement to hate are crimes punishable by law.

The state shall take all necessary measures to eliminate all forms of discrimination, and the law shall regulate the establishment of an independent commission for this purpose.

This Article is an improvement on the equality clause of 2012 Constitution, which simply stated that “citizens enjoy equality before the law. They have identical rights and public duties. There is no discrimination among them.”⁶⁷ However, Article 53 suffers from a number of key shortcomings which both limit its scope and undermine its efficacy.

Firstly, while the list of grounds in Article 53 is clearly non-exhaustive – due to the inclusion of the phrase “or for any other reason” – the list of grounds which are explicitly provided for is not consistent with the range of grounds protected under the international human rights instruments to which Egypt is party.⁶⁸ The Constitution does not, for example, explicitly prohibit discrimination on grounds such as age, nationality, sexual orientation, pregnancy, gender identity and health status, all of which are well-recognised at international law.⁶⁹ These omissions create uncertainty for persons exposed to discrimination on these grounds, and create the risk that Article 53 will be read and interpreted in a way which is inconsistent with international law. These risks are heightened because the Constitution does not define or provide criteria for determination of what constitutes “any other reason”, and because there have been no judicial interpretations of it to date. In light of this lack of

⁶⁷ See above, note 63, Article 33.

⁶⁸ See *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 5.

⁶⁹ See, for example, CESCR, *General Comment No. 20 on Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009.

definition of the phrase Article 53 should be read in a manner which is consistent with the treaty bodies' interpretation of the "other status" category found in many international human rights instruments.⁷⁰ Thus, whilst the lack of explicit protection of these grounds in Article 53 creates uncertainty and the risk of misinterpretation, it need not be decisive. It is also seriously problematic that Article 53 fails to prohibit multiple discrimination, discrimination by association and discrimination by perception.⁷¹

Secondly, whilst Article 53 includes a substantive guarantee of non-discrimination, it fails to define discrimination. In the absence of any comprehensive anti-discrimination legislation (see further below), the failure to include a definition of discrimination in the Constitution that includes direct, indirect discrimination, denial of reasonable accommodation and harassment is a notable shortcoming.⁷² This said, given that Article 53 is drafted in broad terms, referring to the state's obligation to take the necessary measures for eliminating "*all forms of discrimination*" (emphasis added), the term "discrimination" can and should be interpreted as encompassing direct and indirect discrimination, harassment and the denial of reasonable accommodation in accordance with Egypt's international human rights law obligations.

Thirdly, Article 53 fails to stipulate that positive action is a mandatory part of the right to equality: according to Principle 3 of the Declaration of Principles on Equality (the "Declaration"), "to be effective, the right to equality requires positive action".⁷³ While the Constitution does provide for certain positive action measures (as discussed in more detail below) neither Article 53 nor any other provision provide clarity that such measures are illustrative, and that positive action is a requirement in all cases where substantive inequalities arise.

A further significant shortcoming of Article 53 is the fact that its protection extends only to citizens of Egypt, thus excluding foreigners and stateless

70 See, for example: ICCPR, Article 2(1); and International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3, Article 2(2), which have been interpreted by the Human Rights Council and CESCR respectively as including a number of other grounds. See, in particular, *ibid.*

71 See above, note 68, Principles 5 and 6, and the discussion of the Declaration in Part 1.

72 *Ibid.*, Principle 5; See above, note 69, Para 10; and CRPD Committee, *General Comment No. 6 (2018) on equality and non-discrimination*, UN Doc. CRPD/C/GC/6, 2018, Para 18.

73 See above, note 68, Principle 3.

persons from protection against discrimination. While international human rights law does not require *all* rights and freedoms guaranteed to citizens to be extended to non-citizens, the law is clear that the obligation of states to protect and guarantee the rights to equality and non-discrimination extends to all persons within the territory and subject to the jurisdiction of the state. Under Article 26 ICCPR, Egypt has the obligation to ensure that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law”; this guarantee is not limited to citizens, it applies to *all* persons.⁷⁴ Furthermore, the HRC has clarified in its General Comment No. 15 that states’ obligation under Article 2(1) ICCPR to ensure the rights in the Covenant without discrimination to “all individuals within its territory and subject to its jurisdiction” requires states to ensure Covenant rights irrespective of nationality or statelessness, unless one of these rights expressly states it is applicable only to citizens.⁷⁵ Similarly, the CESCR has noted in its General Comment No. 20 that the rights in the Covenant (and, thereby, the right to non-discrimination in the enjoyment of these rights) apply “to everyone”, including non-nationals, such as refugees, asylum-seekers, stateless persons and migrant workers.⁷⁶

Finally, Article 53’s categorisation of discrimination as a “crime punishable by law” is seriously problematic. Whilst states are obliged to prohibit discrimination, international best practice requires that discrimination be dealt with as a matter of civil rather than criminal law. The right to non-discrimination cannot be properly and effectively enforced through recourse to criminal law penalties and criminal liability for several reasons. Firstly, discrimination does not require intent or malicious motive on the part of the discriminator: as a matter of law, an act of discrimination may be committed either intentionally or unintentionally.⁷⁷ As such, it is not necessary for a claimant to allege or prove intent in order for a finding of discrimination to be made. In-

74 The Human Rights Committee (HRC) has, in its communications, found that distinctions made on the basis of citizenship may violate Article 26 ICCPR. See, for example: HRC, *Adam v Czech Republic*, Communication No. 586/1994, UN Doc. CCPR/C/57/D/586/1994, 1996; and HRC, *Karakurt v Austria*, Communication No. 965/2000, UN Doc. CCPR/C/74/D/965/2000, 2002.

75 HRC, *General Comment No. 15: The Position of Aliens under the Covenant*, (Twenty-seventh session, 1986), 11 April 1986, Paras 1–2.

76 See above, note 69, Para 30.

77 See above, note 68, Principle 5; HRC, *General Comment No. 18: Non-discrimination* (Thirty-seventh session, 1989), 10 November 1989, Para 7; *Ibid.*, Para 7; see above, note 72, Para 18(a).

deed, direct discrimination can occur in cases where the discriminating party believes they are acting in the best interests of the victim. In such cases, the application of criminal penalties would be disproportionate and unjustified. Conversely, the requirement of intent under the criminal law is unduly burdensome for victims of discrimination, and unduly restricts victims' ability to claim the protection of the law. Secondly, criminal proceedings generally require a high burden of proof, "beyond reasonable doubt", as opposed to the lower threshold of "balance of probabilities" utilised in civil proceedings. The higher the standard of proof, the more difficult it is for victims to obtain redress. As such, the burden of proof required by the criminal law is not appropriate for the prevention of discrimination, which may be difficult to prove directly and beyond reasonable doubt. Thirdly, a key evidential requirement in discrimination cases is the reversal of the burden of proof. As the CESCR has made clear in its General Comment No. 20:

*Where the facts and events at issue lie wholly, or in part, within the exclusive knowledge of the authorities or other respondent, the burden of proof should be regarded as resting on the authorities, or the other respondent, respectively.*⁷⁸

With respect to criminal law, however, the presumption of innocence is a well-established principle under international law.⁷⁹ The reversal of the burden of proof would clearly not be compatible with the presumption of innocence. Finally, the focus of criminal proceedings is on the punishment of the offender, whereas a key purpose of anti-discrimination law is to provide the victim with an effective remedy. Indeed, according to the Declaration, persons who have been subjected to discrimination "have a *right* to seek legal redress and an effective remedy".⁸⁰ As such, the focus of civil proceedings – which is on providing remedies to victims – makes them more appropriate for ensuring the enforcement of anti-discrimination laws than criminal proceedings.⁸¹

78 See above, note 69, Para 40.

79 ICCPR, Article 14(2).

80 See above, note 68, Principle 18 (emphasis added).

81 Equal Rights Trust, *Written submissions to the 57th session of the Committee on the Elimination of Discrimination against Women in relation to the combined third and fourth periodic reports submitted by Kazakhstan*, January 2014, Para 18.

Specific Provisions on the Rights of Particular Groups Exposed to Discrimination

In addition to Article 53, the Constitution includes a number of provisions which deal specifically with the rights of particular groups exposed to discrimination. Article 11, entitled “The Place of Women, Motherhood and Childhood”, purports to promote gender equality:

The state commits to achieving equality between women and men in all civil, political, economic, social, and cultural rights in accordance with the provisions of this Constitution.

The state commits to taking the necessary measures to ensure appropriate representation of women in the houses of parliament, in the manner specified by law. It grants women the right to hold public posts and high management posts in the state, and to appointment in judicial bodies and entities without discrimination.

The state commits to the protection of women against all forms of violence, and ensures women empowerment to reconcile the duties of a woman toward her family and her work requirements.

The state ensures care and protection and care for motherhood and childhood, and for breadwinning, and elderly women, and women most in need.

Like Article 9, discussed briefly above, Article 11 is found in Chapter 2 of the Constitution “Basic Components of Society”, rather than Chapter 3, “Public Rights, Freedoms and Duties”, which contains the right to non-discrimination and other provisions dealing with the protection of human rights. As such, as with Article 9, it is unclear to what extent individuals could rely upon Article 11 to challenge discrimination.

In addition to this concern, Article 11 is flawed in a number of important respects. Of greatest concern is the fact that – while purporting to promote

gender equality – the Article entrenches discriminatory stereotypes and attitudes towards the role of women within Egyptian society by making reference to the “duties of a woman toward her family” but making no equivalent reference to the familial duties of men. More broadly, it is notable that, rather than expressly stating that women and men have the equal right to enjoy all civil, political, economic, social and cultural rights, Article 11 merely commits the state to the process of achieving equality. Furthermore, Article 11 characterises the right to equality as being co-dependent on existing legal rights, rather than an autonomous right as required to ensure consistency with Article 26 ICCPR. Whilst Article 11 commits the state to take measures to ensure that women are represented in the house of representatives, it only requires “appropriate” – as opposed to “equal” – representation for women, and it is unclear how the term “appropriate” should be interpreted in this context. The express reference to the protection of women from all forms of violence is, however, a welcome addition, and has led to several important amendments to the Egyptian Penal Code, which are discussed below and in section 3.3.

Article 81, entitled “Rights of the Disabled”, provides that the state shall guarantee “the health, economic, social, cultural, entertainment, sporting and education rights” of persons with disabilities. The Article goes on to stipulate that the state shall “provide work opportunities for such individuals, and allocate a percentage of these opportunities to them”. Article 81 also includes an obligation to make reasonable accommodation for persons with disabilities through “equipping public utilities and their surrounding environment”. As the Constitution is silent on the specifics of the employment quota and accessibility, these matters are regulated by Law No. 10 of 2018 “on Persons with Disabilities” (the “Disability Rights Law”), discussed further below.

In addition to these provisions, Articles 80, 82 and 83 make specific provision for the rights of the child, “guarantees [of] care of youth and young children” and “guarantee[s] [of] the health, economic, social, cultural and entertainment rights of the elderly” respectively.

Positive Action Measures

The Constitution contains several provisions which commit the state to take positive action for persons with certain protected characteristics. Article 180, which regulates the election of local councils, states that:

One quarter of the [local council] seats are allocated to youth under 35 years old, one quarter is allocated for women, workers and farmers are represented by no less than 50 percent of the total number of seats, and these percentages include a proper representation of Christians and people with disability.

Article 180 does not elaborate on what is meant by “proper representation” in this context, and members of ethnic minorities – such as the Nubian people – are notably excluded from its scope.

Article 224 provides that “youth, Christians, persons with disabilities and expatriate Egyptians” are granted “appropriate representation” in the first House of Representatives to be elected after the adoption of the Constitution “in the manner specified by law”. As discussed further below, this provision led to the adoption of a law that resulted in an increase of the representation of these groups in the House of Representatives.⁸² As with Article 180, it is notable that the political representation of other marginalised groups – such as Nubians – is not guaranteed under Article 224.

2.2.2 Specific Equality and Anti-Discrimination Legislation

The most notable deficiency in Egypt’s legal framework for equality is its lack of any comprehensive equality or anti-discrimination legislation. As a party to the ICCPR and the ICESCR, Egypt has an obligation to provide protection from discrimination by state and non-state actors through the adoption of comprehensive anti-discrimination legislation. The HRC has stated that under Article 26 ICCPR, all states parties have an obligation to ensure that the “law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds”.⁸³ It has also noted that Article 2 ICCPR “requires that States Parties adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations”.⁸⁴ The CESCR has stated that “[s]tates parties are therefore encouraged to adopt

⁸² Section 2.2.3 discusses this law in detail.

⁸³ See above, note 77, HRC, Para 12.

⁸⁴ HRC, *General Comment No. 31: The nature of the general legal obligation imposed on states parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add. 13, 2004, Para 7.

specific legislation that prohibits discrimination in the field of economic, social and cultural rights”.⁸⁵ In addition to the general obligations arising under the ICCPR and ICESCR, as a party to ICERD, CEDAW and CRPD, Egypt has specific obligations to legislate to prohibit discrimination against racial or ethnic groups, women and persons with disabilities by public and private actors in all areas of activity covered by these treaties.⁸⁶

Whilst Article 53 of the Constitution provides that the state “shall take all necessary measures to eliminate all forms of discrimination”, Egypt is yet to adopt legislation which prohibits all forms of discrimination and implements the right to equality. The CESCR has previously noted Egypt’s failure to effectively protect against discrimination and has urged it to “adopt comprehensive legislation on non-discrimination to eliminate formal and substantive discrimination”.⁸⁷

In the absence of the comprehensive equality law which Egypt is obligated to adopt under international law, those experiencing discrimination are forced to rely either upon the aforementioned constitutional protections, or on isolated provisions on non-discrimination across various of laws, which offer a patchwork protection from discrimination. Currently, the only domestic law that specifically aims to advance the rights to equality and non-discrimination for a group with a protected characteristic is the recently enacted Disability Rights Law.

Law No. 10 of 2018 “on the Rights of Persons with Disabilities”

On 19 February 2018, Egypt passed the Disability Rights Law. According to a member of the Council of Social Security – a government institution – the Law is intended to implement provisions of the CRPD into the domestic legal framework, including a definition of disability and the right to access to healthcare, transportation, education and employment.⁸⁸ Article 2 of the Disability Rights Law defines a person with a disability as follows:

85 See above, note 69, Para 37.

86 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 660 U.N.T.S. 195, 1965, Article 2(1); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1249 U.N.T.S. 13, 1979, Article 2(b); CRPD, Article 5(2).

87 See above, note 15, Para 8.

88 ExtraNews, Interview with Hiba Higree, Member of the Council of Social Security, 13 April 2017, available (in Arabic) at: <https://www.youtube.com/watch?v=Qsf-LMf42Hc>.

A person who has a full or partial restriction or defect (be this physical, mental, psychological or sensory) which is permanent and which, in interaction with various barriers, prevents them from full and effective participation in society equally with others.⁸⁹

This definition is an improvement on the earlier, narrower definition of disability in Law No. 39 of 1975 “on the Rehabilitation of the Disabled”, which defined a person with a disability as any individual who is “unable to depend on him/herself in performing his/her work” as a result of “physical, mental, sensory or congenital impairment”. However, the definition is still not consistent with the definition of disability under the CRPD: it utilises the term “defect”, rather than the language of impairment used in Article 1 CRPD.⁹⁰

Article 3 defines disability discrimination as “any exclusion, restriction, denial or invalidation of any of the fundamental human rights or freedoms established by the Constitution or any other legislation”. Whilst this definition utilises the language from the definition of “discrimination on the basis of disability” under Article 2 CRPD, it notably fails to specify that disability discrimination includes all forms of discrimination, including direct discrimination, indirect discrimination, harassment and denial of reasonable accommodation.⁹¹

“Reasonable accommodation arrangements” are defined separately under Article 3 as “a set of temporary measures or adjustments which aim to achieve consistency in accessibility where this has been impossible.” This definition differs from that provided in the CRPD,⁹² and it is unclear what is deemed to constitute a “reasonable” arrangement or adjustment for the purposes of Article 3. Although several articles explicitly require the state to make “reasonable

89 Law No. 10 of 2018 “on the Rights of Persons with Disabilities”, Article 2.

90 CRPD, Article 1(2) defines disability as follows: “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

91 CRPD, Article 2; see above, note 72, Para 18.

92 CRPD, Article 2 defines reasonable accommodation as: “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.

accommodation arrangements”,⁹³ denial of reasonable accommodation is not included as a form of disability discrimination under Article 3. This, and the lack of clarity in the definition itself means that the scope of the state’s obligations to provide reasonable accommodation arrangements more broadly is unclear. It is also unclear whether non-state actors are under an obligation to provide reasonable accommodation arrangements as defined under Article 3.⁹⁴

Under Article 4 of the Law, the state is obliged to “protect the rights of persons with disabilities.” This Article imposes a number of specific obligations on the state, including: to ensure non-discrimination and substantive equality for persons with disabilities in the enjoyment of rights; to create “equality of opportunity between persons with disabilities and others”; and, consistent with Article 9 CRPD, to “take steps to guarantee persons with disabilities access to and the use of the physical environmental transport, information and communication technology so as to develop their abilities and skills.”⁹⁵

With respect to education, the Disability Rights Law contains several provisions meant to ensure the equal participation of students with disabilities. Article 15 imposes a direct duty on the Ministry for Further Education and affiliated establishments “to provide reasonable accommodation arrangements for [persons with disabilities] including distance learning”.⁹⁶ Under Article 10, which should be read “in light of” Article 76*bis* of Law No. 12 of 1996 “on the Egyptian Child Law” (the “Child Law”), discussed further below, the state is obliged to take the necessary measures to enable persons with disabilities, including children, to participate in mainstream education at all levels, and close to their place of residence. The fact that Article 10 is subject to the terms of Article 76*bis* of the Child Law is seriously problematic, as Article 76*bis* creates an exception to the general obligation of the state to provide students with disabilities with access to mainstream schools in “exceptional cases resulting from the nature and degree of disability”. Under Article 11 of

93 Articles 15, 20 and 38 of the Disability Rights Law each require the state to make “reasonable accommodation arrangements”, in respect of education, employment and the transport of detainees, respectively.

94 See discussion of enforcement mechanisms below. By virtue of Articles 46(7) and 47, “lack of provision for accommodation arrangements in workplace” may be punished by a minimum six months’ imprisonment and/or a minimum fine of 5000 LE.

95 See above, note 89, Article 4.

96 *Ibid.*, Article 15.

the Disability Rights Law, all education institutions must adhere to “the rules and policies of educational integration of persons with disabilities” and provide equal educational opportunities for persons with all types of disabilities. Article 11 further provides that it is prohibited to deprive persons with disabilities of education at all stages or to refuse admission to educational institutions on the basis of an individual’s disability. Whilst the Disability Rights Law purports to ensure the equal participation in education of persons with disabilities, the fact that it allows for the segregation of children with disabilities in “exceptional cases” pursuant to Article 76*bis* of the Child Law means that it is inconsistent with Egypt’s obligations under the CRPD. Under Article 24 CRPD, access to education should be afforded without discrimination, and the CRPD Committee has made clear that the right to non-discrimination under the CRPD “includes the right not to be segregated”.⁹⁷ Rather, states are obliged to ensure the right of persons with disabilities to education through an “inclusive education system”.⁹⁸

Article 20 requires the state to guarantee the right of persons with disabilities to obtain equal opportunities for work commensurate with their academic qualifications and vocational training. The Article prohibits “any discrimination or deprivation of any privileges or rights on the basis of disability in employment, type of work, promotions or remuneration.” Although this prohibition on discrimination is welcome, it remains unclear whether Article 20 encompasses all forms of discrimination prohibited under international law, given the unclear definition of discrimination contained in Article 3 of the Law. Article 20 further states that the state must adopt policies to ensure persons with disabilities have access to domestic and international labour markets.

Article 22 imposes a quota for the employment of persons with disabilities in organisations with 20 persons or more, stipulating that such organisations must ensure that 5% of all employees are persons with disabilities.⁹⁹ This requirement applies to “governmental and non-governmental bodies and all employers.”¹⁰⁰ Article 23 incentivises employers to recruit persons with

97 See above, note 72, Paras 8 and 13.

98 *Ibid.*

99 *Ibid.*, Article 23.

100 *Ibid.*, Article 22.

a disability by providing tax breaks to those who employ them; the financial benefits increase with the number of persons with a disability who are employed.¹⁰¹ Article 24 of the Law introduces a mandatory one-hour reduction in working hours for persons with disabilities in both governmental and non-governmental entities, stipulating that such persons “must have their hours reduced by one hour each day”, and that this does not affect their pay. Whilst it might be appropriate to reduce the working hours of a person with a disability on an individual basis as a form of reasonable accommodation, such a blanket reduction on the working hours of persons with disabilities serves to reinforce negative social stereotypes concerning the protective needs of persons with disabilities.

Articles 35 to 38 deal with legal proceedings involving disabled persons. All persons with disabilities are afforded the right to “special humane treatment” in detention, alongside medical, social and technical assistance.¹⁰² Persons with disabilities are afforded the right to a lawyer during the investigative and trial stages.¹⁰³ The state is required to make “reasonable accommodation arrangements for the transport of detainees with disabilities”, and ensure that prisons and detention centres are accessible.¹⁰⁴ Any sentences “must be carried out in separate spaces regulated by specialist supervision”.¹⁰⁵

The political rights of persons with disabilities are guaranteed under Article 39, which provides that the state must ensure their participation with respect to voting in, and standing for, elections by making related procedures and facilities accessible to them.

Article 31 places an exemption from taxation, fees, and other expenses on permits for buildings that are permanently allocated to serve persons with disabilities;¹⁰⁶ licenses to make buildings accommodate persons with

101 See above, note 89, Article 22.

102 *Ibid.*, Articles 35 and 37.

103 *Ibid.*, Article 35.

104 *Ibid.*, Article 38.

105 *Ibid.*

106 *Ibid.*, Article 31(1).

disabilities;¹⁰⁷ equipment, educational and medical materials, aids, machines, special tools, prostheses and assistive devices for persons with disabilities;¹⁰⁸ transportation for persons with disabilities;¹⁰⁹ and judicial fees that would be incurred by a person with a disability in respect of proceedings brought “before the courts (...) due to the application of the provisions of [the Disability Rights Law] or any other law relating to the protection of the rights of such persons because of their disability”.¹¹⁰

Article 29 states that the granting of licenses for all new buildings in Egypt is contingent on the inclusion of proposals to make the building accessible for persons with disabilities. Whilst these measures go some way towards satisfying the state’s obligations to ensure to persons with disabilities equal access to buildings, transportation and other facilities in accordance with Article 9(1) CRPD, they do not appear to extend to other areas such as access to information and communications technologies, including electronic services and emergency services, as required by Article 9(1)(b) CRPD. Furthermore, the means adopted in Articles 29 and 31 – namely the application of tax and fee waivers – are limited in scope, and not reflective of the full range of accessibility measures required under Article 9(2) CRPD.

The Disability Rights Law also provides for the establishment of a National Council for Persons with Disabilities (NCPD).¹¹¹ The NCPD replaces the National Council for Disability Affairs (NCDA), which was established in 2012.¹¹² The NCPD is mandated to monitor compliance with the Disability Rights Law, and to provide health, social, technical and specialised legal assistance to detained persons with disabilities.¹¹³ Under Article 22 of the Law, for example, power is given to the Prime Minister to promulgate rules agreed upon by the Council and the Ministry of Regulation of Professional Entities, governing the

107 *Ibid.*, Article 31(2).

108 *Ibid.*, Article 31(3).

109 *Ibid.*, Article 31(4).

110 *Ibid.*, Article 31(5).

111 Egypt Independent, “Cabinet approves establishment of National Council for persons with disabilities”, *Egypt Independent*, 7 February 2018, available at: <http://www.egyptindependent.com/cabinet-approves-establishment-national-council-persons-disabilities>.

112 Prime Minister Decree No. 410 of 2012.

113 *Ibid.*, Article 37.

“employment opportunities” and “special working conditions” of persons with disabilities. The mandate of the NCPD is discussed further below in section 2.4.2.

Contrary to the requirements of the CRPD, the Law does not directly address the position of women with disabilities, nor does it impose any requirement of data collection.¹¹⁴ However, the most significant defects of the Law are in respect of its enforcement and implementation provisions. “Sanctions and Penalties” are dealt with under Section 8 of the Law. Under Article 46, any “acts which expose a disabled person to danger in any condition that threatens his personal dignity, independence, or which discriminates against him because of his disability”,¹¹⁵ is criminalised,¹¹⁶ and made punishable by six months’ imprisonment and/or the imposition of a fine.¹¹⁷ Illustrations of offences include “lack of provision for accommodation arrangements in the workplace”,¹¹⁸ and “leaving disabled persons or children in upper floor classrooms without accessibility.”¹¹⁹ Further offences are detailed under Article 54, which renders a breach of Articles 22, 24, 25, 29, 30 or 34¹²⁰ subject to the imposition of a maximum one year prison sentence and/or a minimum fine of 10,000 LE. For the reasons outlined in section 2.2.1 of this report, international best practice requires that discrimination be dealt with as a matter of civil, rather than criminal, law.¹²¹

The CRPD Committee has emphasised that “the effective enjoyment of the rights to equality and non-discrimination calls for the adoption of enforcement measures” including “dissuasive sanctions”, and the provision of “adequate remedies.”¹²² Beyond the criminalising provisions set out above, no

114 CRPD, Articles 6 and 31.

115 See above, note 89, Article 46.

116 *Ibid.*, Article 45.

117 Set at a minimum rate of 5000 LE: *Ibid.*, Article 47.

118 *Ibid.*, Article 46(7).

119 *Ibid.*, Article 46(5).

120 *Inter alia*, governing matters such as reduced working hours and transport for persons with disabilities.

121 See discussion of the criminalisation of discrimination under the Constitution provided in section 2.2.1.

122 See above, note 72, Para 31(f).

enforcement or implementation measures are provided for under the Law for breach of obligations contained therein,¹²³ contrary to the requirements of the CRPD,¹²⁴ and the right to an effective remedy.¹²⁵

2.2.3 Non-Discrimination Provisions in Other Pieces of Legislation

Other than the Disability Rights Law, the only other legislative provisions on equality and non-discrimination are found in legislation governing other areas of law. However, none of the laws discussed below contains a definition of discrimination, let alone definitions of direct and indirect discrimination or harassment, nor do they detail the state's duty to provide reasonable accommodation. Moreover, taken together, these provisions do not ensure either comprehensive personal or material scope of protection. Thus, the protection offered in these laws falls short of Egypt's obligations under international law and confirms the need for comprehensive anti-discrimination legislation, implementing the constitutional guarantee of equality and non-discrimination under Article 53.

Civil Law

Substantive civil law is primarily regulated by Law No. 131 of 1948 "on the Civil Code" (the "Civil Code"), while procedural law is regulated by the Law No. 13 of year 1986 "on the Code of Civil and Commercial Procedures (the "Code of Civil and Commercial Procedures") and Law No. 25 of 1968. These laws do not explicitly refer to or address the rights to equality or non-discrimination.

Criminal Law

Egyptian criminal law is primarily regulated by Law No. 58 of 1937 "on the Penal Code" (the "Penal Code") and Law No. 150 of 1950 "on the Criminal Code of Procedure" (the "Criminal Code of Procedure"). These Laws are supplemented by specialised legislation such as Law No. 64 of 2010 "on Combating Human Trafficking".

123 Albeit that the power to adopt implementing regulations is conferred on the Prime Minister. See above, note 89, Para 2 of Introductory Note.

124 See above, note 72, Para 31.

125 In this respect, the CRPD Committee has specifically recommended that the burden of proof in civil cases be shifted to the respondent. *Ibid.*, Para 73(i); See also: ICCPR, Article 2(3).

Criminal Prohibition of Discrimination

The Penal Code regulates and defines various forms of criminal conduct punishable by law. An amendment to the Penal Code introduced the crime of discrimination in 2011.¹²⁶ Article 161*bis* provides that:

Any person that commits or omits an action that discriminates between individuals or groups of individuals on accounts of sex, origin, language, religion, or creed, shall be punished with imprisonment and a fine of not less than thirty-thousand pounds and no more than fifty-thousand pounds [EUR 1,400 – 2,300], if this discrimination resulted in a violation of the principle of equal opportunities, social justice or public peace.

The punishment for this crime is increased to at least three months' imprisonment and a fine ranging from LE 50,000 – 100,000 (EUR 2,300 – 4,600) where the perpetrator is a public official or public employee.

Whilst it should be noted that Article 161*bis* does not cover all prohibited grounds of discrimination recognised under international law, the Article is in itself deeply problematic. As discussed in detail in section 2.2.1 above, international best practice requires that discrimination should be dealt with as a matter of civil rather than criminal law. This is due to a range of factors, including in particular the fact that discrimination may occur both intentionally and unintentionally, and the fact that the nature of evidence in discrimination cases means that it is not possible to meet criminal standards of proof, and necessitates transfer of the burden of proof from the complainant to the respondent.

International law requires that certain severe manifestations of discrimination should be dealt with under criminal law in order to offer comprehensive protection from discrimination, namely acts of violence or incitement to violence that are motivated wholly or in part by the victim having or being associated with a prohibited ground of discrimination.¹²⁷ However, Article 161*bis* of the Penal Code

¹²⁶ Introduced by Law No. 126 of 2011.

¹²⁷ See above, note 68, Principle 7; ICERD, Article 4; See above, note 37, CEDAW Committee, Para 29(a).

goes far beyond this, insofar as it imposes criminal liability for any act or omission that discriminates between individuals or groups of individuals. Given that the term “discrimination” is not defined further in the Penal Code, the offence created under Article 161*bis* applies to a very broad range of behaviour and is in danger of criminalising acts which should not be subject to criminal penalty.

Hate Motivated Violence

The Penal Code fails to satisfactorily address the phenomenon of hate motivated violence. Under international human rights law, states are obliged to take appropriate action to protect individuals from violence at the hands of public or private actors. This includes violence committed against certain categories of individuals such as women, persons with disabilities, and sexual and gender minorities.¹²⁸ Violence committed against an individual on account of their actual or perceived personal characteristics, or their association with a protected person or group, is a particularly serious form of discrimination, and appropriate action in such cases may differ from that to be taken in relation to similar cases committed without a discriminatory motive.¹²⁹ In order to give full effect to the principle of equality, a discriminatory motive in the incitement or commission of violence should be considered an aggravating factor during sentencing.¹³⁰ Despite these well-established international standards, the Penal Code does not treat the existence of a discriminatory motive as an aggravating circumstance in the commission of violent crimes.

Hate Speech and Incitement

Article 176 of the Penal Code includes a prohibition of incitement to hatred, stating that “[w]hoever incites, by any of the foregoing methods, to hate or de-

128 HRC, *General Comment No. 35: Liberty and Security of Person*, UN Doc. CCPR/C/GC/35, 2014, Para 9.

129 For example, the European Court of Human Rights (ECtHR) has recognised that “treating violence and brutality with a discriminatory intent on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights”: ECtHR, *Identoba and Others v Georgia*, Application No. 73235/12, 12 May 2015, Para 67; see also Committee against Torture, *General Comment No. 3: Implementation of article 14 by States parties*, UN Doc. CAT/C/GC/3, 2012, Paras 8 and 33; and Human Rights Council, *Concluding observations on the seventh periodic report of the Russian Federation*, UN Doc. CCPR/C/RUS/CO/7, 28 April 2015, Para 10.

130 See above, note 68, Principle 7.

ride a sect of people, if such incitement is liable to perturb public peace, shall be punished with detention.” The term “sect” is understood to encompass religious,¹³¹ and ethnic or racial groups.¹³² According to Article 20(2) ICCPR, Egypt is obliged to ensure that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” is prohibited by law. Article 20(2) ICCPR contains three constituent elements:

*First, only advocacy of hatred is covered; second, hatred must amount to advocacy which constitutes incitement, rather than incitement alone; and third, such incitement must lead to one of the listed results, namely discrimination, hostility or violence.*¹³³

Furthermore, any prohibition pursuant to Article 20(2) ICCPR must comply with the strict requirements of Article 19(3) ICCPR, which states that restrictions to the right to freedom of expression must be established by law and be deemed necessary for the respect of the rights or reputations of others or for the protection of national security or of public order, or of public health or morals.¹³⁴ As such, the threshold of proscribed speech is high.¹³⁵

131 Freedom House, *Policing Belief: The Impact of Blasphemy Laws on Human Rights*, 2010, p. 24, available at: https://freedomhouse.org/sites/default/files/PolicingBelief_Egypt.pdf.

132 Diene, D., *Study of the prohibition of incitement to national, racial or religious hatred in Africa*, visited 12 July 2018, p. 6, available at: <https://www.ohchr.org/Documents/Issues/Expression/ICCPR/Nairobi/NairobiStudyE.pdf>.

133 UN General Assembly, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, UN Doc. A/67/357, 2012, Para 43.

134 HRC, *General Comment No. 34: Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, 2011, Para 48.

135 According to the Camden Principles on Equality and Freedom of Expression, states must interpret key terms of Article 20(2) ICCPR restrictively if they are to prohibit speech in a manner that is consistent with international law. Specifically, the term “advocacy” should be understood as an intention to promote hatred publicly towards the target group; “hatred” and “hostility” should be understood as referring to intense and irrational emotions of opprobrium, enmity and detestation towards the target group; and “incitement” should be understood as statements “which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups”. See: Article 19, *The Camden Principles on Freedom of Expression and Equality*, 2009, Principle 12, available at: <https://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>; The Camden Principles have been endorsed by the Special Rapporteur on Freedom of Expression. See above, note 133, Para 44(a).

Article 176 does not meet this high threshold. Firstly, Article 176 does not require “advocacy” of hatred: advocacy entails an element of intent,¹³⁶ and “implies more than merely stating an idea, but actually engaging in persuading others to adopt a particular viewpoint”, which is a necessary factor in determining when speech should be regulated.¹³⁷ Furthermore, derision cannot be equated with hatred; the latter term refers to “intense and irrational emotions of opprobrium, enmity and detestation towards the target group”, and derision fails to meet this threshold.¹³⁸ The expansive wording of Article 176 leaves room for discriminatory or arbitrary application, and evidence suggests that the Article has been used in practice as a *de facto* blasphemy provision,¹³⁹ in clear violation of international law.¹⁴⁰ UN treaty bodies and special procedures have raised concern at broadly drafted criminal law provisions that may have the effect of violating the right to freedom of expression.¹⁴¹

Gender-Based Violence

There are a number of provisions in the Penal Code that seek to address gender-based violence (GBV) against women and girls. Crimes targeting women in the Penal Code are divided between misdemeanours, with sexual harassment being the only offence, and felonies, comprising of female genital mutilation (FGM), rape, kidnapping of a woman and sexual assault. According to Article 11 of the Penal Code, misdemeanours are crimes punishable with detention or a fine exceeding LE 100 (EUR 4.70), whilst felonies are crimes

136 See above, note 133, Para 44(b).

137 See: Article 19, *'Hate Speech' Explained A Toolkit*, 2015, p. 74, available at: <https://www.article19.org/data/files/medialibrary/38231/'Hate-Speech'-Explained---A-Toolkit-%282015-Edition%29.pdf>; See also: CERD, *General Comment No. 35: Combating Racist Hate Speech*, UN Doc. CERD/C/GC/35, 2013, Para 16, where the CERD emphasised that the intention of a speaker should be taken into account “as [an] important element” of incitement offences.

138 According to the Camden Principles on Equality and Freedom of Expression, states must interpret key terms of Article 20(2) ICCPR restrictively if they are to prohibit speech in a manner that is consistent with international law. See above, note 135, Principle 12.

139 See: *Avocats Sans Frontières, The State of the Right to Freedom of Expression in Egypt, Morocco and Tunisia, from 2011 to 2015*, 2016, pp. 26-28, available at: https://asf.be/wp-content/uploads/2016/10/ASF_FoE_Egypt-Mar-Tun2011-2015_EN_201608.pdf.

140 See above, note 134, Para 48.

141 *Ibid.*, Para 34; See above, note 133, Paras 51–52.

punishable with capital punishment, permanent hard labour, temporary hard labour or imprisonment under Article 10 of the Penal Code.

Article 306*bis*(a)¹⁴² imposes criminal liability for sexual harassment, stating that anyone who subjects another individual to “sexual or obscene gestures” in a public place shall be punished with at least six months’ imprisonment and/or a fine ranging between LE 3,000–5,000 (EUR 142–237).¹⁴³ Article 306*bis*(a) extends to encompass sexual or obscene words transmitted to another individual via “means of modern communication”. Repeat offenders face punishment of at least one year imprisonment and a fine between LE 5,000–10,000 (EUR 237–474).¹⁴⁴ Article 306*bis*(b)¹⁴⁵ states that if the harassment is committed with the intent of receiving sexual gratification from the victim, the punishment is imprisonment for at least one year and a fine of LE 10,000–20,000 (EUR 474–948). Paragraph 306*bis*(b) further states that the crime attracts harsher punishment in circumstances where the perpetrator is in a position of authority in relation to the victim in a work, family, or education setting: the sentence is increased to two to five years imprisonment and a fine of LE 20,000–LE 50,000 (EUR 948–2,370).¹⁴⁶

Article 267 of the Penal Code criminalises sexual intercourse with a woman without her consent. The Criminal Chamber of the Egyptian Court of Cassation ruled on 6 January 1988 that this requires full penal penetration of the vagina of the victim, the absence of which downgrades the act to a possible sexual assault.¹⁴⁷ The CEDAW Committee has made clear that the CEDAW requires states to ensure that the definition of the crime of rape is not lim-

142 Introduced by Presidential Decree No. 50 of 2014.

143 Ahram Online, “Egypt’s Mansour issues law for tougher sexual harassment penalties”, *Ahram Online*, 5 June 2014, available at: <http://english.ahram.org.eg/NewsContent/1/64/103010/Egypt/Politics-/Egypts-Mansour-imposes-tougher-sexual-harassment-p.aspx>.

144 Law No. 58 of 1937 “on the Penal Code”, Article 306*bis*(a).

145 Introduced by Presidential Decree No. 50 of 2014.

146 See above, note 143.

147 Court of Cassation, Criminal Chamber, Petition No. 4113 of 1988, Hearing of 6 January 1988, Technical Office, vol. 39, p. 79 (in Arabic); See also: Euro-Mediterranean Human Rights Network, *Egypt: Report on Violence against Women in Egypt*, 2014, available at: http://www.europarl.europa.eu/meetdocs/2014_2019/documents/droi/dv/57_emhrnfctsheetviolencewom/57_emhrnfctsheetviolencewomen.pdf.

ited to penile penetration of the vagina.¹⁴⁸ Article 267 has been criticised for not including digital, oral and anal penetration or penetration with objects.¹⁴⁹ Furthermore, according to judicial interpretation, any withdrawal of consent must be physically manifest, and there must be forensic proof that the woman resisted the rape in order to establish that she did not consent.¹⁵⁰ As discussed in further detail in section 3.3, this judicial interpretation contradicts international human rights law standards in relation to the definition of rape.

Article 268 criminalises “indecent” assault, which encompasses physical sexual contact with a person without that person’s consent.¹⁵¹ Unlike the two offences described above, its scope of application is not limited to female victims.¹⁵² A ruling of the Court of Cassation on 24 February 1950 clarified that sexual assault means an indecent act carried out on the victim’s body without consent which does not amount to rape but is nevertheless obscene and offensive to the victim.¹⁵³ The punishment is imprisonment with hard labour for between three and seven years, which may be increased to 15 years, depending on the age of the victim or whether the perpetrator was a relative.¹⁵⁴

In 2008, Egypt criminalised the practice of FGM, with Article 242*bis* of the Penal Code imposing a penalty of imprisonment for between three months and two years for any person who carries out FGM.¹⁵⁵ In 2016, Article 242*bis* was amended by Law No. 78 of 2016 such that individuals who perpetrate FGM

148 See, for example: CEDAW, *Concluding observations on the combined seventh and eighth periodic reports of China (Hong Kong)*, UN Doc. CEDAW/C/CHN/CO/7-8, 2014, Paras 54-55; CEDAW, *Concluding observations on the combined third and fourth periodic reports of Kazakhstan*, UN Doc. CEDAW/C/KAZ/CO/3-4, 2014, Paras 18-19.

149 See above, note 147, Euro-Mediterranean Human Rights Network.

150 Arab Republic of Egypt, Case No. 165 of 2009, *Jarayem al Ightisab bayn al Waqe’ wal Tashree’*, 2009.

151 Court of Cassation, Criminal Chamber, Petition No. 289, Hearing of 24 April 1950, Technical Office, vol. 1, p. 534 (in Arabic).

152 *Ibid.*

153 *Ibid.*

154 See above, note 144, Article 269.

155 Law No. 126 of 2008, amending Law No. 58 of 1937.

may be subject to punishment of imprisonment for a term of between five and seven years; this sentence is increased to up to 15 years in prison if the performance of FGM results in the death or permanent disability of the victim.¹⁵⁶ A new Article 242bis(a) was also introduced, pursuant to which anyone who requests the performance of FGM may be subject to a penalty of between one and three years.¹⁵⁷

Domestic violence is not a separate offence under the Penal Code. A draft bill introducing the crime of domestic violence was proposed by the National Council for Women (NCW) in 2013,¹⁵⁸ but has not been passed by the House of Representatives as at the date of finalising this report.

Nationality, Citizenship and Immigration Law

The legal framework for citizenship is set out in Law No. 26 of 1975 “on the Egyptian Nationality” (the “Law on Nationality”), whilst immigration law is regulated by Law No. 88 of 2005 “on the Entry, Residence and Exit of Foreigners”.

Before 2004, the Law on Nationality defined an Egyptian national as anyone with an Egyptian father, which meant that Egyptian women married to non-Egyptians were prevented from passing on their nationality to their children.¹⁵⁹ This constituted direct discrimination on the basis of sex. Although the Law on Nationality allowed Egyptian mothers to pass on their nationality to their child in circumstances where the father was either stateless or of unknown nationality,¹⁶⁰ in practice, there remained a large population of state-

156 Human Rights Watch, “Egypt: New Penalties for Female Genital Mutilation”, *Human Rights Watch*, 9 September 2016, available at: <https://www.hrw.org/news/2016/09/09/egypt-new-penalties-female-genital-mutilation>; Thomas Reuters Foundation and 28 Too Many, *Egypt: The Law and FGM*, 2018, p. 4, available at: [https://www.28toomany.org/static/media/uploads/Law%20Reports/egypt_law_report_v1_\(june_2018\).pdf](https://www.28toomany.org/static/media/uploads/Law%20Reports/egypt_law_report_v1_(june_2018).pdf).

157 *Ibid.*, Thomas Reuters Foundation and 28 Too Many.

158 Nouredin, O., “Egypt’s parliament to discuss bill that criminalizes domestic violence”, *Daily News Egypt*, 27 March 2013, available at: <http://www.egyptindependent.com/egypts-parliament-discuss-bill-criminalizes-domestic-violence>.

159 Law No. 26 of 1975 “on the Egyptian Nationality”, Article 2.

160 *Ibid.*, Article 2(1).

less children with Egyptian mothers.¹⁶¹ Legislation passed in 2004 amended the definition of an Egyptian citizen in Article 2 to the following:

1. *Anyone who is born of an Egyptian father, or an Egyptian mother.*
2. *Anyone who is born in Egypt from unknown parents. A foundling in Egypt shall be considered born in it unless otherwise established.*¹⁶²

While the 2004 Law removed the discriminatory provision in respect of passage of citizenship to children, the Law continues to discriminate between women and men in respect of acquisition of citizenship through marriage. Article 7 of the Law on Nationality sets out the conditions for foreign women married to Egyptian men to acquire Egyptian citizenship: the procedure simply requires the woman to file an application with the Minister of Interior after two years of marriage. In contrast, foreign men are not able to acquire citizenship when they marry Egyptian women under the law.

Egypt lacks national asylum legislation, and instead, activities pertaining to refugee registration, documentation and refugee status determination are conducted by the UNHCR under a 1954 Memorandum of Understanding between Egypt and the UNHCR.¹⁶³ As discussed in Part 3, the government has prevented the UNHCR from providing refugee status determination and other services to Palestinians, meaning that the UNHCR is unable to provide legal advice, shelter, health-care or education to Palestinian refugees as they would to other refugees.¹⁶⁴

Education Law

The fields of primary and secondary education are regulated by Law No. 139 of 1981 “on Education” (the “Law on Education”) and the Child Law”.¹⁶⁵

161 van Waas, L., UNHCR, *The situation of stateless persons in the Middle East and North Africa*, 2016, p. 13, available at: <http://www.unhcr.org/protection/statelessness/4ce63e079/situation-stateless-persons-middle-east-north-africa-laura-van-waas.html>.

162 Law No. 26 of 1975 “on the Egyptian Nationality”, as amended by Law No. 154 of 2004.

163 Memorandum of Understanding between Egypt and the UNHCR, 10 February 1954, Articles 2 and 6.

164 *The Palestinian Return Centre*, “Palestinians in Egypt: Assessing the Impact of Egyptian State Policies and Regulations on Palestinian Refugees”, 2016, available at: https://prc.org.uk/upload/library/files/Palestinians_in_Egypt_full.pdf.

165 Amended by Law No. 126 of 2008.

Article 3 of the Law on Education guarantees free pre-university education as a right for all citizens.¹⁶⁶ Similar to Article 19 of the Constitution – which also guarantees the right to education – the scope of application is limited to Egyptian citizens. By contrast, Article 54 of the Child Law states that “[f]ree education in public schools is a right for *all* children” (emphasis added). The latter provision is, on its face, consistent with international law which requires that education be available and accessible to all.¹⁶⁷

As discussed above, Egypt issued a reservation to Article 22(1) of the Refugee Convention, stating that it does not accept to be bound by that provision’s guarantee that refugees have the right to be accorded the same treatment as nationals with respect to primary education. Nevertheless, Ministerial Decree No. 24 of 1992 issued by the Ministry of Education allows children of recognised refugees from Sudan, and political asylum seekers from Libya and Jordan to attend public schools. Syrian refugees are allowed to attend public school by operation of a Ministerial Circular issued in 2013.¹⁶⁸ Refugees and asylum seekers from these countries must be able to produce a valid residency permit in order to be admitted to school.¹⁶⁹

Although the Law on Education does not make provision for education in non-Arabic or minority languages in the public education system, Article 55 states that private schools may be established where the language of instruction alongside Arabic is another language.

Article 53(5) of the Child Law states that child education at all levels shall target the objective of “[t]he consolidation of values of equality and non-discrimination among individuals on the basis of religion, sex, ethnicity, race, social origin, disability, or any other forms of discrimination”. The Child Law includes several provisions that create obligations for the state with respect to the participation of children with disabilities in the education system. Article 76*bis* states:¹⁷⁰

166 The preamble of the Law also clearly states that it applies to Egyptian children.

167 Convention on the Rights of the Child, 1577 U.N.T.S. 3, 1989, Article 28.

168 See above, note 46, British Institute of International and Comparative Law, p. 62, citing Out-of-School Children Initiative.

169 UNHCR, *Information For Asylum-Seekers and Refugees in Egypt*, 2013, p. 24, available at: <http://www.refworld.org/pdfid/5267a1d9b.pdf>.

170 Amended by Law No. 126 of 2008.

A disabled child shall have the right to education, training, and vocational rehabilitation at the same schools, institutes, and training centers available to non-disabled children, except in exceptional cases resulting from the nature and degree of disability.

The Law further states that in such “exceptional cases” the state must ensure that children with disabilities receive education and training in classes, schools, institutions, or special training centres, and that these institutions must meet the following requirements:

1. *To be linked to the regular education system as well as to the training and vocational rehabilitation system for non-disabled children.*
2. *To meet the needs of the disabled child and be located in near his home.*
3. *To provide all disabled children with comprehensive education or training program, whatever their age or degree of disability.*¹⁷¹

As discussed further in Part 3, this opens the door for the exclusion of students with disabilities from mainstream schools and, in practice, many students with disabilities, including those with intellectual disabilities, are placed in special schools.¹⁷² Under Article 24 CRPD, Egypt is obliged to ensure the right to education without discrimination on the basis of disability; the CRPD Committee has made clear that the right to non-discrimination under the CRPD “includes the right not to be segregated”, and that states must ensure the right of persons with disabilities to education through an “inclusive education system”.¹⁷³

Article 77(1) of the Child Law further provides that a child with a disability has the right to rehabilitation, which means the provision of “social, mental,

¹⁷¹ Law No. 12 of 1996 “on the Child Law”, Article 76bis.

¹⁷² African Disability Rights Yearbook, *Egypt Country Report*, 2014, available at: <http://www.saflii.org/za/journals/ADRY/2014/8.html>; Abdulhameed, H., “The Development and Provision of Educational Services for Children with Intellectual Disabilities in Egypt”, *Revista Brasileira de Educação Especial*, Vol. 16, 2010.

¹⁷³ CRPD Committee, *General Comment No. 4: Article 24: Right to inclusive education*, UN Doc. CRPD/C/GC/4, 2016, Paras 8 and 13.

medical, educational and professional services necessary to the disabled child and his family to assist them in overcoming the consequences of his disability". Article 77(2) states that rehabilitation services and prosthetic equipment must be provided by the state free of charge, subject to the allocation for such expenses in the state budget and to the provisions of Article 85. Article 85 of the Child Law states that the President of the Republic shall establish a fund for the care and rehabilitation of disabled children. As at the date of finalising this report, the fund had not been established.

Employment Law

Employment issues and labour relations are regulated by Law No. 12 of 2003 "on the Labour Law" (the "Labour Law") and Law No. 47 of 1978 "on Civil Servants in the State" (the "Civil Servants Law").

Labour Law

The Labour Law governs the labour relations between employees and employers, and addresses issues such as vocational training and guidance, collective labour relations and occupational health and safety. Notably, it does not apply to civil servants and domestic workers.¹⁷⁴ There are a number of provisions in the Labour Law relating to equality and non-discrimination.

The Law provides that employers must give legitimate and adequate justification when terminating an employee's employment. Article 120 of the Labour Law explicitly states that dismissal due to an employee's colour, sex, social status, family obligations, pregnancy, religion, political view, affiliation to a union, or participation in union activity cannot be considered a legitimate and adequate justification for termination. Whilst Article 120 prohibits discrimination on a range of grounds, certain grounds which are recognised as prohibited under international law and are omitted, including notably disability, sexual orientation, gender identity, age and health status.

However, Article 120 has been interpreted by the courts as proscribing dismissal on the basis of an individual's health status, despite the fact that the Article appears to prohibit discrimination on a closed list of grounds which

¹⁷⁴ Law No. 12 of 2003 "on the Labour Law", Article 4.

does not include this characteristic. In a landmark ruling in 2016, an Egyptian court ruled that an employee's dismissal due to his HIV status was wrongful as it was based on an unlawful ground for dismissal. The court's decision was upheld on appeal in 2017.¹⁷⁵ Thus, it appears that – while Article 120 provides, on its face, a closed list of grounds, the courts are willing to consider its extension to cover analogous characteristics. It should also be noted that Article 120 appears to prohibit dismissal on the basis of direct discrimination alone, through use of the words “due to”.

Article 35 states that “discrimination in wages because of sex, origin, language, religion or creed shall be prohibited”; the term “discrimination” is not defined, but the use of the words “because of” suggests that the provision prohibits direct discrimination only. The penalty for violation of this provision is between LE 100-500 (EUR 4.50 – 23).¹⁷⁶ The grounds of discrimination included in Article 35 are limited, with a number of grounds recognised under international human rights law – including disability, sexual orientation, gender identity, political opinion and age – being notably omitted. After receiving a request from the Committee of Experts on the Application of Conventions and Recommendations of the ILO to amend the Labour Law so that all prohibited grounds are included in the prohibition of discrimination under Article 35, Egypt replied by stating that Article 53 of the Constitution (discussed above) covers all grounds of discrimination recognised under the Discrimination (Employment and Occupation) Convention C111, 1958.¹⁷⁷ Whilst wage discrimination on the basis of sex is prohibited under the Labour Law, the Law fails to expressly guarantee equal remuneration for women and men for work of equal value.¹⁷⁸

Part 1 of the Labour Law, which is dedicated to “Workers Recruitment”, does not include a guarantee of equality and non-discrimination in respect of re-

175 International Development Law Organisation, *The contribution of IDLO's HIV and Health Law Program (2009–2017) to ending AIDS in Latin America and the Middle East / North Africa*, 2017, p. 14, available at: <https://www.idlo.int/sites/default/files/pdfs/publications/IDLO%20Equal%20rights%2C%20equal%20treatment%2C%20ending%20AIDS.pdf>.

176 See above, note 174, Article 247.

177 Committee of Experts on the Application of Conventions and Recommendations, *Discrimination (Employment and Occupation) Convention, Observation: Egypt*, 2017.

178 The principle of equal remuneration for women and men for work of equal value is protected under: International Labour Organization, *Equal Remuneration Convention C100*, 1951, Article 2.

cruitment policies and processes. The Law also fails to include any provisions guaranteeing equality and non-discrimination in relation to terms and conditions of employment, with the exception of Article 88 (discussed below).

Chapter 2 of the Labour Law, titled “Employment of Woman Workers”, sets out a number of rights purporting to protect women, such as the right to maternity leave, though it also contains a number of seriously problematic provisions. Employers with at least five female employees must display the “Women Employment System” – a summary of the rules contained in Chapter 2 of the Labour Law – in the work environment.¹⁷⁹ Article 88 states that “all provisions regulating the employment of workers shall apply to female workers without discrimination among them, once their work conditions are analogous”. The Labour Law does not clarify to whom or what the work conditions need to be analogous, but it appears reasonable to assume that the provision means “analogous to those of men”.

As noted, Chapter 2 has a number of serious problems. Women working in the agricultural sector are excluded from invoking the provisions of this Chapter.¹⁸⁰ The government minister in charge of labour relations is mandated by Article 89 to issue decrees prohibiting or limiting the right of women to work in the period between 7 pm and 7 am. Accordingly, Ministry of Manpower and Immigration Decree No. 183 of 2003 restricts the right of women to work during these hours in industrial establishments.¹⁸¹ Furthermore, the relevant minister has the power to determine the types of employment that “are unwholesome and morally harmful to women”, as well to prohibit women from working in certain

179 See above, note 174, Article 95.

180 *Ibid.*, Article 97.

181 According to Article 2 of the Decree, industrial establishments are defined as: “A) Establishments where substances are manufactured, modified, cleaned, repaired, decorated, prepared for sale, dismantled, destroyed or transformed, including the establishments operating in shipbuilding, or any generating, transforming or connecting, or the motive power of any kind. B) Establishments operating in building and civil engineering, including works of installations constructions, restoration, maintenance, modification and demolition. C) Establishments in respect of which a decree of the Minister of Manpower is issued upon the recommendation of the concerned quarter, for adding or excepting certain activities.” The Decree contains several exceptions to the general prohibition of night shift in these sectors, including female workers engaging in administrative or technical labour in these fields, and organisations which have been awarded a special license by the government to employ women during these hours.

professions altogether.¹⁸² Under Minister of Manpower and Emigration Decree No. 155 of 2003 women are prohibited from working in a range of professions and industries, including working in bars, gambling clubs, underground mines, glass melting and soldering. As discussed in section 3.3 of this report, Articles 89 and 90 and the decrees issued pursuant to these provisions are directly discriminatory on the basis of sex and violate Egypt's international obligations to prohibit all forms of discrimination against women and ensure women's free choice of profession and employment.¹⁸³

Under Article 91 of the Labour Law, female workers who have been in service for at least 10 months have the right to 90 days of fully paid maternity leave and employers are prohibited from discharging mothers in this period.¹⁸⁴ Under Article 94, where female employees work for an employer who has more than 50 employees, they have the right to take unpaid leave of up to two years in addition to the 90 days of paid leave. The Labour Law makes no provision for male employees to take any form of parental leave. Employers with 100 or more female workers are obliged to establish or assign a nursery school in order to accommodate the children of their female employees.¹⁸⁵ Employers who violate this provision risk being subject to a fine ranging between LE 100–200 (EUR 4.50–9).¹⁸⁶ These provisions are premised on the assumption that only female employers bear responsibility for childcare and thus reinforce negative social stereotypes regarding the role of women within Egyptian society.

Civil Servants Law

The employment of persons in the civil service, ministries and their departments, government agencies, local administration units, and public bodies is regulated by the Civil Servants Law. The Law does not contain a non-discrimination provision. However, Article 12 of the Civil Servants Law states that civil servants are appointed by the President of the Republic or by his authorised representative on the basis of competence and merit in a manner ensuring equal opportunities and equality among citizens.

182 See above, note 174, Article 90.

183 CEDAW, Article 11(c).

184 See above, note 174, Article 92.

185 *Ibid.*, Article 96.

186 *Ibid.*, Article 249.

The Civil Servants Law also contains some positive action measures. Article 13 provides the Prime Minister discretion to allocate jobs within the civil service to those injured in military operations, veterans, security operations personnel and persons with disabilities. It is notable, however, that Article 13 does not impose an *obligation* to allocate jobs within the civil service to such persons, but rather leaves it to the Prime Minister's discretion to do so, thus weakening the force of this provision. Furthermore, persons with disabilities are entitled to additional annual leave: Article 48 of the Civil Servants Law states that employees are entitled to annual leave days calculated according to their years of service, but that employees with disabilities are entitled to annual leave without any restriction according to their years of service.

Social Security Law

The area of social security is regulated by Law No. 30 of 1977 "on Social Security" and Law No. 79 of 1975 "on Social Insurance". The only provision related to equality in any way in these laws is Article 137 of the Law on Social Security, which states that Egyptians and nationals of other countries resident in Egypt are subject to the provisions of the same law with respect to social security, subject to exceptions to be determined by the state.

Health Law

The field of healthcare is regulated by Law No. 75 of 1964, Law No. 63 of 1964 and Law No. 32 of 1975 (the "Healthcare Insurance Laws"), Law No. 23 of 2012 and Law No. 99 of 1992 "on Young People During their Educational Period". None of the laws in this field explicitly refer to the right to equality and non-discrimination.

Personal Status Law

Egyptian personal status law is the only branch of domestic law that still operates under the principle of religious personality of laws, meaning that each recognised religious group (Muslims, Christians and Jews) has its own set of rules applicable to matters of personal status:¹⁸⁷ according to Article 3 of the

187 Bernard-Maugiron, N. and Dupret, B., "From Jihan To Susanne Twenty Years Of Personal Status Law In Egypt", *Recht van de Islam*, Vol. 19, 2002, p. 1.

Constitution, the “principles of the laws of Egyptian Christians and Jews are the main source of laws regulating their personal status, religious affairs, and selection of spiritual leaders”.¹⁸⁸

Egyptian personal status law for those of the Muslim faith consists of codified statutory law and non-codified Islamic Sharia, and regulates matters including marriage, divorce, paternity, child custody and inheritance. The principal sources of statutory law are Decree Law No. 25 of 1920 “on Maintenance and Some Questions of Personal Status (the “Personal Status Law”),¹⁸⁹ Decree Law No. 25 of 1929 “on Certain Personal Status Provision Law” (the “Personal Status Law II”),¹⁹⁰ Law No. 77 of 1943 “on Inheritance” and Law No. 1 of 2000 “on Certain Conditions and Procedures of Litigation in Matters of Personal Status” (the “Procedural Personal Status Law”).

Many provisions of Egypt’s codified personal status laws are based on a particular interpretation of principles of Islamic Sharia.¹⁹¹ as Egypt explained to the CEDAW Committee in 2014, “Egyptian legislation, based as it is on the principles of Islamic law, accords rights and duties to both husband and wife which, although not identical, are complementary”.¹⁹² These personal status laws do not include any guarantees of equality and non-discrimination. On the contrary, the CEDAW Committee has noted with concern that legal provisions relating to personal status – including those pertaining to marriage, divorce and inheritance – “do not provide equal rights for women and men”.¹⁹³ This is discussed in detail in section 3.3.

In accordance with Article 3 of the Constitution, matters of personal status for Christians and Jews are governed by laws adopted by the religious lead-

188 See above, note 43, Article 3.

189 Amended by Law No. 100 of 1985 “on Amending Decree Laws No. 25 of 1920 and 1929” and Law No. 4 of 2005 “on Amending Article 20 of Decree Law No. 25 of 1920”.

190 Amended by Law No. 100 of 1985 “on Amending Decree Laws No. 25 of 1920 and 1929”.

191 German Technical Corporation, *Promotion of Women’s Rights, (Egypt), Personal Status Laws in Egypt*, 2010, p. 7, available at: http://horizon.documentation.ird.fr/exl-doc/pleins_textes/divers17-07/010048687.pdf.

192 Human Rights Council, Universal Periodic Review, *Report of the working group of the universal periodic review, Egypt: National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*. UN Doc. A/HRC/28/16, 24 December 2014.

193 See above, note 8, Para 47.

ers of the relevant denomination, rather than by state legislation. For example, marriage and divorce between Coptic Christians is governed by regulations issued by the Coptic Orthodox Church in 1938 (as amended in 2008),¹⁹⁴ whilst matters of personal status for members of the Greek Orthodox Church are governed by church regulations issued in 1937.¹⁹⁵ Where one of the parties is Muslim – for example, where a Coptic Christian woman is married to a Muslim man – then the personal status law applicable to Muslims takes precedence over the regulations of the Coptic Church.¹⁹⁶ Whilst there have been attempts to draft a unified statutory law governing personal status for Christians, such attempts have been unsuccessful to date.¹⁹⁷

Egypt has an obligation under international law to ensure that the right to freedom of religion is afforded equally to all individuals,¹⁹⁸ and any restrictions on the manifestation, observation, or practice of religious belief must be consistent with the narrow list of permissible limitations established under Article 18(3) ICCPR.¹⁹⁹ The HRC has made clear that the recognition of a state religion must not result in the impairment of the enjoyment of the rights of others,²⁰⁰ including the rights to equality and non-discrimination.²⁰¹ The maintenance of separate personal status laws for different religious groups within a society risks giving rise to differing rights to marriage, divorce, inheritance and other matters for those groups and is inconsistent with states' obligations to guarantee the rights to equality and non-discrimination under

194 Khalil, J. and Rowberry, R., "A Brief History of Coptic Personal Status Law", *Berkley Journal of Middle Eastern & Islamic Law*, Vol 3, 2010, p. 118; Egyptian Initiative for Personal Rights, *On Coptic Personal Status Laws: State is Responsible for Protecting Right to Marry and Found a Family*, 2008, available at: <https://eipr.org/en/press/2008/05/coptic-personal-status-laws-state-responsible-protecting-right-marry-and-found-family>.

195 See above, note 191, p 26.

196 *Ibid.*, p. 25.

197 Ibrahim, I., "Personal Affairs Law for Christians: The Responsibility of the Church, the State, and Individuals", *Eshhad*, 6 October 2015, available at: <https://eshhad.org/analysisblog/2017/10/4/personal-affairs-law-for-christians-the-responsibility-of-the-church-the-state-and-individuals>.

198 ICCPR, Articles 18, 2(1) and 26(1).

199 Namely, such limitations must be prescribed by law and be necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

200 HRC, *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion*, UN Doc. CCPR/C/21/Rev.1/Add.4, 1993, Para 9.

201 *Ibid.*

international law.²⁰² The fact that Egypt reserves matters of personal status for Christians and Jews to the religious communities themselves is thus discriminatory on the grounds of religious belief. The Special Rapporteur on freedom of religion or belief has noted that all states are required to reform their personal status laws so as to remove any discrimination against religious minorities,²⁰³ and the CEDAW Committee has specifically called upon Egypt to consider issuing a unified family law on personal status.²⁰⁴

Other Areas of Law

Presidential Decree Law No. 46 of 2014 “on the House of Representatives”

This law contains provisions implementing the state’s obligations to ensure the participation of underrepresented groups in the House of Representatives pursuant to the Constitution, namely women (Article 11 of the Constitution) and youth, Christians, persons with disabilities and Egyptian expatriates (Article 244 of the Constitution).

As mentioned in Part 1, the House of Representatives comprises 448 seats which are allocated to independent candidates under an individual list system (in which candidates are allowed, but not required, to be affiliated with a political party) and 120 seats which are reserved for party representatives through four closed-list constituencies, operating under a closed party list system.²⁰⁵ In addition, up to 28 members are appointed by the President.²⁰⁶ Presidential Decree Law No. 46 of 2014 requires parties in the party list system to reserve a certain number of seats for candidates from groups with protected characteristics:²⁰⁷ under Article 5 of the Decree, each list for which

202 CEDAW Committee, *General Recommendation on Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/29, 2013, Para 10.

203 Human Rights Council, *Report of the Special Rapporteur on Freedom of Religion and Belief*, UN Doc. A/HRC/37/49, 2018, Para 87.

204 See above, note 8, Para 48.

205 Presidential Decree Law No. 92 of 2015.

206 Presidential Decree Law No. 46 of 2014 “on the House of Representatives”, Article 1, as amended by Presidential Decree Law No. 92 of 2015.

207 For a detailed analysis on the quota system, see: Women’s UN Report Network, *Egypt – Women in 2015 Parliamentary Elections – Overview & Analysis*, 2016, available at: <http://wunrn.com/2016/02/egypt-women-in-2015-parliamentary-elections-overview-analysis/>.

15 seats are allocated must include at least three candidates who are Christians, two workers or farmers, two youths,²⁰⁸ a candidate with a disability²⁰⁹ and an Egyptian expatriate.²¹⁰ Furthermore, at least seven of the candidates must be female.²¹¹ In larger districts for which 45 seats are allocated, 21 out of 45 candidates on the party list must be women, whilst at least nine places must be reserved for Christians, nine for workers or farmers, six for youths, three for persons with disabilities and three for Egyptian expatriates.²¹² In addition to the party-list quotas, Article 27 of Decree Law No. 46 of 2014 states that “[t]he President of the Republic may appoint to the House a number of members not exceeding 5% of the number of elected members, half of whom at least shall be Women”. This means that at least 14 presidentially appointed members of the House of Representatives should be female.

In the 2015 House of Representatives elections, women acquired 87 out of 596 seats (15%), the highest share in Egypt’s history.²¹³ Christian candidates won 36 seats (6%), youth 54 (9%) and persons with disabilities and expatriates each won eight seats (1.3%).²¹⁴ However, the Decree was valid for one

208 Article 2 of the Decree defines “youths” as: “person who, on the opening day of the application-for-candidacy window, has reached the age of twenty five Gregorian years but has not reached the age of thirty five years, even if he/she reaches this age at any point during his/her membership.”

209 Article 2 of the Decree defines a “citizen with a disability” as: “[a] person suffering from a disability which does not prevent him/her from exercising his/her civil and political rights, as per a medical report issued in accordance with the terms and regulations established by the High Elections Committee, upon consulting the National Council for Persons with Disabilities.”

210 Article 2 of the Decree defines an “Egyptian expatriate” as: “[a] person who has made his regular residence permanently outside the Arab Republic of Egypt, by having acquired a permanent residence permit in a foreign State, or having resided abroad for a period of no less than ten years prior to the opening day of the application-for-candidacy window. For the purposes of applying the provisions of this law, a person who is a student, on secondment, or delegated abroad is not considered to be residing abroad. The Rules of Procedure of the House of Representatives shall indicate the manner in which a Member Residing abroad may discharge his/her duties.”

211 Presidential Decree No. 46 of 2014 “on the House of Representatives”, Article 5.

212 *Ibid.*

213 Fracoli, E., “Women and Quotas in Egypt’s Parliament”, *The Tahrir Institute for Middle East Policy*, 1 May 2017, available at: <https://timep.org/commentary/women-and-quotas-in-egypts-parliament>.

214 Arab Republic of Egypt, *Egypt’s New Parliament: The Most Empowered and Diverse in Our History*, 2015, available at: <http://www.egyptembassy.net/media/12.16.15-Egypt-Parliamentary-Elections-Fact-Sheet1.pdf>.

election round only and does not apply to the next election in 2020, leaving the prospect of a similar quota in the future uncertain. In the event that the provisions of the Decree are extended to future elections, it should be noted that the provisions suffer from a number of weaknesses. Firstly, the quota measures do not apply to the 448 seats which operate under the individual list system, meaning that their effect is limited. Secondly, the groups for whom seats are reserved is not comprehensive: for example, individuals from ethnic minorities – such as members of the Nubian community – are not included, whilst Egyptian expatriates are given preferential treatment. Furthermore, the definition of disability set out in Article 2 of the Decree is not consistent with the definition of disability under Article 1 CRPD.

Law No. 12 of 1996 “on the Child Law” amended by Law No. 126 of 2008

The Child Law regulates various aspects of life related to children. Law No. 126 of 2008 made important amendments to the Child Law.

One such amendment is the insertion of Article 3(1)(b), which requires the state to ensure the right of children to be free from all forms of discrimination on basis of birth place, parentage, sex, religion, race, disability, or on any other status, and ensures equal opportunities to benefit from all rights for children. The list of prohibited grounds is not comprehensive, and the term “discrimination” is not defined. As discussed above, Article 53(5) states that education shall have the objective of consolidating the values of equality and non-discrimination among individuals on the basis of religion, sex, ethnicity, race, social origin, disability, or any other forms of discrimination.

Conclusion

As is evident from the above discussion, the protections of equality and non-discrimination in Egyptian legislation fall significantly short of Egypt’s obligations under international law. Firstly, whilst there are provisions which guarantee equality and non-discrimination in certain areas of life – such as employment – there is a lack of protection in other key areas of life, such as healthcare and housing. Where legislation does include provisions relating to equality and non-discrimination, such provisions are not comprehensive in terms of the range of characteristics which are protected, the forms of discrimination which are prohibited, or the scope of the application of guar-

antees of non-discrimination. For example, whilst the Labour Law includes a number of provisions which guarantee equality and non-discrimination, these only apply in respect of specific issues such as remuneration and dismissal, and the term “discrimination” is not further defined. Furthermore, certain provisions which ostensibly promote equality – such as provisions of the Labour Law regarding the provision of childcare facilities – are premised on negative social stereotypes regarding the roles of men and women within Egyptian society. Overall, the Egyptian legal framework lacks coherence or clarity in its guarantees of equality and non-discrimination, thus highlighting the need for the adoption of comprehensive anti-discrimination legislation pursuant to Article 53 of the Constitution.

2.3 National Policies Impacting Equality and Discrimination

The government does not have a comprehensive national policy on equality and non-discrimination but has several specific national or regional policies on equality for certain disadvantaged groups. These policies commit the state to largely aspirational goals, without creating binding obligations. A non-exhaustive discussion of certain key policies is set out below.

Sustainable Development Strategy: Egypt Vision 2030

Launched in 2015, the Sustainable Development Strategy: Egypt Vision 2030 (the “Development Strategy”) represents Egypt’s national implementation framework for the Sustainable Development Goals.²¹⁵ The Development Strategy outlines aspirational goals spanning three dimensions of sustainable development, namely, economic, social and environmental, with each dimension expanding in multiple sub-dimensions (Pillars). Several of these Pillars set out policy objectives and call for programmes relevant to the rights to equality and non-discrimination.²¹⁶

The overarching goal of the Economic Development Pillar is to transform Egypt into a knowledge-based, competitive, diversified, market economy.²¹⁷

215 Arab Republic of Egypt, *Sustainable Development Strategy: Egypt Vision 2030*, visited 21 May 2018, available at: <http://sdsegypt2030.com/?lang=en>.

216 *Ibid.*

217 *Ibid.*, p. 12.

Several indicators have a bearing on the rights to equality and non-discrimination, including: a targeted increase in the female labour force participation rate from 22.8% to 35% by the year 2030;²¹⁸ and targeted reductions in poverty.²¹⁹ However, none of the implementation projects and programmes outlined under this Pillar specify how these targets will be met.²²⁰

There are a number of equality-focused objectives at the foundation of the Social Justice Pillar: (i) enhancing social inclusion; (ii) achieving equal rights and opportunities; and (iii) providing protection for the groups most in need.²²¹ The first objective seeks to “achieve comprehensive social inclusion, enhancing confidence among development partners, as well as empowering women and young people in order to reduce the gender and generation gaps, in addition to respect for human rights”.²²² The second objective aims to achieve “equal rights and opportunities in order to establish social mobility, by reducing geographical gaps and providing quality main services including health, education, decent work, and social protection”.²²³ Finally, the third objective focuses on positive action measures (referred to in the Development Strategy as “positive discrimination”) for the “marginalised and the most needy social groups” including the most socio-economically disadvantaged, homeless children, persons with disabilities and the elderly.²²⁴ The strategy does not elaborate on what type of positive action measures will be adopted.

Egypt has chosen several performance indicators for measuring achievements within the framework of the Social Justice Pillar. A key performance indicator is Egypt’s international rank on the gender gap index of the World Economic Forum. Currently ranking at 134th out of 144 countries for gender equality, with a score of 0.608 (1 equates to full gender parity),²²⁵ Egypt seeks

218 *Ibid.*, p. 16.

219 *Ibid.*

220 *Ibid.*, p. 17.

221 Arab Republic of Egypt, *Sustainable Development Strategy: Egypt Vision 2030: Social Dimension – Fifth Pillar: Social Justice*, p. 146, visited 21 May 2018, available at: <http://sdsegypt2030.com/wp-content/uploads/2016/10/6.-Social-Justice-Pillar.pdf>.

222 *Ibid.*

223 *Ibid.*

224 *Ibid.*

225 World Economic Forum, *International Report on Gender Gap, 2017*, p. 11, available at: <https://www.weforum.org/reports/the-global-gender-gap-report-2017>.

to progress to the 100th and 60th place in 2020 and 2030 respectively.²²⁶ Another indicator is the percentage of female-headed households living under the poverty line; the goal is to reduce the percentage of households from 26.3% to 12% in 2020 and ultimately 0% in 2030.²²⁷ Other indicators are less precisely defined and lack specific targets. For example, the “human rights indicator” is defined as the “[t]he general situation of human rights in the political, economic, and social aspects via quantitative and qualitative mechanism” and the Development Strategy merely outlines that a committee of experts will be formed which is charged with developing a measurement system for this indicator.²²⁸ Whilst some indicators do not focus specifically on measuring improvements in the area of equality and non-discrimination, for example, the indicator “beneficiaries of the social welfare programs” – which measures the overall number of beneficiaries of social programmes – the Development Strategy stipulates that progress on all indicators within the Social Justice Pillar will be measured and disaggregated by gender and age.²²⁹ While this is a positive development, the data should be disaggregated by reference to all grounds protected under international law, including but not limited to ethnicity, religious belief and disability.

The Development Strategy sets out several key programmes with the aim of fulfilling the objectives of the Social Justice Pillar. The “Developing the Legal and Governance Framework” programme aims to develop legislation and policies that reduce social inequality and improve social integration.²³⁰ This includes plans to “amend the articles of the Penal Code that relate to all aspects of violence against women”, with a view to imposing “harsh” deterrent punishments,²³¹ and to “[d]evelop detailed legislative rules determining the obligations of public and private institutions relating to equality of opportunities and prohibition of discrimination among citizens”.²³² While these plans are welcome, if implemented, they would not go far enough to discharge

226 See above, note 221, p. 147.

227 *Ibid.*

228 *Ibid.*, p. 148.

229 *Ibid.*, p. 150.

230 *Ibid.*, p. 152.

231 *Ibid.*, p. 153.

232 *Ibid.*

Egypt's international obligations to guarantee and protect the rights to equality and non-discrimination, as the Programme does not announce plans to adopt comprehensive equality legislation.²³³

The programme “Developing and Expanding the role of State authorities concerned with Transparency and Protection” aims to “activate” the roles of the Ombudsman and the Commission for Equality (yet to be established) in order to realise equal opportunities and effectively prohibit discrimination.²³⁴ Finally, the programme “Reducing the Social Generation and Gender Gaps” will apply “the list election system”. It is not known whether this means that the state will continue the party list quota system described in section 2.2.3 to encourage young people and women to participate in political life.²³⁵ All programmes are to be concluded by 2030. However, the Development Strategy does not provide for targets, a budget, or implementation monitoring mechanisms.

The Education & Training Pillar strives for “the availability of educational services for all without discrimination, including males and females, those from rural and urban areas, people with special needs, and distinguished and talented students” with respect to pre-university education.²³⁶ Accordingly, one of the objectives of the Pillar is “availing education for all without discrimination”, which includes “providing a supportive environment to integrate those with minor disabilities into pre-university schools” and “improving the quality of schools equipped for those with severe and multiple disabilities”.²³⁷ Specific provision is made for students with mild disabilities under the “Integrating Students with Minor Disabilities in Schools” programme, which contains the following sub-goals: equipping schools with modern technology to meet the needs of students with disabilities; allocating a separate budget for “integrating” students with disabilities; including “integration” as part of the education accreditation standards; providing incentives for teachers and psychologists; and establishing local, regional, and international partnerships

233 See above, note 15, Para 8.

234 See above, note 221, p. 154.

235 *Ibid.*

236 *Ibid.*, p. 173.

237 Arab Republic of Egypt, *Sustainable Development Strategy: Egypt Vision 2030: Social Dimension – Seventh Pillar: Education & Training*, p. 174, available at: <http://sdsegypt2030.com/wp-content/uploads/2016/10/8.-Education-Training-Pillar.pdf>.

to support integration and special education systems.²³⁸ Thus, although the Education and Training Pillar of the Development Strategy ostensibly seeks to improve access to education for students with disabilities, it reproduces the dichotomy between students with “mild” and “severe” disabilities found in education law discussed in section 2.2.3. Ensuring inclusive education for students with mild disabilities alone violates the right to “inclusive education”, which is to be guaranteed to *all* individuals under the CRPD.²³⁹ This includes those with multiple or “severe” disabilities.²⁴⁰ As discussed above and in section 3.6, maintaining a system of special education for children with disabilities is contrary to the right to non-discrimination under the CRPD, which “includes the right not to be segregated”.²⁴¹

Whilst the Development Strategy includes a number of equality-focused objectives, it does not go far enough to ensure the effective implementation of the SDGs and, in particular, the Goals relating to equality (notably Goal 5 regarding gender equality, Goal 10 regarding reduced inequalities, and Goal 16 regarding the promotion of inclusive societies and institutions). The equality-related objectives of the Development Strategy are narrow in scope, focusing on certain groups – such as women and persons with disabilities – but omitting others, such as ethnic and racial minorities, and lesbian, gay, bisexual and transgender (LGBT) persons. Moreover, many of the targets set out in the Strategy fall short of achieving equality; for example, the target regarding the female labour force participation rate is set at 35% rather than 50%. Indicators relating to the targets are not clearly defined, and there is thus little detail on how targets will be met. The Strategy has been criticised by Egyptian civil society for failing to specify clear implementation mechanisms, including budgetary allocations for the implementation of specific components of the Strategy, with the Egyptian Center for Economic & Social Rights noting that “the lack of a roadmap for implementation makes these goals objectively and practically unrealistic”.²⁴²

238 *Ibid.*, p. 186.

239 CRPD, Article 24(1).

240 See above, note 173, Para 6.

241 See above, note 72, Paras 8 and 13.

242 Egyptian Center for Economic & Social Rights, *Lack of Strategy in the 2030 Strategy*, 2016, available at: <http://www.socialwatch.org/sites/default/files/2016-SR-Egypt-eng.pdf>.

National Strategy for the Empowerment of Egyptian Women 2030

Developed by the NCW in consultation with various government ministries and civil society actors, the National Strategy for the Empowerment of Egyptian Women 2030 (the “Strategy for Women”) was launched in 2017 to complement Egypt’s Strategy on Sustainable Development (discussed above) with more detailed gender-oriented development goals.²⁴³

The stated aim of the Strategy for Women is ensuring that women contribute to the sustainable development of Egypt and providing them with political, social, and economic opportunities without discrimination.²⁴⁴ Its objective is to “strengthen the status of women through a comprehensive approach that takes into consideration the different roles that women play at the different phases of their life”. However, this objective is undermined in the next sentence, which asserts that “societal support” is required in order for women to be able to “contribute to the development of the nation, without compromising their family duties”.²⁴⁵ The notion that women are a group in need of special support by the state is paternalistic and risks entrenching stereotypes that serve to undermine women’s equality of participation. Although certain positive action measures are required in order to ensure *de facto* equality between men and women, such measures are justified by reference to the need to redress historic disadvantage caused by underlying structural inequalities, rather than as a result of the “special” status of women. Moreover, by referring to women’s family duties, the strategy further entrenches discriminatory, patriarchal views concerning women’s role in society as mothers and homemakers. Such views contribute to women’s continued exclusion from the labour market.²⁴⁶

Paternalistic and patriarchal language is used consistently throughout the Strategy for Women in a manner which reinforces discriminatory gender ste-

243 National Council for Women (NCW), *National Strategy for the Empowerment of Egyptian Women 2030*, 2017, Preface, available at: <http://ncw.gov.eg/wp-content/uploads/2018/02/final-version-national-strategy-for-the-empowerment-of-egyptian-women-2030.pdf>.

244 *Ibid.*, p. 21.

245 *Ibid.*

246 Increased female participation in the labor market is one of the stated goals of Egypt’s Sustainable Development Strategy. See discussion of the Strategy set out above.

reotypes. References to women's need for social "protection" are repeated in the Strategy's stated goals:

*To emphasise and fulfil Egypt's commitment to women's rights as set forth in the Egyptian Constitution 2014, as well as in binding international conventions, covenants and declarations to which Egypt is a party [and] to respond to the real needs of Egyptian women—particularly those living in rural areas in Upper Egypt, the poor, female-headed households, the elderly and disabled women. These groups are **entitled to care**—when the State develops development plans, in order to ensure their **full protection**, utilise their human and financial resources and potential in order to fulfil the principle of equal opportunities as set forth in the Constitution.*²⁴⁷

The Strategy for Women is organised into four Pillars: women's political empowerment and leadership; women's economic empowerment; women's social empowerment; and women's protection.²⁴⁸ The Strategy calls for targets to be achieved by 2030 but does not commit to midterm targets. The first Pillar calls for "increased participation" of women in the House of Representatives and local councils; more women in executive posts in government; and non-discrimination in the appointment of women to judicial posts.²⁴⁹ Numerous interventions are called for to implement this Pillar, ranging from training female candidates for public office, to reviewing existing legislation to ensure equal opportunities for women with respect to these positions.²⁵⁰ It should be noted, however, that targets for women's participation fall short of Egypt's obligations to ensure gender equality in political and public life under Article 7 CEDAW, with the objectives being framed in terms of "increasing participation" rather than ensuring equality of participation between men and women.²⁵¹ As such, even if goals are met, it appears likely that gender disparities will continue to exist.

247 See above, note 243 (emphasis added).

248 *Ibid.*

249 *Ibid.*, p. 29.

250 *Ibid.*, p. 31.

251 For example, the target in relation to "percentage of women in public posts" by the year 2030 is set at 17%: *ibid.*, p. 30.

The second Pillar sets the goal of achieving economic empowerment for women.²⁵² Sub-goals include the elimination of discrimination against women in securing jobs; an expansion of support services for working women; and ensuring gender responsive laws and work relations in all sectors.²⁵³ Planned interventions include ensuring compliance with human resource policies and incorporating gender equality aspects; combatting work place harassment; and investing in business training and support programmes for women.²⁵⁴

The third Pillar is focused on increasing the social engagement of women and preventing harmful or discriminatory practices against women in private and public spheres.²⁵⁵ Its sub-objectives are increasing legal assistance to women; expanding family planning and reproductive health rights; and providing assistance to specific groups such as women with disabilities, mothers with disabilities, and elderly women.²⁵⁶ Performance indicators are largely to be health-oriented, and include matters such as life expectancy, fertility rate and contraception usage among women.²⁵⁷ Indicators do not assess the provision of legal assistance despite this being a stated sub-objective.

Finally, the fourth Pillar calls for the elimination of negative practices that threaten women's lives and dignity, and those which prevent their effective contribution to social development, including by eliminating all forms of violence against women.²⁵⁸ Sub-objectives include combatting FGM and early marriage; addressing sexual harassment; and amending inheritance and personal status laws.²⁵⁹ Eight indicators with targets are used to gauge performance.²⁶⁰ Planned interventions include ensuring enforcement of GBV laws, and increasing law enforcement's monitoring of gender based crimes.²⁶¹

252 *Ibid.*, p. 33.

253 *Ibid.*, p. 38.

254 *Ibid.*

255 *Ibid.*, p. 45.

256 *Ibid.*

257 *Ibid.*, p. 46.

258 *Ibid.*, p. 55.

259 *Ibid.*

260 *Ibid.*, p. 56.

261 *Ibid.*, p. 57.

Monitoring of the Strategy for Women will be coordinated by the NCW and performed multiple times per year, and will involve progress review meetings at the Cabinet and Governors' Council and continuous monitoring activities by the NCW.²⁶² However, despite the establishment of these monitoring mechanisms, the policy document remains aspirational: it does not commit the state to allocate financial resources to achieve any of its stated goals, nor does it impose specific obligations on the state to take any particular action. As such, it lacks both the specificity and the resources required for effective implementation. Furthermore, many of the policy's objectives can only be achieved through significant law reform, both in terms of identifying and repealing discriminatory laws and the adoption of comprehensive anti-discrimination legislation. Moreover, there is little discussion of the need to identify and remove discriminatory barriers to participation and ensure effective protection from discrimination. Thus, the Strategy remains largely aspirational, rather than a practical and tangible plan for ensuring women's equal participation.

National Strategy for Combating Violence against Women 2015–2020

The National Strategy for Combating Violence against Women (the “Strategy on GBV”) launched in 2015. It was drafted by the NCW and enjoys the support and cooperation of various government ministries.²⁶³

The Strategy on GBV acknowledges that “[v]iolence against women and girls constitutes a flagrant violation of human rights” and that it is “a manifestation of the imbalanced relationship between men and women”.²⁶⁴ The general objective of the Strategy on GBV is to combat all forms of violence against women and girls, with sub-objectives contained in four Pillars.²⁶⁵ The first Pillar focuses on prevention and calls for increasing public awareness on domestic violence,²⁶⁶ the second Pillar aims at providing protection to women

²⁶² *Ibid.*, p. 67.

²⁶³ NCW, *The National Strategy for Combating Violence against Women 2015-2020*, 2015, p. 8, available at: <http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/egypt%20national%20strategy%20for%20combating%20vaw%202015.pdf?vs=2221>.

²⁶⁴ *Ibid.*, p. 7.

²⁶⁵ *Ibid.*, p. 21.

²⁶⁶ *Ibid.*

and girls, including through implementing and developing legislation and policies aimed at combatting violence against women and conducting awareness-raising campaigns;²⁶⁷ the third Pillar is focussed on intervention and it aims to provide counselling, treatment and rehabilitation to victims of GBV, as well as establishing reporting hotlines and shelters for victims;²⁶⁸ and the fourth Pillar is focussed on ensuring effective preventive mechanisms and legal procedures to prosecute cases of violence against women.²⁶⁹

There are 17 performance indicators measuring the progress of the Strategy on GBV and the strategy sets challenging targets. By the end of 2020, the number of women subjected to acts of violence is to be reduced by 50%, the number of shelters are to increase by 50%, and the percentage of women subjected to FGM ratio is to reduce by 50%.²⁷⁰ Another notable target is the enactment of a comprehensive law that criminalises all acts of violence against women.²⁷¹ The document does not provide details on the financing of the Strategy, and instead states that the costs and available funds will have to be determined.²⁷²

The inclusion of a target regarding the enactment of a law criminalising all forms of GBV is positive, given that the provisions of the Penal Code relating to GBV suffer from a number of significant weaknesses, as discussed in section 2.2.3 above, and the fact that certain forms of violence – such as domestic violence – are not currently criminalised. However, the effectiveness of such legislation is likely to be weakened in the absence of a wider equality law reform effort: whilst discriminatory laws are maintained and there is ineffective prohibition of discrimination through comprehensive equality law, discriminatory social norms that drive and serve to justify acts of GBV are unlikely to be addressed. Moreover, whilst the adoption of criminal laws prohibiting violence against women forms a necessary part of the state's ob-

²⁶⁷ *Ibid.*

²⁶⁸ *Ibid.*

²⁶⁹ *Ibid.*, p. 23.

²⁷⁰ *Ibid.*, p. 34.

²⁷¹ *Ibid.*

²⁷² *Ibid.*

ligations to eliminate discrimination against women,²⁷³ criminal law prohibitions must be effectively implemented²⁷⁴ and should be accompanied by civil law remedies (such as restraining orders) and other forms of legal and social assistance (such as the provision of accessible shelters).²⁷⁵ As discussed in section 2.4, weak enforcement and implementation mechanisms, including lack of access to legal aid, pose significant challenges to the enforcement of laws in Egypt, which extends to protection from GBV. Although the Strategy on GBV does include plans to expand upon existing protective measures (for example, by increasing the number of available shelters),²⁷⁶ no specific legal obligations are imposed on state bodies.

The Egyptian NGO Nazra for Feminist Studies noted in its 2016 assessment of the Strategy on GBV that it also suffers from shortcomings with respect to monitoring and evaluation.²⁷⁷ For example, whilst the Strategy includes performance indicators and aspires to monitor their achievement, performance indicators have not been allocated to specific monitoring agencies.²⁷⁸ Furthermore, where monitoring agencies have been specified, Nazra has noted that these are the same state actors that are charged with implementing the objectives, and third-party actors (such as CSOs) do not have a role to play in monitoring the implementation of the strategy. Finally, Nazra notes that the monitoring mechanisms lack transparency.²⁷⁹ The Euro-Mediterranean Human Rights Network (Euromed) have also noted that the Strategy on GBV fails to explicitly address the main solutions to legal obstacles facing female victims of violence, namely broadening the definition of rape in the Penal Code and

273 CEDAW Committee, *General Recommendation No. 19: Violence against women*, UN Doc. A/47/38, 1992, Para 24; See above, note 8, Para 24.

274 CEDAW Committee, *Yildirim v Austria*, Communication No. 6/2005, UN Doc. CEDAW/C/39/D/6/2005, 2007, Para 12.1.2.

275 Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Rashida Manjoo*, UN Doc A/HRC/23/49, 2013, Para 70; See above, note 8, Para 24.

276 See above, note 263 p. 25.

277 Nazra for Feminist Studies, *One year after its launch, the National Strategy for Combating Violence Against Women still lacking Monitoring Mechanism*, 2016, available at: <http://nazra.org/en/2016/05/one-year-after-its-launch-national-strategy-combating-violence-against-women-still-lacking>.

278 *Ibid.*

279 *Ibid.*

repealing or amending provisions of the Penal Code which allow perpetrators of violence to avoid punishment (discussed further in section 3.3).²⁸⁰ In addition, Euromed have expressed concern that coordination between the agencies charged with the Strategy's implementation is lacking, and the state's failure to dedicate funds to combatting domestic violence casts doubt on the state's intention to adequately address the problem.²⁸¹

The Strategy on GBV has led to the publication of a medical protocol for doctors on dealing with victims of violence and professional training efforts on using it.²⁸² Furthermore, a forensic unit for violence against women and children has been established in the Cairo region, and police protocols now state that victims should be referred to this institution.²⁸³ In addition, the Strategy has led to comprehensive public awareness campaigns in the media.²⁸⁴ The Strategy also led to the Central Agency for Public Mobilization and Statistics and the NCW launching the first national survey measuring the prevalence of GBV in June 2016.²⁸⁵ The study also measured the impact of GBV on women's health, reproductive health and general wellbeing, and brought the associated economic costs on victim's families, society and the state to light.²⁸⁶ The purported aim of the study is to guide policy-makers in formulating evidence-based policies and strategies to combat GBV.²⁸⁷

Women's Citizenship Initiative 2011

Launched in 2011, this joint project was initiated by UN Women, the United Nations Development Programme and the NCW, together with various government ministries including the Ministry of State for Administrative Develop-

280 See above, note 147, Euro-Mediterranean Human Rights Network, p. 2.

281 *Ibid.*

282 See above, note 277.

283 *Ibid.*

284 UN Women, *Egypt – Ending violence against women*, visited 21 May 2018, available: <http://egypt.unwomen.org/en/what-we-do/ending-violence-against-women>.

285 UN Population Fund, *The Egypt Economic Cost Of Gender-Based Violence Survey 2015, 2016*, available at: <http://egypt.unfpa.org/sites/default/files/pub-pdf/Costs%20of%20the%20impact%20of%20Gender%20Based%20Violence%20%28GBV%29%20WEB.pdf>.

286 *Ibid.*, p. 128.

287 *Ibid.*, p. 6.

ment.²⁸⁸ The immediate goal of the initiative was to issue two million national identification cards to Egyptian women, which is needed to meet the larger goal of enhancing women's participation in the democratic process.²⁸⁹ The widespread lack of identification documentation among women in Egypt, which affected an estimated four million women in 2012,²⁹⁰ can prevent women from being able to vote, stand for office and become members of political parties.²⁹¹ In addition, challenges relating to access to education, employment and healthcare have reportedly also resulted from a lack of identification cards amongst women.²⁹²

Implementation measures included raising awareness among women about the importance of having identification cards, especially among rural communities.²⁹³ The primary implementation measure was the setting up of mobile registrar units to register and issue IDs for women.²⁹⁴ As of 2015, 230,000 women had been registered and provided with identification cards.²⁹⁵ UN Women reported that 80,000 identification cards were issued in 2016 alone.²⁹⁶

Takaful and Karama Programmes

In 2015, the Ministry of Social Solidarity initiated the Takaful and Karama (Solidarity and Dignity) cash transfer schemes to support families with chil-

288 South-South World, "Women Citizenship Initiative", *Arab Solutions*, 26 June 2015, available at: <http://arab.southsouthworld.org/46-solution/279/women-citizenship-initiative>.

289 *Ibid.*

290 UN Women, "The Women Citizenship Initiative will ensure Citizenship Rights to Two Million Women in Egypt", *UN Women*, 10 July 2012, available at: <http://www.unwomen.org/en/news/stories/2012/7/the-women-citizenship-initiative-will-ensure-citizenship-rights-to-two-million-women-in-egypt>.

291 UN Development Programme, "Egypt: ID cards help women proclaim their existence", *UN Development Programme*, visited 22 May 2018, available at: http://www.undp.org/content/undp/en/home/ourwork/ourstories/a-young-woman_s-pursuit-of-proclaiming-her-existence.html.

292 UN Women, "The citizenship initiative", *UN Women*, visited 22 May 2018, available at: <http://egypt.unwomen.org/en/what-we-do/leadership-and-political-participation/the-citizenship-initiative>.

293 *Ibid.*

294 See above, note 291.

295 See above, note 288.

296 See above, note 292.

dren, elderly people and persons with disabilities.²⁹⁷ As of 2017, 1,739,000 Egyptian citizens benefitted from these programmes.²⁹⁸

Takaful is a conditional cash transfer programme for low income households with children.²⁹⁹ Conditions include the requirement for families to enrol children into school and pregnant mothers must seek pre-natal care and vaccinations where necessary.³⁰⁰ Eligible families receive between LE 325–645 (approximately EUR 16–31) per month depending on the number and age of their children.³⁰¹ Karama is an unconditional scheme benefiting persons who cannot work, specifically the elderly (65 years of age or older) and persons with severe and permanent disabilities.³⁰² Disability is assessed by the Ministry of Health and eligible persons receive LE 350 (approximately EUR 17) per month.³⁰³

Strategy on the Protection, Rehabilitation, and Empowerment of Persons with Disabilities in Egypt 2017–2020

The Ministry of Social Solidarity launched its Strategy on the protection, rehabilitation, and empowerment of persons with disabilities in Egypt (the “Strategy on Disability”) in 2017.³⁰⁴ A midterm review halfway through 2018 is scheduled to take place before the final review in 2020.³⁰⁵

297 Egypt Independent, “Social Solidarity Ministry to provide citizens with disabilities financial support”, *Egypt Independent*, 25 July 2017, available at: <http://www.egyptindependent.com/social-solidarity-ministry-financial-support>.

298 *Ibid.*

299 Ministry of International Cooperation, *National Voluntary Review On The Sustainable Development Goals Input To The 2016 High-Level Political Forum (HLPF) On Sustainable Development*, 2016, p. 27, available at: <https://sustainabledevelopment.un.org/content/documents/10738egypt.pdf>.

300 *Ibid.*

301 Social Protection, *Takaful and Karama (Solidarity and Dignity)*, visited 21 May 2018, available at: <http://www.social-protection.org/gimi/RessourcePDFaction?ressource.ressourceId=53569>.

302 Observatory of Public Sector Innovation, *Takaful & Karama Program*, visited 21 May 2018, available at: <https://www.oecd.org/governance/observatory-public-sector-innovation/innovations/page/takafulkaramaprogram.htm>.

303 See above, note 301.

304 Madamasr, “Ministry announces 3-year strategy for empowerment, integration of disabled persons”, *Madamasr*, 27 December 2016, available at: <https://www.madamasr.com/en/2016/12/27/news/society/ministry-announces-3-year-strategy-for-empowerment-integration-of-disabled-persons>.

305 *Ibid.*

The Strategy on Disability contains six main goals. The first goal is the adoption of legislation and national policies that regulate the rights of persons with disabilities in line with international conventions; the 2018 Disability Rights Law was promulgated pursuant to this goal.³⁰⁶ The second goal is to update the national personal register to include up-to-date numbers on the population of persons with disabilities, disaggregated by type of disability and geographical location.³⁰⁷ The third goal is to establish aid programmes to generate income and increase standards of living for persons with disabilities by 2018, including vocational training.³⁰⁸ The fourth goal is to create an effective social security system, with the aim to increase the number of persons with disabilities receiving financial support by 30% and increase their allocation within the social security budget by 20%.³⁰⁹ Fifth, the Strategy on Disability calls for an increase in the number of recipients of the “Karama” cash transfer programme (described above) from 40,000 to 200,000.³¹⁰ Finally, the strategy aims to increase awareness among the public of the challenges facing persons with disabilities in society, in particular in the field of education.³¹¹

Conclusion

A range of policies, strategies and initiatives have been adopted by the government with aims which include increasing equality of participation in society by marginalised and discriminated groups. While welcome, such policies are limited in a number of important ways. The principal problem is that policies and strategies are aspirational documents which do not impose binding obligations on the state or on non-state actors, and thus do not discharge Egypt’s obligations under international law to establish a comprehensive legal framework guaranteeing the rights to equality and non-discrimination.³¹² In addition, many of the policy commitments which the state has made are inadequately defined, or are not supported by clear targets or budgetary allocations. Many policies are also

306 *Ibid.*

307 *Ibid.*

308 *Ibid.*

309 *Ibid.*

310 *Ibid.*

311 *Ibid.*

312 See above, note 68, Principles 4, 5, 6, 11(b), and 12; See above, note 69, Para 37; See above, note 15, Para 8.

limited in their scope, as they focus only on particular protected characteristics; certain groups, such as ethnic minorities and LGBT persons, are entirely omitted from discussion. Moreover, the use of imprecise and paternalistic language in certain policies risks entrenching inequalities and discrimination,³¹³ contrary to the purported aims of the policies themselves. These weaknesses are exacerbated by the lack of adequate monitoring mechanisms, the failure to allocate an adequate budget for implementation and the setting of low targets,³¹⁴ all of which cast doubt on the efficacy of these policies in achieving their stated aims.

2.4 Enforcement and Implementation

The sections above focused on the national legal and policy framework protecting the rights to equality and non-discrimination in Egypt. However, the effectiveness of this framework depends on how the relevant laws are enforced and implemented in practice. As the CESCR has noted, “the adoption of legislative measures (...) is by no means exhaustive of the obligations of States parties”.³¹⁵ Rather, states must adopt all appropriate measures to ensure that the rights to equality and non-discrimination are given full effect.

This section discusses the way in which the rights to equality and non-discrimination are enforced and implemented in Egypt. As there are currently no specific institutional mechanisms which focus on protecting the rights to equality and non-discrimination, this section focuses on access to justice, legal aid and the remedies available for victims of discrimination.

2.4.1 Legal System

The Egyptian judicial system is a civil law system and is comprised of courts of ordinary jurisdiction, further divided into the civil and administrative courts, and courts of special jurisdiction.³¹⁶

313 See the use of patriarchal and language in the National Strategy for the Empowerment of Egyptian Women, discussed above.

314 See, for example, in respect of women’s participation, discussed in the National Strategy for the Empowerment of Egyptian Women, above.

315 CESCR, *General Comment No. 3: The Nature of States Parties’ Obligations*, UN Doc. E/1991/23, 1990, Para 4.

316 Abdel Wahab, M.S.E., *An Overview of the Egyptian Legal System and Legal Research*, 2012, available at: <http://www.nyulawglobal.org/globalex/Egypt1.html>.

The civil courts of ordinary jurisdiction consist of three tiers, namely the Courts of the First Instance, the Appellate Courts and the Court of Cassation.³¹⁷ The Court of Cassation is the highest judicial body for civil, criminal and all other cases which fall under the jurisdiction of courts under the three-tier system. Whilst appeals before the Court of Cassation are formally limited to issues of law, as opposed to issues of fact, in practice, judgments supported by insufficient evidence can be and are reversed by this court for being erroneous as a matter of law.³¹⁸ The Code of Civil and Commercial Procedures and the Criminal Code of Procedure regulate the jurisdiction of the ordinary courts.

The administrative courts are collectively referred to as the “State Council”.³¹⁹ Under the Constitution, the State Council has exclusive competence to:

*[A]djudicate in administrative disputes, disciplinary cases and appeals, and disputes pertaining to its decisions. It also solely competent to issue opinions on the legal issues of bodies to be determined by law, review and draft bills and resolutions of a legislative character, and review draft contracts to which the state or any public entity is a party.*³²⁰

The competence of the State Council is further determined by Law No. 47 of 1972 “on the Law of the State Council”. This law clarifies that the State Council consists of the Disciplinary Courts, Administrative Courts, Administrative Judicial Courts, the State Commissioners and the Supreme Administrative Court, which sits at the top of the hierarchy.³²¹ The Disciplinary Courts hear disciplinary actions against civil servants employed by the executive branch of government, local governments and public companies.³²² The Administra-

317 Library of Congress, *Legal Research Guide: Egypt*, updated 6 September 2015, available at: <https://www.loc.gov/law/help/legal-research-guide/egypt.php>.

318 Egypt Justice Project, *Common Courts: Overview of Egypt's Common Court System*, visited 22 May 2018, available at: <https://egyptjustice.com/common-courts>.

319 Law No. 47 of 1972 “on the Law of the State Council”.

320 See above, note 43, Article 190.

321 See above, note 319, Article 3.

322 *Ibid.*, Article 15; See also: Egypt Justice Project, *State Council*, visited 22 May 2018, available at: <https://egyptjustice.com/administrative-courts>.

tive Courts adjudicate disputes relating to government personnel decisions and administrative contracts.³²³ The Administrative Judicial Courts are courts of first instance in administrative disputes not covered by the jurisdiction of the other administrative courts of the State Council and hear appeals arising from these courts.³²⁴ The Administrative Judicial Courts have jurisdiction over administrative matters, including government contracts and – unlike the Administrative Courts – decrees issued by government officials and ministries. The Supreme Administrative Court hears appeals from the lower administrative courts.³²⁵ The State Commissioners prepare cases and draft opinions for the Supreme Administrative Court.³²⁶

Egypt's courts of special jurisdiction include the Supreme Constitutional Court, the Council of State, Family Courts, Military Courts, Economic Courts and Environmental Courts.³²⁷ According to the Constitution, the Supreme Constitutional Court has exclusive competence to:

*[D]ecide on the constitutionality of laws and regulations, interpret legislative texts, and adjudicate in disputes pertaining to the affairs of its members, in disputes between judicial bodies and entities that have judicial mandate, in disputes pertaining to the implementation of two final contradictory rulings, one of which is issued by any judicial body or an agency with judicial mandate and the other issued by another body, and in disputes pertaining to the implementation of its rulings and decisions.*³²⁸

323 *Ibid.*, Article 14.

324 *Ibid.*, Article 13.

325 *Ibid.*, Article 23.

326 Brown, N.J., Carnegie Endowment for International Peace, *A Guide Through the Egyptian Maze of Justice*, 2016, available at: <http://carnegieendowment.org/2012/06/06/guide-through-egyptian-maze-of-justice-pub-48302>.

327 See above, note 317.

328 See above, note 43, Article 192. This Article restates the competence of the Supreme Constitutional Court as it was originally defined in Article 25 of Law No.48 of 1979 "on the Law of the Supreme Constitutional Court".

The Court consists of a president and “a sufficient number of deputies to the president”; there are currently ten deputies to the president.³²⁹ The Court’s president is chosen by the Court’s General Assembly, which is responsible for governing the Court’s affairs.³³⁰ The Constitution also provides for the appointment of a body of commissioners, known as the Commissioners Authority of the Supreme Constitutional Court, which is tasked with conducting a preliminary review of all incoming cases referred to the Supreme Constitutional Court and drafting advisory reports.³³¹

Law No. 10 of 2004 “on the Establishment of Family Courts” determines that Family Courts have jurisdiction over all matters of personal status and all family disputes.³³² The law aims to simplify litigation procedures in matters of personal status and allows for a claimant-friendly family court system: for example, the age of legal capacity to initiate a legal action before the Family Courts is 15 years, whereas it is normally 21 years for non-personal status related suits.³³³ Furthermore, legal action can be brought before the Family Courts without a sign off from a lawyer, unlike other Egyptian civil courts, and litigants are permitted to represent themselves.³³⁴ A family court comprises of three judges and two specialists – a psychologist and a sociologist – at least one of whom must be a woman.³³⁵

The Military Courts are regulated by Article 204 of the Constitution and Law No. 25 of 1966. The Military Courts are an independent court system that adjudicate exclusively on all matters related to the armed forces, its officers and its personnel.³³⁶ The Military Courts have no jurisdiction over civilians except:

329 *Ibid.*, Article 193; See also: Egypt Justice Project, *Supreme Constitutional Court*, accessed 22 May 2018, available at: <https://egyptjustice.com/supreme-constitutional-court>.

330 *Ibid.*, Article 191.

331 *Ibid.*, Article 193; See also, above, note 329, Egypt Justice Project.

332 Law No. 10 of 2004 “on the Establishment of Family Courts”, Article 3.

333 Youssef, M.M., The Law Library of Congress, *Egypt: Access to the Justice System and to Legal Aid*, 2017, p. 4, available at: <https://www.loc.gov/law/help/access-to-justice/egypt-access-to-justice-system.pdf>.

334 *Ibid.*

335 See above, note 332, Articles 1–2.

336 See above, note 43, Article 204(1).

[F]or crimes that represent a direct assault against military facilities, military barracks, or whatever falls under their authority; stipulated military or border zones; its equipment, vehicles, weapons, ammunition, documents, military secrets, public funds or military factories; crimes related to conscription; or crimes that represent a direct assault against its officers or personnel because of the performance of their duties.³³⁷

The Constitution provides that the law may further define the crimes for which civilians may stand trial before the Military Courts,³³⁸ thus opening the door to an expansion of competence for these courts. As the Military Courts are separate from the ordinary judicial system, their rulings are not subject to review by the Court of Cassation: appeals are made to the Military Court for Misdemeanour Appeals or the Supreme Court of Military Appeals depending on the type of the crime alleged.³³⁹ The Military Courts are under the direct supervision of the Ministry of Defence,³⁴⁰ which also appoints Military Judges.³⁴¹ Since his election into office, President al-Sisi has expanded the jurisdiction of the Military Courts further by presidential decree,³⁴² resulting in thousands of prosecutions of civilians before military courts.³⁴³ Presidential Decree No. 136 of 2014 extended the jurisdiction of the Military Courts to all crimes alleged to have been committed on public and vital installations, including utilities infrastructure, transport networks and “other buildings, installations, facilities, public property”.³⁴⁴ This provides the Military Courts jurisdiction over any crimes committed on any public facility or property, such as government buildings and public universities.³⁴⁵ As discussed in section 3.1, this has led

337 *Ibid.*, Article 204(2).

338 *Ibid.*, Article 204(3).

339 Law No. 25 of 1966, “the Military Judiciary Law”, as amended by Law No. 12 of 2014, Article 43.

340 *Ibid.*, Article 1.

341 *Ibid.*, Article 47.

342 Presidential Decree No. 136 of 2014 “on Securing and Protection of Public and Vital Facilities”.

343 ICJ, *Egypt’s Judiciary: A Tool of Repression, Lack of Effective Guarantees of Independence and Accountability*, 2016, p. 132, available at: <https://www.icj.org/wp-content/uploads/2016/10/Egypt-Tool-of-repression-Publications-Reports-Thematic-reports-2016-ENG-1.pdf>.

344 *Ibid.*, p. 136; See above, note 342, Articles 1–2.

345 *Ibid.*, ICJ, p. 136.

to the widespread prosecution of civilians on the basis of their actual or perceived political affiliations and opinions.³⁴⁶

Law No. 162 of 1958 (the “Emergency Law”) authorised, *inter alia*, the establishment of Emergency State Security Courts.³⁴⁷ These courts, which are convened by the President, operate during times of state emergency and are independent from the ordinary judiciary.³⁴⁸ Decisions of the Emergency State Security Courts cannot be appealed.³⁴⁹ The jurisdiction of the Emergency State Security Courts extends to a range of ill-defined crimes including terrorism, drug-trade, deliberate spreading of false news, “thuggery” and “any internal disturbance”.³⁵⁰ The Emergency State Security Courts were operational from 1981 to 31 May 2012, when the ousted President Mubarak’s last state of emergency declaration expired.³⁵¹ During this period, civilians were tried before the Emergency State Security Courts.³⁵² Although Article 97 of the Constitution prohibits the operation of “exceptional courts”, the Emergency Law has yet to be amended and still provides for the establishment of Emergency State Security Courts. In October 2017, the Prime Minister issued a Decree that reinstated the jurisdiction of the Emergency State Security Courts to try defendants for crimes in accordance with the Emergency Law, including for alleged violations of protest and anti-terrorism laws.³⁵³ As discussed in section 3.1, these courts have been used to prosecute peaceful activists.

346 *Ibid.*

347 Law No. 162 of 1958, “the Emergency Law”, Articles 7–9.

348 *Ibid.*

349 *Ibid.*, Article 12.

350 *Ibid.*, as amended by Decree No. 193 of 2011.

351 Auf, Y., “The State of Emergency in Egypt: An Exception or Rule?”, *Atlantic Council*, 2 February 2018, available at: <http://www.atlanticcouncil.org/blogs/menasource/the-state-of-emergency-in-egypt-an-exception-or-rule>.

352 *Ibid.*

353 The Prime Minister’s decree included: Law No. 107 of 2013, “the Protest Law”, Law No. 10 of 1914, “the Assembly Law”, Law No. 94 of 2015, “the Anti-terrorism Law”, Law No. 34 of 2011, “Criminalizing Attacks on Freedom of Work and Devastating Establishments”, Law No. 394 of 1954, “the Weapons and Ammunition Law”, Law No. 113 of 2008, “the Freedom of Worship Law”. It also includes crimes related to terrorism, violations of national security, intimidation, hooliganism, blocking transportation, certain crimes in the penal code and crimes contravening the pricing and supply laws.

The Judiciary

Article 94 of the Constitution states that “the independence, immunity and impartiality of the judiciary are essential guarantees for the protection of rights and freedoms”. Article 184 of the Constitution goes on to provide as follows:

The judiciary is independent. It is vested in the courts of justice of different types and degrees, which issue their judgments in accordance with the law. Its powers are defined by law. Interference in judicial affairs or in proceedings is a crime to which no statute of limitations may be applied.

Furthermore, Article 186 of the Constitution states that judges are independent and are equal in rights and duties; that they cannot be dismissed; and that they are subject to no other authority but the law. The importance of judicial independence as a binding constitutional principle has also been emphasised by the Supreme Constitutional Court in a number of decisions.³⁵⁴

The principal legislation governing Egypt’s judiciary is the Judicial Authority Law No. 46 of 1972 (the “Judicial Authority Law”). In April 2017, the House of Representatives approved amendments to the Judicial Authority Law, granting the President the power to appoint the heads of key judicial bodies,³⁵⁵ namely the head of the Court of Cassation, the State Council, the Administrative Prosecution Authority³⁵⁶ and the State Lawsuits Authority.³⁵⁷ Before these amendments, the heads of these bodies were selected according to seniority by the bodies themselves and only confirmed by the President as a matter of formality; following these amendments, the President appoints the heads of the bodies from a list of three candidates submitted by each body.³⁵⁸ The State

354 For example: Supreme Constitutional Court, Case No. 34 of 1996, 15 June 1996.

355 Law No. 46 of 1972, “the Judicial Authority Law”, as amended by Law No. 13 of 2017.

356 The Administrative Prosecution Authority is a government agency charged with the task of monitoring and investigating crimes committed by all civil servants in all government institutions.

357 The State Lawsuits Authority is a government agency that represents the state in proceedings before national and international courts and tribunals.

358 Amnesty International, “New legislation threatens judicial independence in Egypt”, *Amnesty International*, 27 April 2017, available at: <https://www.amnesty.org/en/latest/news/2017/04/new-legislation-threatens-judicial-independence-in-egypt>.

Council was the only body that failed to comply with this new procedure in the latest appointment round in May 2017, resulting in the President selecting his own candidate from amongst the State Council's seven most senior judges, a prerogative the President now possesses in circumstances where a judicial body does not comply with the new appointment procedure.³⁵⁹ According to Amnesty International, the amended procedure represents yet another encroachment into the affairs of the judiciary by the executive and has the potential to critically undermine judicial independence in the country.³⁶⁰

Concerns have also been raised in relation to the fact that the Ministry of Justice is endowed with "wide powers over judges which provide scope for abuse",³⁶¹ including the right to assign judges to courts around the country and the right to initiate disciplinary proceedings against judges.³⁶² Such powers "provide scope for abuse of executive power and potential interference by the Minister of Justice (...) in the judiciary".³⁶³ According to the ICJ, judges who have publicly criticised the government's human rights violations have been arbitrarily removed from their posts as a result of disciplinary proceedings, where "the accusations and findings (...) have not been based on clearly defined standards of judicial conduct"; many such proceedings "have been marred by numerous due process violations".³⁶⁴ Reuters reported in October 2016 that the authorities forcibly retired 32 judges who had signed a document in 2013 criticising President Morsi's removal from power during the July 2013 coup d'état.³⁶⁵

359 Freedom House, *Freedom in the World 2018 – Egypt*, visited 22 May 2018, available at: <https://freedomhouse.org/report/freedom-world/2018/egypt>.

360 See above, note 358.

361 International Bar Association, *Separating Law and Politics: Challenges to the Independence of Judges and Prosecutors in Egypt*, 2014, p. 6, available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=B30A63AE-8066-4B49-8758-C1684BE5E9B9>.

362 *Ibid.*; International Bar Association, "Egypt: IBAHRI urges new government to strengthen independence of the judiciary in light of recent convictions", 1 July 2014, available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=d358354a-f212-4001-b465-30a670da36b2>; See above, note 358.

363 See above, note 361, p. 27.

364 See above, note 343, p. 73–74.

365 Reuters, "How Egypt's crackdown on dissent ensnared some of the country's top judges", *Reuters*, 18 October 2016, available at: <https://www.reuters.com/investigates/special-report/egypt-judges>.

2.4.2 National Councils

Article 214(1) of the Constitution states that “[t]he law specifies independent national councils” including the National Council for Human Rights (NCHR), the NCW, the National Council for Childhood and Motherhood (NCCM), and the NCPD. The Article further states that the “law sets out (...) guarantees for their independence and neutrality of their members”. Article 214(2) guarantees that these councils possess legal personality, enjoy technical, financial, and administrative independence, and must be consulted when drafting laws and regulations pertaining to their respective areas of work.

Article 53 of the Constitution commits the state to establishing an independent commission for the purposes of eliminating all forms of discrimination. As at the date of finalising this report, this commission has yet to be established.

National Council for Human Rights

The NCHR was established by Law No. 94 of 2003³⁶⁶ and serves as the national human rights institution of Egypt. The House of Representatives selects candidates for membership of the NCHR and appoints its members, including the president and vice-president, by a majority vote.³⁶⁷

In October 2006, the NCHR received an “A-Rating” in respect of its compliance with the “Paris Principles”,³⁶⁸ the standards on the status and functioning of national human rights institutions which were adopted by the UN General Assembly in 1993.³⁶⁹ The NCHR’s re-accreditation was scheduled for 2011 but did not occur due to the revolution that broke out during the same year. In the post-revolution period, the Sub-Committee on Accreditation (SCA) of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights deferred the re-accreditation

366 Amended by Law No. 197 of 2017.

367 Law No. 94 of 2003, as amended by Law No. 197 of 2017, Article 2bis(a).

368 Global Alliance for National Human Rights Institutions, *Accreditation status as of 21 February 2018*, 2018, p. 3, available at: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/Status%20Accreditation%20Chart.pdf>.

369 UN General Assembly, Principles relating to the Status of National Institutions (the Paris Principles), G.A. Res 48/134, 1993.

process multiple times due to the fact that the statute of the NCHR was being reviewed and amended by the House of Representatives.³⁷⁰

However, in March 2017, prior to the entry into force of Law No. 197 of 2017, which made important changes to the functioning of the NCHR, the SCA – whilst commending the then draft law – noted that several issues remained.³⁷¹ For example, the SCA called for the inclusion of the competence for the NCHR to make unannounced visits to prisons and places of detention in order to ensure that any investigations could pre-empt efforts to conceal or obscure rights violations.³⁷² Secondly, the SCA noted that the law did not specify whether members of the NCHR possess functional immunity for actions undertaken in good faith in their official capacity, which, according to the SCA, is essential if the independence of the NCHR is to be guaranteed.³⁷³ These two concerns of the SCA were not taken into account in the adoption of Law No. 197 of 2017 and therefore remain as weaknesses in the functioning of the NCHR. At the time of finalising this report, the NCHR has yet to be re-accredited by the SCA.

According to Article 99 of the Constitution, the NCHR must inform the prosecutor's office of "[a]ny assault on the personal freedoms or sanctity of the life of citizens, along with other general rights and freedoms guaranteed by the Constitution and the law". Furthermore, Article 99 grants the NCHR the power to intervene on behalf of the victims of human rights violations in civil proceedings.

According to Law No. 94 of 2003, as amended in 2017,³⁷⁴ the NCHR has the power to *inter alia* provide its opinion on draft laws and bylaws relating to

370 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, 2013, p. 9 available at: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/Report%20May%202013-Consolidated-English.pdf>.

371 Global Alliance of National Human Rights Institutions, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, 2017, p. 35, available at: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Final%20Report%20-%20March%202017-%20English.pdf>.

372 *Ibid.*

373 *Ibid.*, p. 36.

374 Law No. 197 of 2017.

its scope of competence; prepare national action plans for the protection and promotion of human rights; receive and examine individual human rights complaints, and settle or resolve the complaint with the involvement of the relevant state authority; monitor the implementation of international human rights treaties; visit detention centres; and raise awareness of human rights amongst the public.³⁷⁵ Although the NCHR can hear complaints from individuals against all state agencies, its findings and opinions are non-binding.

National Council for Women

The NCW was established by Presidential Decree No. 90 of 2000, with the primary purpose of promoting the participation of women in all levels of society.³⁷⁶ In 2018, a new law was promulgated to regulate the NCW (Law No. 30 of 2018), replacing Decree No. 90 of 2000. Under this new law, the NCW is stated to have the aims of, *inter alia*, promoting and protecting women's rights and freedoms, and consolidating the values of equality and non-discrimination in line with the Egyptian Constitution and Egypt's international obligations.³⁷⁷

Article 214 of the Constitution provides that the NCW is to be "technically, financially and administratively independent", and that the law governing the NCW shall include "guarantees for the independence and neutrality of their respective members". Accordingly, Article 1 of Law No. 30 of 2018 provides that the NCW is "an independent national council" which enjoys "legal personality and artistic, financial and administrative independence in the exercise of its functions and activities". However, whilst the 30 members of the NCW are nominated by relevant bodies (including parliament, national councils and CSOs), these nominations are made to the President of the Republic who issues the final decision to form the council, meaning that the NCW is not functionally independent.

The NCW's mandate includes proposing national plans for the advancement of women; monitoring implementation of the state's policies in relation to women, submitting proposals and observations to the authorities; following

375 Law No. 94 of 2003, as amended by Law No. 197 of 2017, Article 3.

376 UN Economic Commission for Africa, *Introduction to the National Council for Women*, 2012, available at: <http://www1.uneca.org/ngm/NCWIntroductionVisionMission.aspx>.

377 Law No. 30 of 2018, Article 2.

up on Egypt's implementation of relevant international and regional conventions relating to women; and receiving and reviewing complaints related to violations of women's rights and referring them to appropriate institutions.³⁷⁸

An Ombudsman's Office of the NCW was established in 2001,³⁷⁹ and it continues to function under Law No. 30 of 2018.³⁸⁰ Its tasks are to monitor and address obstacles to women's participation in public life.³⁸¹ Whilst this body is competent to receive complaints of all forms of discrimination, for example, those pertaining to government actions, labour relations, or personal status affairs,³⁸² the CEDAW Committee noted in 2010 with concern that it does not have the mandate to investigate them.³⁸³ Its role is limited to providing social and legal counselling to complainants and finding voluntary solutions with the relevant authority, or otherwise forwarding complaints to appropriate bodies.³⁸⁴

National Council for Childhood and Motherhood

The NCCM was established by Presidential Decree No. 54 of 1988.³⁸⁵ Its mission is to protect and promote the rights of all Egyptian children and to ensure that "all mothers enjoy their rights to a safe and healthy motherhood and to support them in performing their roles towards their families and society".³⁸⁶

The NCCM is not an independent institution as its founding decree stipulates that it is headed by the Prime Minister and must have seven ministers among its members.³⁸⁷ The body is mandated to perform functions

378 *Ibid.*, Article 7.

379 Organisation for Economic Co-operation and Development, *Women in Public Life: Gender, Law and Policy in the Middle East and North Africa*, OECD Publishing, 2014, p. 79.

380 Information provided to the Equal Rights Trust by an Egyptian lawyer, 18 September 2018.

381 See above, note 379.

382 *Ibid.*

383 See above, note 8, Para 19.

384 See above, note 379.

385 Amended by Presidential Decree No. 273 of 1989.

386 The National Council for Childhood and Motherhood, *Our Mission*, visited 22 May 2018, available at: http://www.nccm-egypt.org/e3/e1310/index_eng.html.

387 Presidential Decree No. 54 of 1988, Article 2.

including proposing policies in the field of childhood and motherhood; developing a National Plan in the field of social and family care, health, education, information and social protection; evaluating the implementation of relevant policies and providing recommendations; researching issues related to childhood and motherhood; conducting training activities on implementing relevant policies; and raising awareness on childhood and motherhood issues.³⁸⁸

The NCCM has played a role in initiating various programmes benefitting children and mothers, including establishing a child telephone hotline, raising awareness in relation to FGM, assisting mothers to register the births of their children and helping women and children obtain identification.³⁸⁹

National Council for Persons with Disabilities

The NCPD is the successor to the NCDA, which was established in 2012.³⁹⁰ There have been reports that the NCDA lacked full independence as a result of being underfunded, and under resourced.³⁹¹ Following the entry into force of Law No. 10 of 2018, the NCDA was replaced by the NCPD.³⁹²

The NCPD has the power to, *inter alia*, monitor the compliance with the obligation of employers with more than 20 employees to ensure that at least 5% of the workforce are persons with disabilities,³⁹³ and provide health, social, technical and specialised legal assistance to detained persons with disabilities.³⁹⁴

388 *Ibid.*, Article 3.

389 The National Council for Childhood and Motherhood, *Programmes*, visited 22 May 2018, available at: http://www.nccm-egypt.org/e11/e3206/index_eng.html.

390 See above, note 112.

391 National Council for Human Rights, *Response to the request for information on policies of inclusion of persons with disabilities*, 2016, p. 2 (in Arabic), available at: <https://www.ohchr.org/en/issues/disability/srdisabilities/pages/decisionmaking.aspx>.

392 See above, note 111.

393 See above, note 89, Article 22.

394 *Ibid.*, Article 37.

2.4.3 Enforcement

International law makes clear that states do not meet their obligation to protect people from discrimination by merely prohibiting discrimination in the law. They must also ensure the effective enforcement of the rights to equality and non-discrimination in practice. This means that, in addition to improving legal protection from discrimination, Egypt must also put in place mechanisms that guarantee victims of discrimination effective access to justice and appropriate remedies. According to Principle 18 of the Declaration:

*Persons who have been subjected to discrimination have a right to seek legal redress and an effective remedy. They must have effective access to judicial and/or administrative procedures, and appropriate legal aid for this purpose. States must not create or permit undue obstacles, including financial obstacles or restrictions on the representation of victims, to the effective enforcement of the right to equality.*³⁹⁵

Access to Justice

Access to justice is an important principle of international human rights law.³⁹⁶ Access will only be realised if victims of discrimination are able to seek redress unrestricted by undue procedural obstacles or costs.³⁹⁷ Remedies must be “accessible and effective”,³⁹⁸ and legal aid must be provided where necessary.³⁹⁹ Rules on standing should allow organisations to act on behalf, or in support, of victims of discrimination in order to overcome the disadvantages faced by individuals in the justice system.⁴⁰⁰ It is also important to

395 See above, note 68, Principle 18.

396 See, for example: ICCPR, Article 2(3); See above, note 84, Paras 15–18; UN General Assembly, 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, G.A. Res. 60/147, 2005, Paras 2, 11 and 12.

397 See above, note 68, Principle 18.

398 See above, note 84, Para 15.

399 See above, note 68, Principle 18.

400 *Ibid.*, Principle 20.

allow groups of victims who have experienced similar discriminatory treatment to bring collective claims, if the systemic nature of discrimination is to be effectively addressed.⁴⁰¹ Furthermore, an effective system of access to justice in discrimination cases requires the introduction of measures to protect individuals from any adverse treatment or adverse consequence as a result of bringing a discrimination complaint,⁴⁰² and the adaptation of rules on evidence and proof (discussed further below).⁴⁰³

Access to justice in Egypt is regulated by the Constitution and other legislation.

Access to Justice Under the Constitution

The Constitution establishes a number of principles and rights relevant to access to justice. Article 97 of the Constitution provides that:

Litigation is a safeguarded right guaranteed to all. The state shall bring together the litigating parties, and work towards speedy judgment in cases. It is forbidden to grant any act or administrative decision immunity from judicial oversight.

The right to defend oneself in a court of law, through either self-representation or legal counsel, is guaranteed under Article 98 of the Constitution. Furthermore, Article 99 states that:

Any assault on the personal freedoms or sanctity of the life of citizens, along with other general rights and freedoms guaranteed by the Constitution and the law, is a crime with no statute of limitations for both civil and criminal proceedings. The injured party may file a criminal suit directly.

According to Article 189 of the Constitution, the public prosecution is stated to be an “integral part of the judiciary”, and is responsible for investigating,

401 *Ibid.*

402 *Ibid.*, Principle 19.

403 *Ibid.*, Principle 21.

pressing charges and prosecuting all criminal cases “except what is exempted by law”. Public prosecution is conducted by a Prosecutor General.⁴⁰⁴

Whilst Article 53 of the Constitution and Article 161*bis* of the Penal Code criminalises discrimination and thus enables victims of the crime of discrimination (as defined in Article 161*bis*) to seek justice via the criminal courts, the criminalisation of discrimination is itself deeply problematic and inconsistent with international best practice.⁴⁰⁵

The Supreme Constitutional Court has the exclusive competence to decide on the constitutionality of laws and regulations.⁴⁰⁶ Article 29(a) of Law No. 48 of 1979 on the Law of the Supreme Constitutional Court stipulates that “a court, or any other judicial forum” that considers during judicial proceedings that a provision of a law or of a regulation is unconstitutional may refer the issue to the Supreme Constitutional Court; individuals do not have standing to submit a challenge regarding the constitutionality of a provision of a law or a regulation directly to the Supreme Constitutional Court. Article 48 of Law No. 48 of 1979 provides that judgments and decisions of the Supreme Constitutional Court are final and not subject to further review.

Individuals do not have direct access to enforce their constitutional rights before the Supreme Constitutional Court and thus have limited scope to effectively enforce the rights to equality and non-discrimination guaranteed by the Constitution. This problem is particularly acute under the Egypt legal framework as, in the absence of any comprehensive non-discrimination legislation, the primary source of the right to equality is the Constitution.

Access to Justice Under Legislation

A claimant seeking to assert his or her rights to equality and non-discrimination may bring either civil, criminal or administrative proceedings.

In civil proceedings, for example proceedings brought pursuant to provisions of the Labour Law, both natural and legal persons are able to file a claim before

404 See above, note 43, Article 189.

405 See further discussion in sections 2.2.1 and 2.2.3 above.

406 See above, note 43, Article 192.

the court. However, according to Article 3 of the Code of Civil and Commercial Procedures, a claim shall be not accepted unless the plaintiff has a “personal, direct and existing interest” in the claim. The interest must be: (i) legal, meaning based on a right or a legal status; (ii) direct and personal, in the sense that the plaintiff must assert his or her own right or legal status in the claim; and (iii) existing, meaning that the right or legal status of the dispute has already been impaired.⁴⁰⁷ As such, it is not possible for associations, organisations or other legal entities which have a legitimate interest in the case, such as NGOs, to participate in civil proceedings as third parties.⁴⁰⁸ This is a significant shortcoming in Egypt’s legal framework: NGOs and other third parties can make valuable contributions to the discussion of issues before the court, in particular in connection with the application and understanding of international human rights law norms, and such entities should be able to engage in proceedings either on behalf of or in support of the persons seeking redress.⁴⁰⁹

As regards criminal proceedings, the courts may hear prosecutions for criminal offences which relate to issues of discrimination as set out in the Penal Code. As discussed in section 2.2 above, examples of such offences include discrimination under Article 161*bis*, sexual harassment under Article 306 and FGM under Article 24*bis*. However, the Public Prosecution has the sole jurisdiction to file and handle criminal lawsuits.⁴¹⁰ Whilst it is possible to summon an alleged perpetrator to appear in court where the prosecutor or investigative judge has either closed a case or determined not to institute criminal proceedings, they are unable to do so where the alleged perpetrator is a public official and the offence was committed in the course of the official’s duties.⁴¹¹

With respect to administrative law, every person holding a personal interest in relation to the exercise of power by a public body has legal standing to file a complaint about a decision or decree to the State Council.⁴¹²

407 Law No. 13 of 1986 “on the Code of Civil and Commercial Procedures, Article 3; Court of Cassation, Appeal No. 434 of 1997, 29 December 1997.

408 Information provided to the Equal Rights Trust by an Egyptian lawyer, 21 September 2018.

409 See above, note 68, Principle 20.

410 See above, note 43, Articles 189 and 159; Law No. 150 of 1950 “on the Criminal Code of Procedure”, Article 1; Law No. 46 of 1972, “the Judicial Authority Law”, Article 21.

411 *Ibid.*, Criminal Code of Procedure, Articles 162 and 232; See above, note 343, p. 118.

412 See above, note 319, Article 10.

Legal Aid System

The right to legal aid is regulated under the Constitution and legislation. With respect to the criminal law, the Constitution includes certain guarantees in relation to the appointment of lawyers where the accused does not have the financial means to pay for a lawyer,⁴¹³ which are supplemented by provisions of domestic law which regulate the right to a court appointed lawyer in criminal proceedings.⁴¹⁴ The Egyptian Bar Association is mandated to establish legal assistance agencies to help provide free legal assistance to criminal defendants who cannot afford legal counsel.⁴¹⁵ However, research conducted by the International Bar Association's Human Rights Institute in 2011 showed that these provisions are not properly implemented, meaning that the right to effective legal representation in legal aid cases is not guaranteed in practice.⁴¹⁶

Legal aid in labour proceedings is regulated by Ministry of Justice Decree No. 13637 of 2009. This Decree requires the establishment of legal aid offices, funded by the Ministry of Justice, to assist claimants before labour courts of first instance free of charge; however, such legal aid offices have not been established in practice.⁴¹⁷ Legal aid does not appear to be available for claimants in other civil proceedings; there are no legal aid mechanisms available to support claimants litigating matters of personal status before the family courts.⁴¹⁸

Evidence and Proof

International law recognises that it can be challenging for individuals to prove that they been victims of discrimination, and thus requires that legal rules on

413 See above, note 43, Articles 54(3) and 98.

414 See above, note 328, Criminal Code of Procedure, Articles 124 and 237; Law No. 12 of 1996 "on the Child Law", Article 125; Law No. 17 of 1983 on "Advocacy", Articles 64, 93 and 95.

415 *Ibid.*, Law No. 17 of 1983, Articles 93–94.

416 International Bar Association, *Justice at a Crossroads: The Legal Profession and the Rule of Law in the New Egypt*, 2011, p. 48, available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=A29760B6-B2F0-4AE1-887E-997D4334F957>.

417 Information provided to the Equal Rights Trust by an Egyptian lawyer, 14 November 2018.

418 Barakat, S., *Oxfam Research Reports, The Cost of Justice: Exploratory Assessment on Women's Access to Justice in Lebanon, Jordan, Egypt and Yemen*, 2018, p. 18, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/rr-womens-access-to-justice-mena-040618-en.pdf>.

evidence and proof are adapted to ensure that victims can obtain redress. Principle 21 of the Declaration states that:

Legal rules related to evidence and proof must be adapted to ensure that victims of discrimination are not unduly inhibited in obtaining redress. In particular, the rules on proof in civil proceedings should be adapted to ensure that when persons who allege that they have been subjected to discrimination establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination (prima facie case), it shall be for the respondent to prove that there has been no breach of the right to equality.

As this principle indicates, the “burden of proof” in cases of discrimination shifts to the respondent once facts from which it may be presumed discrimination has occurred have been established. The CESCR has stated in its General Comment No. 20 that:

*Where the facts and events at issue lie wholly, or in part, within the exclusive knowledge of the authorities or other respondent, the burden of proof should be regarded as resting on the authorities, or the other respondent, respectively.*⁴¹⁹

Egypt’s law falls short of these standards as there are no specific rules of evidence applicable to civil law discrimination cases. The burden of proof thus rests with the plaintiff. In accordance with Article 3 of the Law of Evidence, each party to civil proceedings must be able to prove the facts and present evidence to support its arguments.⁴²⁰ This means that a claimant alleging discrimination in civil proceedings is required to prove that the discrimination occurred.

⁴¹⁹ See above, note 69, Para 13; see above, note 72, Para 73(i).

⁴²⁰ Law No. 25 of 1968 “promulgating the Law of Evidence in Civil and Commercial Matters”, Article 3.

Remedies and Sanctions

Principle 22 of the Declaration outlines the importance of appropriate remedies and sanctions where the rights to equality and non-discrimination are violated:

Sanctions for breach of the right to equality must be effective, proportionate and dissuasive. Sanctions must provide for appropriate remedies for those whose right to equality has been breached including reparations for material and non-material damages; sanctions may also require the elimination of discriminatory practices and the implementation of structural, institutional, organisational, or policy change that is necessary for the realisation of the right to equality.

The HRC has stated that remedies must be “accessible and effective”,⁴²¹ whilst the CESCR has declared that “effective” remedies include compensation, reparation, restitution, rehabilitation, guarantees of non-repetition and public apologies.⁴²²

As outlined above, there is currently no specific anti-discrimination law in Egypt. The anti-discrimination provisions in various pieces of legislation do not always provide for specific remedies or sanctions for their breach; for example, whilst Article 120 of the Labour Law prohibits employers from dismissing an employee on the basis of his or her “colour, sex, social status, family obligations, pregnancy, religion, political view, affiliation to a union, or participation in union activity”, the Law does not prescribe a sanction for a violation of this provision. Remedies are therefore largely left to general provisions of civil and administrative law. In relation to the Civil Code, the remedies available include suspension of the unlawful act with compensation for the damage suffered (Article 50) and compensation (Article 163). With respect to administrative law, the sanctions that may be imposed on administrative employees include warnings, admonishments, suspension from work without pay and reduced salary.⁴²³

421 See above, note 84, Para 15.

422 See above, note 69, Para 40.

423 Law No. 54 of 1964, Article 37.

As discussed in sections 2.2.1 and 2.2.3 above, certain manifestations of discrimination and discrimination-related offences are criminalised under the Penal Code. Under the relevant provisions of the Penal Code, sanctions are penal in nature and typically entail either monetary fines or restrictions on liberty. However, as discussed in section 2.2.1 above, penal sanctions are not appropriate for discrimination, except in instances of discriminatory violence or incitement thereto, as international best practice dictates that discrimination should be dealt with under the civil rather than criminal law. One of the reasons for this is the absence of provision for remedies for victims, which means that sanctions are not “effective” in nature.

2.5 Conclusion

As this Part of the report makes clear, Egypt’s legal framework is manifestly inadequate to meet its obligations in respect of the rights to equality and non-discrimination. If the state is to bring its national legal framework into line with international instruments to which it is party, significant legal reform is required. The state must, if it is to provide effective protection from discrimination and meet its international obligations, enact comprehensive equality legislation, prohibiting *inter alia*, all forms of discrimination, on all grounds recognised in international law and in all areas of life regulated by law, requiring positive action where substantive inequalities are identified, and providing the procedural safeguards which are necessary for the effective functioning of an equality law framework.

At the international level, although the state has a good record of ratification of the core international human rights treaties, it has made expansive declarations and reservations which seek to limit the scope of the application of these treaties in critical areas. The state has not accepted the competence of any of the treaty bodies to receive individual complaints, including complaints of discrimination, and has a poor record of compliance with its reporting obligations under the treaties to which it is party

The national legal framework on equality and non-discrimination is severely limited. Protection from discrimination is grounded in the provision relating to equality and non-discrimination set out in Article 53 of the Constitution. This provision is problematic in a number of ways. While providing an open-ended, non-exhaustive list of grounds, it omits certain well-recognised

characteristics from the list of grounds which are explicitly provided for, creating uncertainty for both rights-holders and duty-bearers. Protection from discrimination is guaranteed only to citizens. The scope of prohibited conduct is unclear, as the provision does not explicitly prohibit “all forms of discrimination”, does not define discrimination and makes no reference to direct discrimination, indirect discrimination, harassment or failure to make reasonable accommodation. The provision allows for the criminalisation of discrimination, something which is contrary to international best practice, for a number of reasons.

Article 53 of the Constitution states that Egypt shall “take necessary measures for eliminating all forms of discrimination”. However, the state has failed to adopt comprehensive anti-discrimination legislation, as clearly required to meet its non-discrimination obligations under international law. The state has adopted one law dedicated specifically to a particular group with a protected characteristic – namely the Disability Rights Law – this does not include a comprehensive definition of discrimination, and the Law fails to meet the standards set out in the CRPD in a number of significant respects, including in terms of the definition of disability itself.

Beyond the Constitution and the Disability Rights Law, victims of discrimination are forced to rely upon a range of isolated non-discrimination provisions in laws governing different areas of life. A number of national laws contain provisions which aim to prevent discrimination in various areas of life, although these provisions all fall short of the state’s international obligations. The Penal Code creates a criminal offence of discrimination, despite the fact that criminalisation of discrimination is both inappropriate from the perspective of due process and inadequate to address the needs of those seeking redress for discrimination. Taken together, the various non-discrimination provisions in legislation fail to provide protection on all grounds recognised at international law and in all areas of life regulated by law. Moreover, in the absence of specific, comprehensive anti-discrimination law, discrimination is not defined, and the procedural safeguards which are necessary for the effective functioning of an equality law framework are absent.

Whilst there are a number of national policies directed at issues of equality and non-discrimination, these are not implemented by binding measures and lack guaranteed financial resources.

The rights to equality and non-discrimination are poorly enforced in Egypt. There are numerous concerns about the independence of the judiciary, with a number of reports showing the adoption of measures that increase the influence of the executive over the affairs of the judiciary. The national human rights institution has limited competence to address violations of the rights to equality and non-discrimination. Furthermore, there is no provision for legal aid in Egypt.

In summary, Egypt's legal framework on equality and non-discrimination is completely inadequate. To ensure compliance with its obligations under international human rights law, Egypt should adopt comprehensive anti-discrimination legislation. This legislation must be supported by strong, effective and independent enforcement mechanisms, which include the provision of adequate legal aid and effective remedies for victims, and the establishment of an independent equality body.

3. PATTERNS OF DISCRIMINATION AND INEQUALITY

This Part of the report discusses the principal patterns of discrimination and inequality in Egypt. It seeks to identify the typical manifestations of discrimination and inequality as they are experienced by people in the country. It is based both on an analysis of research undertaken by authoritative sources and on original direct testimony from a range of individuals collected by researchers working with the Equal Rights Trust. The Trust has sought to corroborate all facts and provide accurate attribution of all statements.

It should be noted that this Part does not seek to provide an exhaustive picture of all the observed patterns of discrimination in Egypt. Rather, it aims to provide an insight into what appear to be the most important issues pertaining to the most significant grounds of discrimination in the country. In respect of each ground, the report discusses the ways in which people experience discrimination and inequality in a range of areas of life, including as a result of discriminatory laws and policies, the actions of the state actors, exposure to discriminatory violence, and discrimination and inequality in areas such as employment, education, healthcare and access to goods and services. The research for this report found evidence of discrimination and inequality arising on a range of different grounds. This Part focuses on inequality and discrimination on the basis of: (i) political opinion; (ii) religion or belief; (iii) gender; (iv) ethnicity or race; (v) nationality and citizenship; (vi) disability; (vii) health status; and (viii) sexual orientation and gender identity.

3.1 Discrimination and Inequality on the Basis of Political Opinion

Protection against discrimination on the basis of “political or other opinion” in the enjoyment of other human rights is enshrined in Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Additionally, Article 26 ICCPR guarantees equal and effective protection against discrimination in all areas of life regulated by law, on the ground of political or other opinion.¹

Article 2(1) ICCPR requires that all Covenant rights are to be guaranteed to all persons without distinction, including on the basis of political opinion. Thus, the

1 Including on the ground of political or other opinion. See: International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171, 1966, Article 26.

obligation to ensure non-discrimination on the basis of political opinion extends to the enjoyment of, *inter alia*, the rights to life, freedom from torture, liberty and security of the person, freedom of movement, and freedom of expression, assembly and association, protected by Articles 6, 7, 9, 12, 19, 21 and 22 ICCPR. It follows that any limitations to these freedoms must respect the principle of non-discrimination,² and that any limitation, restriction or denial of these rights on the basis of political opinion alone is a violation of the ICCPR. These protections are also reflected in the regional treaties that Egypt has ratified.³

The overarching pattern of discrimination on the basis of political opinion in Egypt is the suppression of political dissent. This is effected both through the application of discriminatory laws and through extra-legal means, in particular through the use of discriminatory violence, torture and detention. In the four years since President al-Sisi's election, human rights defenders have been subject to prosecution, asset freezes and travel bans; a highly restrictive law regulating civil society organisations (CSOs) has been promulgated; peaceful protests have been effectively banned; journalists have been arbitrarily detained; and thousands of civilians have been tried before military courts.⁴ These developments have been relatively well-publicised: for example, Human Rights Watch,⁵ Amnesty International,⁶ and Reporters Without Borders,⁷ amongst others, have

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- 2 See: Human Rights Committee (HRC), *General Comment No. 34: Freedoms of Opinion and Expression*, UN Doc. CCPR/C/GC/34, 2011, Para 26.
 - 3 Organisation of African Unity, African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49, 1990; African Union, African Youth Charter, Banjul, adopted by Assembly of the African Union, Seventh Ordinary Session, July 2006, Assembly/AU/Dec.121 (VII); Organisation of African Unity, African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 1981.
 - 4 See, for example: Human Rights Watch, "Human Rights Watch Letter to UK Foreign Secretary", Human Rights Watch, 27 July 2018, available at: <https://www.hrw.org/news/2018/07/27/human-rights-watch-letter-uk-foreign-secretary>.
 - 5 Human Rights Watch, "Egypt: Al-Sisi Should End Rights Abuses", *Human Rights Watch*, 10 April 2018, available at: <https://www.hrw.org/news/2018/04/10/egypt-al-sisi-should-end-rights-abuses>; and Human Rights Watch, "Egypt: Intensifying Crackdown Under Counterterrorism Guise", *Human Rights Watch*, 15 July 2018, available at: <https://www.hrw.org/news/2018/07/15/egypt-intensifying-crackdown-under-counterterrorism-guise>.
 - 6 Amnesty International, "Egypt: End two-year arbitrary detention of human rights defender Hisham Gaafar", *Amnesty International*, 19 October 2017, available at: <https://www.amnesty.org/en/latest/news/2017/10/egypt-end-two-year-arbitrary-detention-of-human-rights-defender-hisham-gaafar>.
 - 7 Reporters Without Borders, "RSF refers arbitrary detention in Egypt to UN Working Group", *Reporters Without Borders*, 1 August 2018, available at: <https://rsf.org/en/news/rsf-refers-arbitrary-detention-egypt-un-working-group>.

extensively documented the suppression of political dissent in recent years. In 2018, Freedom House concluded that Egypt was “not free”, giving the country an aggregate score of 26/100 (where 0 is least free, and 100 is most free), and noting that “[s]erious political opposition is virtually non-existent, as both liberal and Islamist activists face criminal prosecution and imprisonment”.⁸ As such, this section does not seek to provide extensive new evidence, but rather to systematise the information which is already available, and to analyse the inherently discriminatory nature of the human rights violations against those who have, or are perceived to have, opinions opposed to the government.

Political Context

As noted in section 1.6, 25 January 2011 marked the eruption of the “Arab Spring” in Egypt: thousands of protesters gathered in Tahrir Square in Cairo, denouncing the security forces and calling for dignity (*karama*) and freedom (*hurriyyah*).⁹ On 11 February 2011, following 18 days of mass protests in which at least 840 protesters were killed and over 6,000 were injured by the security forces, President Mubarak was deposed after 29 years in office.¹⁰ Presidential powers were assumed by the Supreme Council of Armed Forces, which dissolved the Parliament and suspended the Constitution on 13 February 2011.¹¹ Following elections in June 2012, Muhammad Morsi of the Muslim Brotherhood was sworn in as the new President.¹²

Public opposition to President Morsi began to grow in November after he issued a Presidential Decree granting himself extensive powers,¹³ while opposition from within the armed forces also began to grow. In July 2013, after only a

8 Freedom House, *Freedom in the World 2018: Egypt Profile*, 2018, available at: <https://freedomhouse.org/report/freedom-world/2018/egypt>.

9 Lesch, A., *Egypt's Spring: Causes of the Revolution*, Middle East Policy Council, 16 September 2011, available at: <https://www.mepc.org/egypts-spring-causes-revolution>.

10 Amnesty International, “The ‘Arab Spring’: Five Years On”, 2016, *Amnesty International*, available at: <https://www.amnesty.org/en/latest/campaigns/2016/01/arab-spring-five-years-on>.

11 El-Bendary, M., *Egyptian Revolution: Between Hope and Despair, Mubarak to Morsi*, Algora Publishing 2013, p. 129.

12 Osman, T., *Egypt on the Brink: From Nasser to the Muslim Brotherhood*, Yale University Press, 2013, p. 4.

13 Beaumont, P., “Protests erupt across Egypt after presidential decree”, *The Guardian*, 23 November 2012, available at: <https://www.theguardian.com/world/2012/nov/23/protests-egypt-presidential-decree>.

year in office, President Morsi was ousted by the military in a *coup d'état* led by Abdel Fattah Saeed Hussein Khalil al-Sisi.¹⁴ In the months immediately following the *coup*, the Muslim Brotherhood's members and supporters were targets of extensive government suppression: thousands were arrested,¹⁵ and more than 800 supporters of the Muslim Brotherhood were killed in a single event.¹⁶ In December 2013, the Muslim Brotherhood was designated a terrorist group.¹⁷

In May 2014, al-Sisi won a presidential election which was criticised for failing to meet international democratic standards;¹⁸ low turnout;¹⁹ intimidation of voters;²⁰ and the denial of access to poll monitors.²¹ Parliamentary elections that followed resulted in the pro-al-Sisi coalition winning all 120 seats,²² though it was reported that many parties boycotted the elections due to the threatening atmosphere against opposition political parties.²³

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- 14 Hessler, P., "Egypt's Failed Revolution", *The New Yorker*, 2 January 2017, available at: <https://www.newyorker.com/magazine/2017/01/02/egypts-failed-revolution>.
 - 15 Amnesty International, "Egypt: Detained Morsi supporters denied their rights", *Amnesty International*, 12 September 2013, available at: <https://www.amnesty.org/en/press-releases/2013/09/egypt-detained-morsi-supporters-denied-their-rights/>.
 - 16 Human Rights Watch, "All According to Plan: The Rab'a Massacre and Mass Killings of Protesters in Egypt", *Human Rights Watch*, 12 August 2014, available at: <https://www.hrw.org/report/2014/08/12/all-according-plan/raba-massacre-and-mass-killings-protesters-egypt>.
 - 17 BBC News, "Egypt's Muslim Brotherhood declared 'terrorist group'", *BBC News*, 25 December 2013, available at: <http://www.bbc.com/news/world-middle-east-25515932>.
 - 18 Kirkpatrick, D.K., "International Observers Find Egypt's Presidential Election Fell Short of Standards", *The New York Times*, 29 May 2014, available at: <https://www.nytimes.com/2014/05/30/world/middleeast/international-observers-find-fault-with-egypt-vote.html>.
 - 19 Kalin, S., and Fick, M., "After Egypt's terribly low voter turnout, Sisi wins presidential election", *Public Radio International*, 29 May 2014, available at: <https://www.pri.org/stories/2014-05-29/after-egypts-terribly-low-voter-turnout-sisi-wins-presidential-election>.
 - 20 Loveluck, L., "A landslide for Egypt's Sisi in an 'undemocratic' election", *The Christian Science Monitor*, 29 May 2014, available at: <https://www.csmonitor.com/World/Middle-East/2014/0529/A-landslide-for-Egypt-s-Sisi-in-an-undemocratic-election>.
 - 21 Fadel, L., "No Surprise Here: Sisi Rolls to Victory in Egypt's Election", *NPR*, 29 May 2014, available at: <https://www.npr.org/sections/parallels/2014/05/29/317050568/no-surprise-here-sisi-rolls-to-victory-in-egypts-election>.
 - 22 Al-Araby Al-Jadeed, "Egyptian officials say 29.83 percent turnout in parliamentary elections", *Al-Araby Al-Jadeed*, 26 November 2015, available at: <https://www.alaraby.co.uk/english/news/2015/11/26/egyptian-officials-say-29-83-percent-turnout-in-parliamentary-elections>.
 - 23 Afifi, H., "Egypt elections: Some aren't running, some are boycotting, and this is why", *Ahram Online*, 19 October 2015, available at: <http://english.ahram.org.eg/NewsContentP/1/155967/Egypt/Egypt-elections-Some-arent-running-some-are-boyco.aspx>.

In the years that have followed President al-Sisi's election, he has shown a "flagrant disregard for human rights", with Human Rights Watch asserting that he "has led the country into its worst rights and political crisis in decades".²⁴ The country has experienced a wave of arrests, there is evidence of "widespread and systematic torture in police stations and National Security Agency's offices", and of severe restrictions on freedom of expression, freedom of movement, and freedom of association.²⁵ Many of these abuses have been perpetrated under the guise of counterterrorism measures. A nationwide state of emergency was declared by President al-Sisi in April 2017 in the wake of two suicide bombings.²⁶

In April 2018, President al-Sisi won the presidential election with 97% of the votes cast, following a campaign of intimidation against members of the opposition, including the arrest of other potential candidates.²⁷ In research conducted for this report, interviewees reported that they had been subjected to systematic pressure and intimidation to suppress support for candidates standing in opposition to President al-Sisi. One interviewee described the harassment he experienced in his workplace as a result of his political opinion:

*In November 2017, I was instructed by the Chairman of the Board of Directors that all the employees should have signed forms requesting President al-Sisi to be nominated for a second term. I heard that all of the forms were issued by a party called the Future of the Nation. I refused to sign the form on the first day, and on the second day the Director Manager summoned me and asked me why. He tried to persuade me and pressed me and the rest of the colleagues in the office. I was afraid of the damage that I would suffer if I refused to sign. I was afraid not only of the threats they made, but that after few days the national security would come and ask.*²⁸

24 See above, note 5, Human Rights Watch, April 2018.

25 See above, note 4.

26 See further discussion in Part 3.2.

27 See above, note 5, Human Rights Watch, April 2018.

28 Interview A1.

One human rights defender interviewed by the Equal Rights Trust's researchers spoke of the climate of fear in the country for those in opposition to the current regime:

The current political system feels dangerous and threatening for any community organisation with a specific goal and able to convey a message, especially the message of democracy and freedom and human rights. (...) Independent human rights organisations are a bitter enemy of the current system, which they aim to disrupt. The security services are responsible for all these aggressions. The security services are used as security guards of the regime and the State. What is happening to human rights defenders is a development of the situation that existed under Mubarak and the current regime attempts to control the organisations and limit their ability to mobilise because they think of reforming the community. Organisations of ordinary people have been targeted, and their coordinators have been imprisoned. The current regime wants to shape the society in the form it wants, which is the military form.²⁹

As these testimonies indicate, the suppression of political dissent is widespread, taking effect through a wide range of discriminatory measures directed against those in opposition to the regime, or perceived to be. Such discriminatory treatment ranges from the application of discriminatory laws and direct interference with the work of political activists, civil society representatives and members of the media, through to arrest, arbitrary detention, torture and violence.

Legal and Policy Context

As discussed in Part 2, Egypt adopted a new Constitution by popular referendum on 15–16 January 2014, replacing the Constitution adopted in December 2012 under the presidency of Muhammad Morsi.³⁰ Article 5 of the 2014

²⁹ Interview A3.

³⁰ Grote, R., "Constitutional Developments in Egypt: The New 2014 Egyptian Constitution", *Oxford Constitutional Law*, available at: <http://oxcon.oupplaw.com/page/egyptian-constitution/constitutional-developments-in-egypt-the-new-2014-egyptian-constitution>.

Constitution provides that the country's political system is "based on political and partisan pluralism" and "respect for human rights and freedoms". Article 53 guarantees that citizens are equal before the law and may not be discriminated against on grounds including political affiliation.

A number of Articles of the Constitution guarantee civil and political rights. Article 65 guarantees freedom of thought and opinion, with every person having "the right to express his/her opinion verbally, in writing, through imagery, or by any other means of expression and publication". Furthermore, Article 70 of the Constitution guarantees freedom of the press, printing and paper, visual, audio and electronic publication, and Article 71 states that it is "prohibited to censor, confiscate, suspend or shut down Egyptian newspapers and media outlets in any way", though this latter provision is subject to an exception "for limited censorship in time of war or general mobilisation". Article 72 guarantees freedom of the media, and equality of access to the media:

The State shall ensure the independence of all State-owned press institutions and media outlets, in a manner ensuring their neutrality and presentation of all political and intellectual opinions and trends as well as social interests and also guaranteeing equality and equal opportunities in addressing public opinion.

Article 73 regulates the right to organise and to freedom of assembly: citizens have the right to organise public meetings, marches, demonstrates and all forms of peaceful protests by serving a notification as regulated by law, whereas "[t]he right to peaceful and private assembly is guaranteed without need for prior notification".

Article 74 provides that citizens "have the right to form political parties by notification as regulated by the law", subject to the proviso that:

No political activity may be exercised or political parties formed on the basis of religion, or discrimination based on sex, origin, sect or geographic location, nor may any activity be practiced that is hostile to democracy, secretive, or which possesses a military or quasi-military nature.

While this provision purports to combat discrimination, it creates the potential for discriminatory application, given the broad range of grounds included – such as origin and geographic location – together with the potential for an expansive or arbitrary interpretation of whether or not an activity can be considered to be “hostile to democracy” or “secretive”. These latter restrictions go beyond the limitations on the exercise of the right to freedom of association provided by Article 22(2) ICCPR, which requires that any limitation must be necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 75 of the Constitution provides that citizens have the right to form non-governmental organisations and institutions, and “shall be allowed to engage in activities freely”, whilst Article 77 regulates the establishment and administration of Trade Unions. Article 15 of the Constitution provides that “[p]eaceful strike is a right regulated by Law”.

Under Article 87 of the Constitution, citizen’s participation in public life is stated to be a “national duty”, and it is provided that every citizen “has the right to vote, run in elections, and express their opinion in referendums”.

It should be noted that a number of these political rights – namely those stipulated under Articles 73, 74, 75 and 87 of the Constitution – are guaranteed to citizens only. While international human rights law does not require *all* rights and freedoms guaranteed to citizens to be extended to non-citizens, exceptions to the general principle of equality between citizens and non-citizens are limited. Under Article 25 ICCPR, certain political rights – including the right to vote – are guaranteed to citizens only; however, the restrictions on the enjoyment of political rights by non-citizens under the Egyptian Constitution clearly go beyond the scope of permissible limitations under Article 25 ICCPR.

Articles 16, 25, 83 and 84 of the Constitution encourage the participation and cooperation of civil society in promoting civil, political and economic rights alongside the Government. However, as discussed below, the promise of these Articles has not been fulfilled: rather than being treated as partners, civil society members and groups have been persecuted and subjected to a wide range of human rights abuses. As a result, the Office of the United Nations

High Commissioner for Human Rights (OHCHR) has raised concern about the “[b]rutality and intimidation of the country’s most thoughtful voices, cutting off the vital social and economic services provided by NGOs”.³¹

Discriminatory Laws

The rights to freedom of expression, assembly and association are limited through legislation which places restrictions on the enjoyment of these rights incompatible with the limitations permitted under the ICCPR.

Laws Impinging on the Right to Freedom of Assembly

In addition to laws inhibiting the right to freedom of association, several laws limit the right to freedom of assembly in ways which exceed the narrow criteria for limitation of the right which are set out in Article 21 ICCPR.

On 24 November 2013, former interim President Adly Mansour signed Law No. 107 of 2013 “on Organising the Right to Peaceful Public Meetings, Processions and Protests”.³² This Law severely restricts the right to freedom of assembly. Article 4 contains a broad definition of a protest:

*A protest is every gathering of individuals in a public place, or procession on the public roads and squares that exceeds ten to express their opinions or demands, or political discontentment in a peaceful manner.*³³

Article 5 specifically prohibits the conduct of “[p]ublic meetings for political purposes (...) in places of worship or their arena, or their annexes”.³⁴ Evidently, this Article is open to discrimination in application, particularly given the close association between certain political parties and religious communities in Egypt.

31 Office of the High Commissioner for Human Rights (OHCHR), “Opening Statement by Zeid Ra’ad Al Hussein, United Nations High Commissioner for Human Rights”, 11 September 2017, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041>.

32 Decision of the President of the Arab Republic of Egypt relating to Law. No. 107 of 2013 “on Organising the Right to Peaceful Public Meetings, Processions and Protests”.

33 *Ibid.*, Article 4.

34 *Ibid.*, Article 5.

Article 8 imposes restrictions on those wishing to organise or conduct any protest or public meeting. Under the Article, the maximum duration of a protest or public meeting is 15 days, with the exception of electoral meetings, which may be no longer than 24 hours. The Article stipulates that it is necessary to submit a written notification to the police station at least three working days prior to the start of the meeting or protest. Detailed information must be submitted to the police, including the subject and purpose of the public meeting or protest, and the names of the individuals or entities organising the meeting or protest, including their “residences and contact information”.³⁵

Under Article 10, where “serious information or evidence” is found to indicate the presence of threats to security or peace, the Minister of Interior may issue a decree prohibiting, suspending or relocating the public meeting or protest,³⁶ whilst Article 11 provides that security forces may disperse a meeting or protest and arrest suspects if the participants “violate the peaceful nature of expressing opinions”.³⁷ This broad power accorded to the authorities to either prohibit or forcibly disperse public meetings and protests gives officials discretion to prevent otherwise lawful, peaceful protests, creating the potential for discriminatory application.

In the three year period following the enactment of Law No. 107 of 2013, approximately 37,000 legal or security measures were taken to implement it, and over 19,000 arrests and 3,000 cases of detention and interrogation were reported.³⁸ On 13 January 2015, the Egyptian Organization for Human Rights submitted a list to President al-Sisi with the names of 200 individuals detained under Law No. 107 of 2013, with a request that they be pardoned.³⁹ Two weeks earlier, a group of students from Al-Azhar, Cairo and Ain Shams Universities had been sentenced to three years in prison

35 *Ibid.*, Article 8.

36 *Ibid.*, Article 10.

37 *Ibid.*, Article 11.

38 Freedom House, *Freedom in the World 2017: Egypt*, 2017, available at: <https://freedomhouse.org/report/freedom-world/2017/egypt>.

39 El-Fekki, A., “NGO to submit 200 names for presidential pardon request in protest cases”, *Daily News Egypt*, 5 January 2015, available at: <https://dailynewsegypt.com/2015/01/05/ngo-submit-200-names-presidential-pardon-request-protest-cases>.

for protests in Nasr City under the legal powers granted by Law No. 107 of 2013.⁴⁰

International concern about Law No. 107 of 2013 was raised by the Special Rapporteur on the situation of human rights defenders in 2015, who reported that the Law's enforcement had allegedly resulted in cases of arbitrary arrest, ill-treatment and sentencing of peaceful protesters, as well as the denial of their due process rights.⁴¹ The Special Rapporteur noted that he was:

*[G]ravelly concerned at the disproportionate punishments under this law, which heavily restricts the right to freedom of assembly and has a deleterious impact on the work of human rights defenders in the country.*⁴²

Following a constitutional challenge, Article 10 of the Law was struck down by the Supreme Constitutional Court on the basis that it was unconstitutional,⁴³ and on 30 April 2017 it was amended such that the Minister of Interior must now seek judicial approval before suspending, relocating or altering the route of a demonstration.⁴⁴ Although unchecked authority to ban protests is no longer vested in the Minister of Interior, Chapter 3 of Law No. 107 of 2013, which provides for the imposition of penalties for breaches of the law, remains in force. Commentators have expressed concern that the continuation in force of these provisions allows security forces to “continue to harass and arrest protesters”.⁴⁵

40 *Ibid.*

41 Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst: Addendum*, UN Doc. A/HRC/28/63/Add.1, 2015, available at: <http://www.ohchr.org/Documents/Issues/Defenders/A-HRC-28-63-Add-1.pdf>.

42 *Ibid.*

43 Supreme Constitutional Court of the Arab Republic of Egypt, Case No. 10 of Judicial Year 37.

44 Law No. 14 of 2017 “on Amending Certain Provisions of Law No. 107 of 2013 for Organising the Right to Peaceful Public Meetings, Processions and Protests the Freedoms of Assembly and Association”.

45 El-Sheikh, S., “Parliament to start discussing amendments to Protest Law Sunday”, *Daily News Egypt*, 25 March 2017, available at: <https://dailynewsegypt.com/2017/03/25/parliament-start-discussing-amendments-protest-law-sunday>.

Laws Impinging on the Right to Freedom of Association

Until 2017, associations and non-governmental organisations (NGOs) working in Egypt were subject to the requirements of the Law on Associations and Community Foundations⁴⁶ which, despite significant defects, provided a degree of operational space and freedom to CSOs.⁴⁷ However, in recent years, NGOs have come under increasing pressure, due in large part to the adoption of laws that unduly restrict association rights, including notably the adoption of a new law regulating NGOs.

In 2014, Article 78 of the Penal Code was amended,⁴⁸ criminalising the act of requesting or receiving foreign funding “with the aim of pursuing acts harmful to the national interest or destabilising the general peace or the country’s independence and unity.” Those found guilty under this provision can face life imprisonment; in cases involving a civil servant, the death penalty may also be imposed.⁴⁹ This amendment creates a broad discretion on the part of the authorities to limit freedom of association, together with the rights to freedom of expression and assembly, both of which could constitute “acts” within the meaning of the Article. The scope of the limitation on the right to freedom of association provided for in the revised Article – applying to acts considered to be “harmful to the national interest, general peace or the country’s independence and unity” – is far broader than the strictly limited and defined purposes for which the right to freedom of association can be limited.⁵⁰

Following its amendment, Article 78 has been applied in a discriminatory manner against individuals and NGOs on the basis of their actual or perceived political opinions. For example, in March 2016, the authorities froze the as-

46 Law No. 84 of 2002 “on Associations and Community Foundations”.

47 International Center for Not-for-Profit Law, *Civic Freedom Monitor: Egypt*, updated 12 November 2018, available at: <http://www.icnl.org/research/monitor/egypt.html>.

48 Presidential Decree No. 128 of 2014 “on Amending Provisions of the Penal Code.”

49 Law No. 58 of 1937 “on the Penal Code”, Article 78.

50 ICCPR, Article 22(2), provides that any limitation on the right to freedom of association must be prescribed by law and be necessary in a democratic society for the protection of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. Articles 19(3) and 21 ICCPR provide near-identical grounds for the limitation of the rights to freedom of expression and freedom of assembly, respectively.

sets of a number of NGO leaders, accusing them of accepting foreign funding in violation of Article 78. Moreover, even clearly apolitical NGOs are among those to have faced persecution; notably, in April 2017, Aya Hegazy, the co-founder of the Belady Foundation, an NGO dedicated to the care of street children, was acquitted after more than two years in pre-trial detention having been charged under Article 78.⁵¹

In May 2017, President al-Sisi signed the Law on Associations and Other Foundations Working in the Field of Civil Work (the “Law on Associations”).⁵² The anticipated impact of the Law was a concern for some time before its enactment: in March 2013 the OHCHR stated that the draft Law could be used to suppress the legitimate work of CSOs.⁵³ Since its enactment, the Law on Associations has faced strong condemnation, including by a group of eight NGOs in a joint statement.⁵⁴ Amnesty International has described the law as a potential “death sentence for human rights groups in the country”.⁵⁵ The Special Rapporteur on the situation of human rights defenders has also raised concerns that the Law violates both Egypt’s Constitution and its international legal obligations.⁵⁶

Article 13 of the Law stipulates that “associations and other entities subject to the provisions of this law are not allowed to work in any field or practice

51 Mada Masr, “Aya Hegazy and Belady Foundation staff acquitted after more than 2 years in detention”, *Mada Masr*, 16 April 2017, available at: <https://www.madamasr.com/en/2017/04/16/news/u/aya-hegazy-and-belady-foundation-staff-acquitted-after-more-than-2-years-in-detention/>; Islam, S., “American charity worker in Egypt is acquitted after three years in jail”, *Public Radio International*, 17 April 2017, available at: <https://www.pri.org/stories/2017-04-17/american-charity-worker-egypt-acquitted-after-three-years-jail>.

52 Law No. 70 of 2017 “on Associations and Other Foundations Working in the Field of Civil Work”.

53 OHCHR, “Egypt: NGO Bill infringes international standards – UN rights experts urge legislators to reject it”, 28 March 2013, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13190&LangID=E>

54 Human Rights Watch, “Egypt: New Law Will Crush Civil Society”, *Human Rights Watch*, 2 June 2017, available at: <https://www.hrw.org/news/2017/06/02/egypt-new-law-will-crush-civil-society>.

55 Amnesty International, “Egypt: NGO law threatens to annihilate human rights groups”, *Amnesty International*, 30 May 2017, available at: <https://www.amnesty.org/en/latest/news/2017/05/egypt-ngo-law-threatens-to-annihilate-human-rights-groups>.

56 Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya: Addendum*, UN Doc. A/HRC/25/55/Add.3, 2014, Para 155.

any activity that is part of the work of political parties” or to engage in “any work of political nature” or “any work that may cause harm to national security, law and order, public morals or public health”.⁵⁷ Although there is a lack of consensus internationally on how best to regulate the political activities of organisations and associations,⁵⁸ the expansive wording of Article 13 presents a clear risk of discriminatory application.

Article 14(7) of the Law prohibits NGOs from “[c]onducting opinion polls and publishing or making available their results”.⁵⁹ Although laws imposing restrictions on the publication of polling data in the immediate run up to an election may sometimes be justified,⁶⁰ a blanket ban on all forms of polling, which provides “an important source of accountability”,⁶¹ unduly restricts the right to freedom of speech, and cannot be justified by reference to the restricted list of permissible limitations established under Articles 19(3) or 22(2) ICCPR.

Under Article 70 of the Law, the National Regulatory Agency for the Work of Foreign Non-Governmental Organizations is established. It has wide-reaching authority to review:

*[A]ll matters related to the establishment, work, and activity of foreign NGOs in Egypt, all the different forms of cooperation between these NGOs and the governmental and non-governmental entities and foundations inside the country, as well as the foreign funding of the Egyptian civil associations and foundations.*⁶²

Article 14 prohibits associations from “[c]onducting field research or disclosing their results before presenting them to the [National Regulatory] Agency

57 See above, note 52, Article 13.

58 UN General Assembly, *Report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, Maina Kiai, UN Doc. A/70/266, 2015, Para 47.

59 See above, note 52, Article 14(7).

60 Human Rights Council, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, UN Doc. A/HRC/26/30, 2014, Paras 72–74.

61 *Ibid.*, Para 72.

62 See above, note 52, Article 70.

to make sure of their integrity and neutrality”, and also bans any activities “that result in destabilising the national unity, national security, public order and public morals”. These provisions give significant control over the work of NGOs to the state, with a resulting impact on the ability of such groups to advocate for change and criticise governmental policy. The Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, has expressed concern over legislation that provides “broad discretion to authorities to monitor or oversee the activities of associations”, which may pose a “grave risk to the continued existence of organizations that engage in activities perceived to be threatening to the State.”⁶³

Under Article 26 of the Law, the National Regulatory Agency has the “right to take the necessary procedures to rectify any procedures or works that are in violation of the provisions of the law.”⁶⁴ Any violations of the Law may result in a minimum of one year and a maximum of five years imprisonment.⁶⁵

Anti-Terror Legislation

The rights of protestors and those perceived to be in opposition to government are further limited through the application of broadly-framed provisions contained in the 2015 Law on Confronting Terrorism⁶⁶ (“the Anti-Terrorism Law”). The Law has been criticised for its expansive definition of a “terrorist act”,⁶⁷ contained in Article 2:

[A]ny use of force, violence, threat, or intimidation domestically or abroad for the purpose of disturbing public order, or endangering the safety, interests, or security of the community; harming individuals and terrorizing them; jeopardizing their lives, freedoms, public or pri-

63 UN General Assembly, *Report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, Maina Kiai, UN Doc. A/HRC/26/29, 14 April 2014, Para 58.

64 See above, note 52, Article 26.

65 See above, note 52, Article 87.

66 Law No. 94 of 2015 “on Confronting Terrorism”.

67 Human Rights Watch, “Egypt: Counterterrorism Law Erodes Basic Rights”, *Human Rights Watch*, 19 August 2015, available at: <https://www.hrw.org/news/2015/08/19/egypt-counterterrorism-law-erodes-basic-rights>.

vate rights, or security, or other freedoms and rights guaranteed by the Constitution and the law; harms national unity, social peace, or national security or damages the environment, natural resources, antiquities, money, buildings, or public or private properties or occupies or seizes them; prevents or impedes public authorities, agencies or judicial bodies, government offices or local units, houses of worship, hospitals, institutions, institutes, diplomatic and consular missions, or regional and international organizations and bodies in Egypt from carrying out their work or exercising all or some of their activities, or resists them or disables the enforcement of any of the provisions of the Constitution, laws, or regulations.

The Human Rights Committee (HRC) has expressed concern that overbroad anti-terror provisions may result in the infringement of Convention guarantees, including rights to freedom of expression, association and assembly.⁶⁸ The HRC has also stated that under the ICCPR, any anti-terror law must comply with the principles of legality, certainty, predictability and proportionality.⁶⁹ Article 2 of the Anti-Terrorism Law falls below this standard. References, *inter alia*, to “endangering the interests of the community”, “disturbing public order”⁷⁰ and impeding “public authorities” are unclear in scope and may be applied arbitrarily and in a discriminatory manner against groups on account of their political beliefs or activities.

Article 35 of the Anti-Terrorism Law prohibits the intentional publication, broadcast, display or promotion of statements that relate to terrorist acts or anti-terrorism operations that contradict the official position of the Ministry of Defence. A violation of Article 35 is punishable by a fine and a ban on practising journalism for up to a year “if the crime is a breach to the ethics of

68 See, for example: HRC, *Concluding Observations: Bahrain*, UN Doc. CCPR/C/BHR/CO/1, 26 July 2018, Para 28.

69 See, for example: HRC, *Concluding Observations: Lao People’s Democratic Republic*, UN Doc. CCPR/C/LAO/CO/1, 26 July 2018, Para 14.

70 See, for example: HRC, *Concluding Observations: Jordan*, UN Doc. CCPR/C/JOR/CO/5, 4 December 2017, Para 12.

the profession.”⁷¹ In 2015, the European Parliament voiced its concern about the potential for abuse stemming from this vague and expansive definition, noting that the breadth of the definition means that it has the potential to be applied in a discriminatory manner, and therefore has a potentially chilling effect on legitimate expression and protest including acts of civil disobedience.⁷² Since then, the Egyptian authorities have increasingly used the Anti-Terrorism Law to prosecute journalists, activists and critics for peaceful criticism of the government, as discussed below.

Discriminatory Violence

As noted above, the main pattern of discrimination on the basis of political opinion in Egypt is the suppression of dissent. This is most clearly evidenced in the violent suppression of protests, which have resulted in deaths and serious injury. In a joint submission to the Universal Periodic Review in 2014, a number of Egyptian NGOs noted that the practice of successive governments over the preceding four years had “led to a situation in which individuals must accept grave risks should they wish to exercise their right to peaceful assembly, including the risk they may be killed.”⁷³

Following the revolution on 25 January 2011, the security and military forces responded with the use of force against peaceful protesters: it is reported that, between 25 January and 11 February 2011, at least 846 individuals were killed in public squares and around government buildings, with the killings carried out by the police, the military and civilians acting on behalf of the state.⁷⁴ This was the start of a pattern in which excess force was used by the state to disperse peaceful protests: protesters engaging in sit-ins in Tahrir

71 See above, note 66, Article 35.

72 European Parliament, *Understanding definitions of terrorism*, European Parliamentary Research Service, 2015, p. 2, available at: http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/571320/EPRS_ATA%282015%29571320_EN.pdf.

73 Association for Freedom of Thought and Expression (AFTE), the Egyptian Initiative for Personal Rights and the Cairo Institute for Human Rights Studies, *Joint Submission to the 20th Session of the Universal Periodic Review: Egypt*, 2014, p. 1, available at: https://www.upr-info.org/sites/default/files/document/egypt/session_20_-_october_2014/js13_upr20_egy_e_main.pdf.

74 *Ibid.*, pp. 4-5; Human Rights Watch, *Submission to the 20th Session of the Universal Periodic Review: Egypt*, 2014, p. 1, available at: https://www.upr-info.org/sites/default/files/document/egypt/session_20_-_october_2014/hrw_upr20_egy_e_main.pdf.

Square were dispersed by military forces in March 2011 and April 2011, with the latter incident leading to the death of at least one protester.⁷⁵ In November and December 2011, at least 51 protesters were killed and hundreds injured after the security forces attacked peaceful demonstrations, with the police “fir[ing] tear gas continuously and indiscriminately for six full days”.⁷⁶ Further clashes occurred between the military and protesters in February 2012, April and May 2012 and November 2012, leading to the deaths of a number of protesters.⁷⁷ During the first months of 2013, the police killed at least 60 protesters and injured almost 2,000 others in Cairo, Suez, Ismailia and Port Said, with 46 individuals killed in Port Said alone.⁷⁸

In the wake of the *coup d'état* in July 2013, which resulted in the ousting of President Morsi, there was an escalation in violence against protesters. On 14 August 2013, in what has become known as the “Rabaa Massacre”, the security forces killed at least 900 people attending protests in Rabaa al Adawiya and al-Nahda squares in Cairo in what has been described as a “campaign of intense and extensive repression against the Muslim Brotherhood as well as non-Islamist critics of the [al-Sisi] government”.⁷⁹ This “unprecedented excessive use of unlawful lethal force” was followed by legislative crackdowns on the right to freedom of assembly, with Law No. 107 of 2013 (discussed above) adopted a few months later.⁸⁰ In 2014, reporting on the situation in the country, the Special Rapporteur on the situation of human rights defenders expressed:

[D]eep concern regarding excessive use of force by the police against peaceful demonstrators and human rights defenders, including women and children. She is particularly concerned regarding reports that she

75 International Federation for Human Rights, *Submission to the 20th Session of the Universal Periodic Review: The Situation of Human Rights in Egypt*, 2014, p. 3, available at: https://www.upr-info.org/sites/default/files/document/egypt/session_20_-_october_2014/fidh_upr20_egy_e_main.pdf.

76 See above, note 73, p. 5.

77 See above, note 75, p. 3.

78 See above, note 73, p. 6; See above, note 75, p. 3.

79 See above, note 74, Human Rights Watch, p. 1; see above, note 16.

80 See above, note 73, p. 6.

*has received of killings, serious injuries, acts of torture and sexual harassment of demonstrators. She also expresses her concern regarding the apparent lack of intervention of the police and security agents to protect demonstrators.*⁸¹

Further incidents of large-scale unlawful violence against protesters have subsequently occurred, in particular surrounding the anniversary of the Egyptian revolution: on 25 January 2014, over 100 protesters were killed by the police in a violent crackdown on protests across the country,⁸² and in January 2015 at least 15 people were killed in clashes between protesters and the police.⁸³ In April 2016, the security forces violently dispersed protests across Egypt using tear gas.⁸⁴

This use of discriminatory violence to suppress political dissent has been accompanied by a failure on the part of the state to effectively investigate and prosecute those responsible, and to provide reparations for victims.⁸⁵ As recently noted by Human Rights Watch, “no single official member of the security forces was investigated or prosecuted nearly five years after the [Rabaa Massacre]”.⁸⁶ In July 2018, the Egyptian Parliament approved a law submitted by the government – the Law Governing the Treatment of Certain Senior Commanders of the Armed Forces – which grants immunity to security officers from prosecution for any act committed in the course of their

81 See above, note 56.

82 See above, note 73, p. 7.

83 Withnall, A., “Cairo protests: 15 killed in Egypt in violent clashes with police as more than a thousand protesters mourn young mother Shaima al-Sabbagh”, *Independent*, 25 January 2015, available at: <https://www.independent.co.uk/news/world/africa/cairo-protests-three-shot-dead-by-egyptian-police-using-non-lethal-pellets-include-young-mother-10001193.html>.

84 OHCHR, “Egypt: Worsening crackdown on protest, a further setback to human rights”, 9 May 2016, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19933&LangID=E>.

85 See: Human Rights Watch, *Egypt: No Acknowledgment of Justice for Mass Protester Killings*, 2013, available at: <https://www.hrw.org/news/2013/12/10/egypt-no-acknowledgment-or-justice-mass-protester-killings>; Amnesty International, “Egypt: no justice for 900 Rabaa Massacre victims, as mass show trial continues”, *Amnesty International*, 14 August 2018, available at: <https://www.amnesty.org.uk/press-releases/egypt-no-justice-900-rabaa-massacre-victims-mass-show-trial-continues>.

86 See above, note 5, Human Rights Watch, April 2018.

duties between July 2013 (when President Morsi was ousted from office) and January 2016.⁸⁷ As noted by the Tahrir Institute for Middle East Policy, the law “establishes a selective and arbitrary type of amnesty”, protecting only members of the military from prosecution (as opposed to both civilian and military actors), and creating “a culture of impunity around some of the most serious human rights violations that the country has witnessed in its modern transitional period”.⁸⁸

Discriminatory Torture and Ill-treatment

The prohibition of torture is an absolute right which all states are required to uphold,⁸⁹ and is contained in numerous human rights treaties, including the ICCPR⁹⁰ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁹¹ Article 1 CAT provides a definition of torture that is considered to be authoritative:

[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 a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him 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. It does not include pain

87 See above, note 85, Amnesty International; BBC News, “Egypt military officers get immunity over 2013 crackdown”, *BBC News*, 16 July 2018, available at: <https://www.bbc.co.uk/news/world-middle-east-44848757>.

88 El-Sadany, M., “Egypt’s Authorities Co-opt Transitional Justice in New Draft Law”, *The Tahrir Institute for Middle East Policy*, 13 July 2018, available at: <https://timep.org/commentary/egypts-authorities-co-opt-transitional-justice-in-new-draft-law>.

89 As discussed in section 2.1.1.4, the prohibition of torture is a peremptory norm of international law, which is considered to be so fundamental that no derogation is possible.

90 ICCPR, Article 7.

91 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 85, 1984, Article 1.

*or suffering arising only from, inherent in or incidental to lawful sanctions.*⁹²

Under the Egyptian Constitution, the state is obliged to respect, guarantee and protect human dignity under Article 51, while Article 52 provides that “[a]ll forms of torture are a crime with no statute of limitations”.⁹³ Article 55 of the Constitution also provides that those who are apprehended, detained or have their freedom restricted “shall be treated in a way that preserves their dignity” and may not be “tortured, terrorised, or coerced” or “physically or mentally harmed”, and stipulates that any violation of these prohibitions is a crime. The Penal Code also criminalises “any public servant or official who orders, or participates in, the torture of an accused person with a view to inducing him to make a confession” (Article 126), or “anyone who unlawfully arrests a person and threatens to kill him or subjects him to physical torture” (Article 282(2)).⁹⁴ According to Article 63 of the Penal Code, “an order cannot be invoked as a justification of torture”.⁹⁵

Egypt’s national legal framework on torture is not consistent with the country’s international human rights law obligations, in particular those which arise under the CAT. None of the provisions of the Constitution and Penal Code discussed above include a comprehensive definition of torture that is consistent with Egypt’s obligations under Article 1 CAT. Moreover, while Article 52 provides that “[a]ll forms of torture are a crime with no statute of limitations”, under Article 126 of the Penal Code, torture is only prohibited where it is perpetrated with a view to obtaining a confession, meaning that there is *inter alia* no prohibition on the infliction of pain and suffering “for any reason based on discrimination of any kind”, as is required under Article 1 CAT. Furthermore, Article 126 of the Penal Code “inappropriate[ly] limits the definition of torture to victims who are ‘accused’”, which means that it poten-

92 See, for example, Rodley, N., “The Definition(s) of Torture in International Law”, *Current Legal Problems*, Vol. 55, 2002, p. 476; Miller, G.H., Floersheimer Center for Constitutional Democracy, Benjamin N. Cardozo School of Law, *Defining Torture*, 2005, pp. 5–6; Lasson, K., “Torture, Truth Serum, and Ticking Bombs: Toward a Pragmatic Perspective on Coercive Interrogation”, *Loyola University Chicago Law Journal*, Vol. 39, 2008, p. 334.

93 Constitution of the Arab Republic of Egypt 2014, Articles 51–52.

94 Law No. 58 of 1937 “on the Penal Code”, Articles 126 and 282(2).

95 *Ibid.*, Article 63.

tially excludes individuals who are detained without charge.⁹⁶ The prohibition in Article 282(2) of the Penal Code is limited to “physical torture”, thus failing to recognise that severe mental pain or suffering is also proscribed under Article 1 CAT. The Committee against Torture (CAT Committee) has previously recommended that Egypt adopt a definition of torture which “fully corresponds” to the definition in Article 1(1) CAT.⁹⁷

During the violent suppression of dissenters during and in the aftermath of the Egyptian revolution, there were widespread reports of the torture of opposition protesters in detention centres.⁹⁸ A Human Rights Watch report published in February 2011 documented the cases of a number of protesters who had been tortured by the military after being arrested on 28 January 2011; one victim, who was apprehended by army officers and taken to a nearby military post, described the torture he was subjected to:

The treatment (...) was hellish. As soon as they brought me in, they beat me up badly. Then they ordered me to sit down for an interrogation. My hands were tied behind my back and several soldiers began to beat me. Just every soldier who came in, they were all in army uniforms, they would insult me and threaten to use horrible torture techniques on me, they said we were exhausting the military with all these useless protests and that we were destroying the country. I was slapped and kicked, and some of their commanders beat me with sticks and the butts of their rifles.⁹⁹

96 Human Rights Watch, *We Do Unreasonable Things Here: Torture and National Security in al-Sisi's Egypt*, 2017, p. 57, available at: <https://www.hrw.org/report/2017/09/05/we-do-unreasonable-things-here/torture-and-national-security-al-sisi-egypt>.

97 Committee against Torture (CAT Committee), *Concluding Observations: Egypt*, UN Doc. CAT/C/CR/29/4, 23 December 2002, Para E(b). In 2010, the CAT Committee issued a List of Issues which requested Egypt to provide detailed information on the applicable criminal provisions and penalties for acts of torture pursuant to its previous recommendation regarding the adoption of a comprehensive definition of torture. However, Egypt never submitted a reply to the List of Issues, nor has it submitted a subsequent periodic report: CAT Committee, *List of issues prior to the submission of the fifth periodic report of Egypt*, UN Doc. CAT/C/EGY/Q/5, 13 July 2010, Para 1.

98 See above, note 75, p. 2; See above, note 73, p. 6.

99 Human Rights Watch, “Egypt: Statements From Protesters Detained by Army”, *Human Rights Watch*, 8 February 2011, available at: <https://www.hrw.org/news/2011/02/08/egypt-statements-protesters-detained-army>.

In May 2017, the CAT Committee issued a report in which it considered allegations regarding the systemic use of torture in Egypt between 2012 and 2015, based on evidence submitted by the NGO Alkarama Foundation which contained at least 146 individual allegations of torture, as well as several mass claims.¹⁰⁰ The Committee noted that available NGO reports indicated that torture was “carried out by Egyptian military, police and prison officials for the purposes of punishing protesters”; the Committee noted that torture had been facilitated by a significant increase in arrests since July 2013 and the use of unofficial detention centres.¹⁰¹ Having considered all of the evidence before it, the Committee reached “the inescapable conclusion that torture is a systemic practice in Egypt”.¹⁰²

Later in 2017, Human Rights Watch published a report on “Torture and National Security in al-Sisi’s Egypt”, which exposed what was described as “an assembly line of abuse” against suspected dissidents.¹⁰³ The report found that the police and National Security officers routinely tortured perceived political dissidents through beatings, electric shocking and rape.¹⁰⁴ The report also found that the majority of detainees interviewed had informed prosecutors about the fact that they had been tortured, but “saw no evidence that prosecutors took any action to investigate their allegations”.¹⁰⁵ At the same time, the authorities have suppressed efforts to expose these abuses and counter torture, including through shutting down the Al-Nadeem Center for the Rehabilitation of Victims of Violence and Torture, as discussed further below.¹⁰⁶

Confessions extracted through torture are not excluded from trials. In one serious case occurring in May 2016, a military court reportedly sentenced eight civilians to death following their conviction for crimes which included belonging to the Muslim Brotherhood, allegedly relying on confessions obtained through

100 CAT Committee, *Report of the Committee against Torture (fifty-eighth, fifty-ninth and sixtieth sessions)*, UN Doc. A/72/44, 2017, Chapter V.

101 *Ibid.*, Para 66.

102 *Ibid.*, Para 69.

103 See above, note 96, p. 1.

104 *Ibid.*, pp. 3–4.

105 *Ibid.*, p. 4.

106 *Ibid.*, p. 6.

torture.¹⁰⁷ This is in direct contravention of Article 15 CAT, which provides that states parties shall ensure that any statement which is made as a result of torture “shall not be invoked as evidence in any proceedings”.

Arbitrary Detention and Violations of Fair Trial Rights

According to Human Rights Watch, there are currently tens of thousands of peaceful dissidents in detention.¹⁰⁸ Journalists, human rights activists and individuals suspected of having links to the Muslim Brotherhood have been targeted in particular, with many individuals being referred for prosecution in respect of their peaceful criticism of, or opposition to, the government under terrorism-related charges pursuant to the Anti-Terrorism Law.¹⁰⁹ Reporters Without Borders has described Egypt as “one of the world’s biggest prisons for journalists”.¹¹⁰ In 2018, 24 journalists were reportedly imprisoned, placing Egypt behind only Turkey as the country with the highest number of journalists in prison.¹¹¹

In the run-up to the 2018 presidential election, the authorities intensified their crackdown on opposition activists and perceived political dissidents. In May 2017, Amnesty International reported that at least 36 people were arrested; in many of these cases the arrest was reportedly due to comments made online about the elections.¹¹² In an official statement, the Interior Ministry announced that its communications unit had detained 40 people on charges including criticising the government via social media, insulting the

107 Freedom House, *Freedom in the World 2017: Egypt*, 2017, available at: <https://freedomhouse.org/report/freedom-world/2017/egypt>.

108 See above, note 5, Human Rights Watch, April 2018.

109 See above, note 5, Human Rights Watch, July 2018.

110 Reporters Without Borders, *Egypt: One of the world’s biggest prisons for journalists*, 2018, available at: <https://rsf.org/en/egypt>.

111 Reporters Without Borders, *Violations of press freedom barometer: The figures in 2018*, 2018, available at: https://rsf.org/en/barometer?year=2018&type_id=235#list-barometre.

112 Amnesty International, “Egypt: Former Presidential Candidate Khaled Ali Facing Trial Amid Crackdown on Political Activists”, *Amnesty International*, 24 May 2017, available at: <https://www.amnesty.org/en/press-releases/2017/05/egypt-former-presidential-candidate-khaled-ali-facing-trial-amid-crackdown-on-political-activists>.

President and disturbing public peace.¹¹³ Security forces also conducted a series of raids targeting members of political groups and parties, and raided the homes of five activists in Alexandria Governorate.¹¹⁴

This crackdown extended to presidential candidates who announced that they intended to run against President Sisi. Khaled Ali, a potential presidential opponent, was arrested in May 2017 on charges of “violating public morals”, with Amnesty International noting that his arrest “was clearly politically motivated”.¹¹⁵ In January 2018, Sami Anan, another potential presidential candidate, was arrested for a “serious breach of the laws of military service” after announcing that he would stand in the elections.¹¹⁶

This crackdown continued after President al-Sisi’s victory in the presidential election. In June 2018, the OHCHR noted with concern the recent spate of arrests and detentions of activists and journalists in Egypt: those arrested during May 2018 alone included prominent journalist and blogger Wael Abbas (accused of being a member of a “terrorist organisation” and publishing false news), civil society activist and lawyer Haytham Mohamadein (charged with calling for illegal protests), Shady al-Ghazaly Harb (charged with spreading false news) and comedian Shady Abu Zaid (accused of mocking the police).¹¹⁷ The OHCHR observed that arbitrary detention “has become a chronic problem in Egypt”.¹¹⁸

A further concern relates to the number of individuals held in pretrial detention, in violation of Article 14 ICCPR, which guarantees the right to a fair and public hearing by a competent, independent and impartial tribunal, and guarantees that individuals be tried “without undue delay”. Article 134 of the Code

113 Mohie, M., “Arrests of political opposition continues, former presidential candidate Khaled Ali summoned for questioning”, *Mada Masr*, 22 May 2017, available at: <https://www.madamasr.com/en/2017/05/22/feature/politics/arrests-of-political-opposition-continues-former-presidential-candidate-khaled-ali-summoned-for-questioning>.

114 *Ibid.*

115 See above, note 112.

116 BBC News, “Egypt election: Retired general and candidate Sami Anan arrested”, *BBC News*, 23 January 2018, available at: <http://www.bbc.com/news/world-middle-east-42795008>.

117 OHCHR, “Press briefing note on Egypt, United States and Ethiopia”, 5 June 2018, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23174&LangID=E>.

118 *Ibid.*

of Criminal Procedure sets out the circumstances in which pretrial detention can be imposed by a judge: where the defendant is caught *in flagrante*; where the defendant poses a risk of absconding; where the defendant poses a risk to the investigation; or where the case concerns security or public order.¹¹⁹ According to one commentator, such circumstances are defined broadly, giving judges “plenty of leeway in applying them”.¹²⁰

Prior to 2013, Article 143 of the Code of Criminal Procedure set limits on the duration of pretrial detention in Egypt, providing that this should not exceed six months for minor offences, 18 months for serious crimes, or two years for crimes carrying the death penalty or life imprisonment. Following a change to the law in 2013, in cases where individuals are facing a death sentence or life imprisonment, a judge may order detention for renewable periods of 45 days.¹²¹ There is evidence that this amendment, coupled with the broad conditions set out in Article 134 of the Code, has facilitated the circumvention of the ceiling on pretrial detention in cases where individuals are yet to be sentenced: the Egyptian Initiative for Personal Rights noted in 2016 that pretrial detention had become “a tool of political punishment”.¹²² Prosecutors have reportedly kept more than 1,400 individuals in pretrial detention past the two-year time limit, in violation of the Code of Criminal Procedure.¹²³ Those detained include photojournalist Mahmoud Abou Zeid (also known as Shawkan), who was arrested on 14 August 2013 for covering the use of force by the security forces in the context of the Rabaa massacre,¹²⁴ and journalist Hisham Gaafar, the director of the Mada Foundation for Media Development,

119 Law No. 150 of 1950 “on the Code of Criminal Procedure”, Article 134.

120 Project on Middle East Democracy, *The Role of the Public Prosecution in Egypt’s Repression*, 2017, p. 14, available at: <https://pomed.org/wp-content/uploads/2016/11/POMEDAnsaryEgyptReport.pdf>.

121 Presidential Decree No. 83 of 2013, “on Amending the Provisions of the Code of Criminal Procedure”.

122 Egyptian Initiative for Personal Rights, “The New Emergency Law: Endless Pretrial Detention as Political Punishment At least 1,464 people in Four Governorates Held in Pretrial Detention Longer than the Two Year Legal Limit”, 10 May 2016, available at: <https://eipr.org/en/press/2016/05/replacement-emergency-law-pretrial-detention-political-punishment>.

123 See above, note 120, p. 14.

124 Human Rights Council, *Opinions adopted by the Working Group on Arbitrary Detention at its seventy-sixth session, 22-26 August 2016 – Opinion No. 41/2016 concerning Mahmoud Abdel Shakour Abou Zeid Attitallah (Egypt)*, UN Doc. A/HRC/WGAD/2016/41, 2016.

who was arrested on 21 October 2015 on accusations of belonging to a “terrorist group”.¹²⁵

Use of Military and Emergency Courts

The Working Group on Arbitrary Detention has stated that military courts “cannot be considered as independent and impartial tribunals”, and should have no “jurisdiction to try civilians, whatever the charges they face.”¹²⁶ The HRC, in its General Comment No. 13, has stated that the trying of civilians by military courts “should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in [A]rticle 14”¹²⁷. This principle is guaranteed in Article 204 of the Egyptian Constitution, which provides that civilians cannot stand trial before military courts except in narrowly defined circumstances, including where they have committed a direct assault against military facilities.

However, on 27 October 2014, President al-Sisi issued Presidential Decree No. 136 of 2014,¹²⁸ expanding the jurisdiction of military courts to try civilians accused of offences against “vital” government and public facilities.¹²⁹ As discussed in Part 2, this provides military courts jurisdiction over any crimes committed on any public facility or property, such as government buildings and public universities.¹³⁰ The Decree has been used to refer individuals charged with offences related to their alleged role in protests, such as inciting violence and blocking roads, to military courts.¹³¹ In April 2016, Human

125 See above, note 7.

126 Human Rights Council, *Opinions Adopted by the Working Group on Arbitrary Detention: Opinion No. 27/2008 (Egypt)*, UN Doc. A/HRC/13/30/Add.1, 2010, p. 47, Para 40.

127 HRC, *General Comment No. 13: Article 14 (Administration of Justice)*, 13 April 1984, Para 4.

128 Presidential Decree No. 136 of 2014 “on Securing and Protection of Public and Vital Facilities”.

129 Sadek, G., “Egypt: Decree Allowing Armed Forces to Assist Law Enforcement Agencies in Protecting Government and Public Facilities”, *Global Legal Monitor*, 6 November 2014, available at: <http://www.loc.gov/law/foreign-news/article/egypt-decree-allowing-armed-forces-to-assist-law-enforcement-agencies-in-protecting-government-and-public-facilities>.

130 International Commission of Jurists, *Egypt’s Judiciary: A Tool of Repression Lack of Effective Guarantees of Independence and Accountability*, 2016, p. 136, available at: <https://www.icj.org/wp-content/uploads/2016/10/Egypt-Tool-of-repression-Publications-Reports-Thematic-reports-2016-ENG-1.pdf>.

131 Human Rights Watch, “Egypt: Surge of Military Trials”, *Human Rights Watch*, 18 December 2014, available at: <https://www.hrw.org/news/2014/12/18/egypt-surge-military-trials>.

Rights Watch reported that military courts had tried at least 7,420 Egyptian civilians since October 2014, a significant number of whom were reportedly accused of participating in illegal protests or of being a member of or supporting the Muslim Brotherhood.¹³² In May 2018, a prominent Egyptian freelance journalist – Ismail Alexandrani – was sentenced to 10 years in prison by a military court in Cairo for allegedly spreading “false news” and joining a banned organisation (the Muslim Brotherhood).¹³³

Since late 2017, another parallel judicial system – comprising the Emergency State Security Courts (ESSCs) – has been operating under the state of emergency.¹³⁴ As discussed in Part 2, Law No. 162 of 1958 (the “Emergency Law”)¹³⁵ authorised the establishment of Emergency State Security Courts; these courts operate during times of state emergency and are, similar to the military judiciary, independent from the ordinary judiciary and directly supervised by the executive branch of government.¹³⁶ In October 2017, the Prime Minister of Egypt issued a Decree that reinstated the jurisdiction of the ESSCs to try defendants, including for alleged violations of Law No. 107 of 2013, the Anti-Terrorism Law and a number of other laws.¹³⁷ The ESSCs have been used to prosecute a number of peaceful activists, including a number of Nubian human rights activists who were arrested for participating in an unlicensed protest (see further discussion in Part 3.4).¹³⁸

132 Human Rights Watch, “Egypt: 7,400 Civilians Tried In Military Courts”, *Human Rights Watch*, 13 April 2016, available at: <https://www.hrw.org/news/2016/04/13/egypt-7400-civilians-tried-military-courts>.

133 Committee to Protect Journalists, “Military court in Egypt sentences journalist to 10 years in jail”, *Committee to Protect Journalists*, 22 May 2018, available at: <https://cpj.org/2018/05/military-court-in-egypt-sentences-journalist-to-10.php>.

134 See above, note 5, July 2018.

135 Law No. 162 of 1958 “on the State of Emergency”.

136 See above, note 130, p. 147.

137 The Prime Minister’s decree included: Law No. 107 of 2013 “The Protest Law”; Law No. 10 of 1914 “The Assembly Law”; Law No. 94 of 2015 “The Anti-terrorism Law”; Law No. 34 of 2011 “Criminalizing Attacks on Freedom of Work and Devastating Establishments”; Law No. 394 of 1954 “The Weapons and Ammunition Law”; Law No. 113 of 2008 “The Freedom of Worship Law”. It also includes crimes related to terrorism, violations of national security, intimidation, hooliganism, blocking transportation, certain crimes in the penal code, and crimes contravening the pricing and supply laws.

138 See above, note 5, Human Rights Watch, July 2018.

Arrest of Protesters: Protests Surrounding the Tiran and Sanafir Islands

In the field research stage of this report, researchers spoke to a number of individuals who had been arrested by the authorities for their involvement in protests in relation to the Tiran and Sanafir islands in April 2016. The islands are located in the Straits of Tiran – a strategically important stretch of water used by Israel to access the Red Sea – and have been the subject of a longstanding dispute between Egypt and Saudi Arabia.¹³⁹ Whilst the islands are uninhabited, Egyptian troops have been stationed on the islands since 1950; however, Saudi Arabia began to dispute Egypt's sovereignty over the islands in 1957.¹⁴⁰ In April 2016, President al-Sisi reached an agreement with Saudi King Salman to relinquish sovereign control over the islands to Saudi Arabia; this prompted mass protests, with critics claiming that al-Sisi was “selling” the islands in return for Saudi aid given that King Salman signed a number of multi-billion dollar development agreements during his April 2016 visit to Egypt.¹⁴¹

One individual who was arrested after taking part in the April 2016 protests explained that he was taken to a security camp where around 350–400 other individuals were being detained. He was then transferred to al Nahda prison in Cairo, where he was held in pretrial detention for two months before being released. When asked why he believed he had been subjected to this treatment, he explained as follows:

To send a message to any citizen or politician that anyone who protests will be arrested if he is not with the regime. (...) The idea of you appearing to understand the law or the Constitution means that you may cause trouble and should be arrested. (...) Anyone who expresses a different opinion or even thinks is arrested.”¹⁴²

139 The Tahir Institute for Middle East Policy, *Tiran and Sanafir: Developments, Dynamics, and Implications*, August 2017, p. 8, available at: <https://timep.org/wp-content/uploads/2017/08/Tiran-and-Sanafir-Developments-Dynamics-and-Implications-web.pdf>; BBC News, “Egypt’s parliament approves islands deal to Saudi Arabia”, *BBC News*, 14 June 2017, available at: <https://www.bbc.co.uk/news/world-middle-east-40278568>.

140 *Ibid.*, The Tahir Institute for Middle East Policy, p. 8.

141 *Ibid.*; See above, note 139, BBC News.

142 Interview A14.

Another individual who took part in protests against the cessation of the Tiran and Sanafir islands explained that he had been arrested and taken to National Security, where he was blindfolded and restrained with ropes around his hands and legs, before being taken to court and charged with, *inter alia*, insulting the President, joining a prohibited group, and working to undermine the Constitution. The individual explained that the prosecution used screenshots of posts on his Facebook account in order to demonstrate his guilt. The case was then transferred to the ESSCs.¹⁴³

Discriminatory Denial of Freedom of Expression

Egypt is bound to ensure the right to freedom of expression without discrimination under Articles 2 and 19 ICCPR. Alongside these international obligations, as noted above, Article 65 of the Constitution guarantees freedom of thought and opinion, while Articles 70, 71 and 72 provide guarantees related to the freedom of the media.

In practice, freedom of expression in Egypt is severely restricted. In 2018, Reporters Without Borders described the state of media freedom in the country as “extremely worrying”, and ranked Egypt 161st out of the 180 countries in its World Press Freedom Index.¹⁴⁴ In its report on the status of freedom of expression in Egypt during 2017, the Association for Freedom of Thought and Expression (AFTE), an Egyptian human rights organisation, stated that the Egyptian state has “sought to eliminate all forms of free expression of opinion” in the period since President al-Sisi had come to power.¹⁴⁵

There has been a particular effort to suppress freedom of expression online. AFTE reported that the government blocked at least 450 websites during the course of 2017, including independent news outlets, social media platforms,

143 Interview A18.

144 Reporters Without Borders, “Egypt”, *Reporters Without Borders*, 2016, available at: <https://rsf.org/en/egypt>.

145 AFTE, *The Fifth Annual Report On The Status Of Freedom Of Expression In Egypt – 2017*, 2018, p. 7, available at: <https://afteegypt.org/wp-content/uploads/%D8%A7%D9%84%D8%AA%D9%82%D8%B1%D9%8A%D8%B1-%D8%A7%D9%84%D8%B3%D9%86%D9%88%D9%8A-2017-english2.pdf>.

websites of human rights organisations, and VPN and proxy services.¹⁴⁶ On 24 May 2017 alone, the State-run news agency, Mena, announced that the authorities had blocked 21 news websites, including those known for being critical of the government, claiming that they were “spreading lies” and “supporting terrorism”.¹⁴⁷

AFTE reported in early 2018 that the government was seeking work to “codify its repressive measures”, including through the introduction of legislative amendments.¹⁴⁸ On 18 August 2018, President al-Sisi ratified a new cybercrime law – the Anti-Cyber and Information Technology Crimes Law¹⁴⁹ (the “Cybercrime Law”) – which has the purported aim of tackling instability and terrorism.¹⁵⁰ Article 2 of the Cybercrime Law regulates the activities of internet service providers and allows for the comprehensive surveillance of communications, requiring telecommunications companies to retain and store users’ data for 180 days. Article 7 grants the state the authority to censor Egyptian-based or foreign websites which disseminate “propaganda” perceived to be threatening to national security or the national economy.¹⁵¹ AFTE has observed that the Cybercrime Law is “characterised by vagueness, which allows the possibility of extending the penalties of the law to any ordinary act that is perceived to be contrary to the policies of the Egyptian authorities”.¹⁵²

146 *Ibid.*, p. 16; See above, note 8.

147 Article 19, “Egypt: Blocking news websites violates the constitution and international obligations”, *Article 19*, 30 May 2017, available at: <https://www.article19.org/resources.php/resource/38768/en/egypt-blocking-news-websites-violates-the-constitution-and-international-obligations>; Alkarama, “Egypt: 21 News Agencies’ Websites Blocked for “Spreading Lies” and “Supporting Terrorism”, *Alkarama*, May 2017, available at: <https://www.alkarama.org/en/articles/egypt-21-news-agencies-websites-blocked-spreading-lies-and-supporting-terrorism>.

148 See above, note 145, p. 7.

149 Law No. 175 of 2018 on “Anti-Cyber and Information Technology Crimes”.

150 BBC News, “Egypt internet: Sisi ratifies law tightening control over websites”, *BBC News*, 18 August 2018, available at: <https://www.bbc.com/news/world-middle-east-45237171>.

151 AFTE, “Egyptian Parliament Approves Cybercrime Law Legalizing The Blocking Of Websites And Full Surveillance Of Egyptians”, *AFTE*, 20 June 2018, available at: https://afteegypt.org/digital_freedoms-2/2018/06/20/15358-afteegypt.html?lang=en.

152 Association for Freedom of Thought and Expression, “Egyptian Parliament Approves Cybercrime Law Legalizing The Blocking Of Websites And Full Surveillance Of Egyptians”, 20 June 2018, available at: https://afteegypt.org/digital_freedoms-2/2018/06/20/15358-afteegypt.html?lang=en.

In July 2018, media reports stated that Parliament had approved a draft Law giving the state power to block social media accounts, and deeming any social media account with more than 5,000 followers as media outlets and thus under the supervision of Egypt's media regulator, the Supreme Council for the Administration of the Media.¹⁵³ This law was ratified on 1 September 2018.¹⁵⁴

Discriminatory Denial of Freedom of Association

As noted above, between 2002 and 2017, the work of civil society in Egypt was governed by Law No. 84 of 2002 on Associations and Community Foundations, and its implementing regulation.¹⁵⁵ The Law gave significant discretion to the Ministry of Social Solidarity, including the authority to deny legal registration to associations on grounds such as a belief that an association's purposes threaten national unity or are contrary to "public order or morals".¹⁵⁶ The Law also prohibited any association from receiving foreign funds without advance approval from the Ministry of Social Solidarity.¹⁵⁷

From 2011 onwards, the authorities increasingly used provisions of Law No. 84 of 2002 to target human rights defenders and their organisations as part of a broader crackdown on civil society.¹⁵⁸ In July 2011, the authorities began an investigation into the funding of a number of CSOs in what became known as Case 173 of 2011; the first phase of the investigation in this case was concluded in June 2013, and saw 43 foreign and Egyptian national employees of NGOs sentenced to between one and five years in prison, having been charged with operating unlawfully in Egypt and receiving foreign funding without permission.¹⁵⁹ The decision resulted in the closure, among

153 BBC News, "Egypt to regulate popular social media users", *BBC News*, 17 July 2018, available at: <https://www.bbc.com/news/world-middle-east-44858547>.

154 The Associated Press, "Egypt's president ratifies law to monitor social media", *ABC News*, 1 September 2018, available at: <https://abcnews.go.com/Technology/wireStory/egypts-president-ratifies-law-monitor-social-media-57551126>.

155 Implementing Regulation for Law No. 84 of 2002 (Ministry of Social Affairs Decree 178 of 2002).

156 See above, note 46, Article 11.

157 *Ibid.*, Article 17.

158 Amnesty International, "Egypt, Unprecedented Crackdown on NGOs", *Amnesty International*, 23 March 2016, available at: <https://www.amnesty.org/en/press-releases/2016/03/egypt-unprecedented-crackdown-on-ngos>.

159 *Ibid.*

others, of the Egyptian branches of the National Democratic Institute, the International Republican Institute, Freedom House, the International Center for Journalists and the Konrad Adenauer Foundation.¹⁶⁰ The case was reopened in 2016, and during the course of 2016 and 2017 at least 26 NGO directors were subject to asset freezes and travel bans.¹⁶¹ For example, the Al-Nadeem Center for the Rehabilitation of Victims of Violence and Torture was raided by security forces in February 2016 on suspicion of receiving foreign funding,¹⁶² and was subsequently closed by the authorities in February 2017.¹⁶³ On 7 December 2016, numerous human rights defenders were arrested in connection with Case 173 of 2011, including human rights lawyer and founder of the Egyptian Women's Legal Assistance, Azza Soliman.¹⁶⁴ Azza Soliman was released on bail on the same day, and is still facing charges including up to 25 years in prison.¹⁶⁵

As discussed above, in May 2017 President al-Sisi signed Law No. 70 of 2017 on Associations and other Foundations Working in the Field of Civil Work,¹⁶⁶ a highly restrictive new law which imposes further limitations on the conduct and activities of CSOs in Egypt. The OHCHR has expressed concern at the deepen-

160 *Ibid.*

161 Cairo Institute for Human Rights, "Attempted Shutdown of the Al-Nadeem Center Exposes the War on Independent Rights Organizations, Rights Groups: we are operating in a repressive climate with the state harassing us at every juncture", 22 February 2016, available at: <https://cihrs.org/attempted-shutdown-of-the-nadeem-center-exposes-the-war-on-independent-rights-organizationsrights-groups-we-are-operating-in-a-repressive-climate-with-the-state-harassing-us-at-every-juncture/?lang=en>.

162 Nazra Center for Feminist Studies, "Nadeem Centre Forcibly Shut Down: Joint Statement", 10 February 2017, available at: <http://nazra.org/en/2017/02/nadeem-center-forcibly-shut-down>.

163 European Union External Action, "Statement by the Spokesperson on the closure of the Al-Nadeem Center for Rehabilitation of Victims of Violence", 9 February 2017, available at: https://eeas.europa.eu/headquarters/headquarters-Homepage/20325/statement-spokesperson-closure-al-nadeem-center-rehabilitation-victims-violence_en.

164 Hassan, M., "What has Azza Soliman done?" *Open Democracy*, 1 December 2016, available at: <https://www.opendemocracy.net/north-africa-west-asia/mozn-hassan/what-has-azza-done-azza-soliman-unique-feminist-at-risk>.

165 Amnesty International, "Speak Out for Women's Rights Defender Azza Soliman", *Amnesty International*, 3 May 2017, available at: <https://www.amnesty.org/en/get-involved/take-action/speak-out-for-egypt-womens-rights-defender-azza-soliman/>; Amnesty International, *BRAVE – Azza Soliman*, 23 August 2017, available at: <https://www.youtube.com/watch?v=aUtBxeajIXI>.

166 See above, note 52.

ing restrictions on the operation of NGOs in Egypt, stating that such restrictions prevent critical human rights monitoring, advocacy and reporting activities.¹⁶⁷

Discriminatory Denial of Free Movement

Article 12 ICCPR enshrines the right to freedom of movement, including freedom to choose one's residence and the right to leave any country, including one's own. Article 12(2) specifically guarantees that "[e]veryone shall be free to leave any country, including his own". While Article 12(3) provides that freedom of movement may be restricted under national law to protect national security, public order, public health or the rights and freedoms of others, any such restrictions must be consistent with other rights, including the right to non-discrimination.¹⁶⁸ Article 62 of the Egyptian Constitution guarantees freedom of movement, and states that "[n]o citizen may be banned from leaving state territory" except by judicial order for a specified period of time, and in cases specified by the law.

The Egyptian authorities have imposed travel restrictions on those who are, or are perceived to be, politically opposed to the government. In 2015, Human Rights Watch reported that it had documented at least 32 cases in which airport security officials had confiscated the passports of political activists and NGO workers, thus preventing them from travelling.¹⁶⁹ In a more recent case, Esraa Abdel Fattah, a journalist and member of the Egyptian Democratic Academy (an NGO), was stopped by police officers at Cairo International Airport on 3 January 2015 and was prevented from boarding a flight to Germany on the basis that a judicial travel ban had been issued against her.¹⁷⁰ Ms Fattah sought to challenge the travel ban issued against her before the State Council, but her claim was dismissed by the courts on 9 May 2017 on the basis that they lacked jurisdiction over the matter.¹⁷¹

167 OHCHR, *Repressive New NGO Law Deeply Damaging For Human Rights in Egypt – Zeid*, 1 June 2017, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21678&LangID=E>.

168 HRC, *General Comment No. 27: Article 12 (Freedom of Movement)*, UN Doc. CCPR/C/21/Rev.1/Add.9, 1999, Para 2.

169 Human Rights Watch, "Egypt: Scores Barred From Traveling", *Human Rights Watch*, 1 November 2015, available at: <https://www.hrw.org/news/2015/11/01/egypt-scores-barred-traveling>.

170 Front Line Defenders, "Case History: Esraa Abdel Fattah", *Front Line Defenders*, available at: <https://www.frontlinedefenders.org/en/case/case-history-esraa-abdel-fattah>.

171 *Ibid.*

Equal Rights Trust researchers spoke to a number of human rights defenders who had been affected by travel bans, who spoke about the impact that such measures have had on their ability to work overseas, and of the failure of the authorities to address complaints about the infringement of their rights.¹⁷² One individual explained as follows:

I faced a lot of difficulties that came to a head when I was banned from travelling to Germany from Cairo in 2015 to attend a training workshop about violence against women. The organiser of the training was a German NGO, and Tunisian and other European organisations were invited to the workshop. When I was passing the passports department I was stopped and they said there was a resemblance between my name and a wanted person. They told me to wait and that it was probably a mistake. (...) After a while the officer went to make a phone call and came back and said that a "secret" decision had been made a month earlier by National Security, which banned me from travelling. (...) For a while I was banned from travelling and afraid to talk about what happened, because I am working for an international organisation. (...) I sent a letter to the Attorney General, but it wasn't seriously investigated. I also tried to bring a lawsuit with some colleagues but it failed. I submitted a complaint to the National Council for Human Rights but, again, nothing happened. (...) This is main problem of the regime... anyone who doesn't follow the "official story" is considered a betrayer and traitor. Just because I have an opposing opinion the regime doesn't just refuse to acknowledge it, it refuses its existence at all and refuses the concept of difference itself.¹⁷³

Conclusion

While the Egyptian Constitution provides a right to non-discrimination on grounds including political affiliation, in reality, discrimination on the basis

172 Interview A2.

173 Interview A13.

of political opinion is widespread and severe. The principal pattern of discrimination on the basis of political opinion is the suppression of dissent by the state and its agents. Those who are, or are perceived to be, in opposition to the ruling party – members and representatives of opposition parties, society activists, human rights defenders, independent journalists and social media activists – experience discriminatory violations of their civil and political rights. Constitutional rights are undermined by discriminatory laws, which restrict the rights to freedom of expression, assembly and association in ways which are not consistent with the limitations permitted in international law. Such laws have been used to stifle actual and perceived political opponents and to suppress the work of civil society actors, including human rights defenders and journalists.

The use of discriminatory laws to suppress political dissent has been coupled with the use of state-sanctioned discriminatory violence, torture and ill-treatment against dissenters, in particular protestors, and the arbitrary detention of those who are, or are perceived to be, in opposition to the government. Thousands of peaceful dissidents are reportedly detained in Egypt, where they face violations of fair trial rights, including through the use of pretrial detention and trial by military and exceptional courts. Freedom of expression is increasingly restricted, with the authorities having blocked hundreds of websites – including independent news outlets and social media platforms – and introducing repressive legislation which regulates the activities of internet service providers and authorises the censorship of certain websites. Human rights defenders and their organisations have also been subject to a crackdown by the authorities, with individuals and organisations being subject to travel bans and asset freezes in violation of their rights under international law.

3.2 Discrimination and Inequality on the Basis of Religion or Belief

Under international law, freedom of religion or belief is protected by Article 18 ICCPR, while freedom from discrimination on grounds of religion or belief is protected by both Article 2(1) – which prohibits discrimination in the enjoyment of other Covenant rights – and Article 26 ICCPR. Article 2(2) ICESCR provides a guarantee of non-discrimination in the enjoyment of the economic, social and cultural rights protected by that Covenant. In the case of children, Article 2 of the Convention on the Rights of the Child (CRC) provides

a guarantee of non-discrimination, while Article 14 further provides for the right of the child to freedom of thought, conscience and religion.

Pursuant to regional human rights treaties, Egypt must guarantee freedom from discrimination without distinction of any kind on grounds including religion (Article 2 of the African Charter on Human and Peoples' Rights (ACHPR)). Article 3 of the African Charter on the Rights and Welfare of the Child (ACRWC) enshrines the principle of non-discrimination irrespective of a child's or his or her parents' or legal guardians' religion. Article 9 ACRWC sets out the right to freedom of thought, conscience and religion of every child. Further, Article 2 of the African Youth Charter guarantees the enjoyment of rights without discrimination on the grounds of religion, while Article 6 provides the right to freedom of thought, conscience and religion.

The lack of official census data makes it difficult to be precise about the numbers and size of religious groups in Egypt, and reports vary. However, it is estimated that approximately 95% of the population is Muslim, of whom approximately 90% are Sunni Muslim.¹⁷⁴ The number of Muslims practicing Sufism, a form of worship prevalent in both the Sunni and Shia sects, is reported to be 15 million,¹⁷⁵ which equates to approximately 16% of the total Muslim population.¹⁷⁶ There are also small groups of Quranist Muslims, Ahmadi Muslims and a small Dawoodi (a branch of Ismaili Shia Islam) Bohra community, estimated at around 660 people.¹⁷⁷

Coptic Christians are the largest non-Muslim religious group in Egypt, and Egyptian Coptic Christians are the largest Christian community in the Arab world.¹⁷⁸ Reports differ as to the size of the group: some sources report

174 Pew Research Center, *Global Religious Futures Project: Egypt*, visited 23 November 2018, available at: http://www.globalreligiousfutures.org/countries/egypt/religious_demography#/?affiliations_religion_id=0&affiliations_year=2010; United States Department of State, *Egypt 2016 International Religious Freedom Report*, 2016, available at: <https://www.state.gov/documents/organization/269132.pdf>.

175 Minority Rights Group International, *Sufi Muslims*, visited 23 November 2018, available at: <http://minorityrights.org/minorities/sufi-muslims>.

176 Based on estimates of the total number of Muslims in Egypt; see above, note 174.

177 *Ibid.*, United States Department of State, p. 3.

178 Minority Rights Group International, *Copts of Egypt*, updated October 2017, available at: <http://minorityrights.org/minorities/copts>.

the Coptic Christian community as comprising between 15 and 18 million people,¹⁷⁹ whilst Minority Rights Group International has stated that estimates of the number of Coptic Christians range between 4.7 and 7.1 million.¹⁸⁰ Other Christian communities reportedly constitute less than 2% of the population; these include the Armenian Apostolic, Catholic (Armenian, Chaldean, Melkite, Maronite, Greek, Latin and Syrian), Orthodox (Greek and Syrian), Anglican/Episcopalian and other Protestant churches.¹⁸¹ There are also reportedly between 1,000 and 1,500 Jehovah's Witnesses.¹⁸²

Following a mass exodus of Jewish people to Israel in 1948, the Jewish community is said to comprise between only 18 and 23 individuals.¹⁸³ There are also believed to be between 500 and 7,000 members of the Bahá'í faith in Egypt, though, as these figures indicate, there is uncertainty about their exact number due to the annulment of their official legal status in 1960.¹⁸⁴

Dar al-Ifta, the state-run Sunni foundation authorised to issue religious decisions, has estimated that there are only 866 atheists in Egypt,¹⁸⁵ though this figure has been questioned by Jubilee Campaign, a USA-based organisation.¹⁸⁶

179 Primo, V., "What does Ramadan mean for Egypt's Coptic Christians?", *Cairo Scene*, 17 June 2015, available at: <http://www.cairoscene.com/In-Depth/What-does-Ramadan-mean-for-Egypt-s-Coptic-Christian>.

180 See above, note 178.

181 See above, note 174, United States Department of State, p. 2.

182 Minority Rights Group International, *Jehovah's Witnesses of Egypt*, updated October 2017, available at: <http://minorityrights.org/minorities/copts>.

183 The Economist, "Muslims in Egypt are trying to preserve its Jewish heritage", *The Economist*, 9 September 2017, available at: <https://www.economist.com/news/middle-east-and-africa/21728590-egypts-leaders-have-increased-their-outreach-shrinking-jewish>; Parisse, E., "Egypt's last Jews aim to keep heritage alive", *The Times of Israel*, 26 March 2017, available at: <https://www.timesofisrael.com/egypts-last-jews-aim-to-keep-alive-heritage>.

184 See: Minority Rights Group International, *Bahá'í of Egypt*, updated October 2017, available at: <http://minorityrights.org/minorities/bahai-of-egypt/>; and Daily News Egypt, "Ministry of Endowments warns against 'Bahá'í threat'", *Daily News Egypt*, 11 December 2014, available at: <https://dailynewsegyp.com/2014/12/11/ministry-endowments-warns-bahai-threat>.

185 Kingsley, P., "Egypt's atheists number 866 – precisely", *The Guardian*, 12 December 2014, available at: <https://www.theguardian.com/world/2014/dec/12/egypt-highest-number-atheists-arab-world-866>.

186 Jubilee Campaign, *Egypt Report: Human Rights and Freedom of Religion in Egypt: Statement for Human Rights Council Session 28*, visited 23 November 2018, available at: <http://jubileecampaign.org/country-reports/2015-reports/2015-egypt-report>.

Legal and Policy Framework

As noted above, Article 53 of the Constitution provides that all citizens are equal before the law and are equal in rights, freedoms and general duties without discrimination on grounds including religion or belief. Article 53 further provides that discrimination is a crime punishable by law,¹⁸⁷ and imposes an obligation on the state to “take all necessary measures to eliminate all forms of discrimination”. Article 64 establishes that “freedom of belief is absolute” and provides for the right to practice religious rituals and establish places of worship for the followers of “Divine Religions”.

As discussed in more detail below, Islam is afforded legal primacy under the Constitution: Article 2 declares that “Islam is the religion of the State” and that “[t]he principles of Islamic Sharia are the main source of legislation”. Article 7 of the Constitution establishes a specialised religious body, Al-Azhar, which is “responsible for preaching Islam and disseminating the religious sciences and the Arabic language in Egypt and the world”. It is described as “an independent scientific Islamic institution” and “the main authority for religious sciences, and Islamic affairs”. Under Article 4 of the 2012 Constitution, there was an obligation to consult Al-Azhar’s Body of Senior Scholars in relation to matters pertaining to Islamic law; however, this requirement was removed from the 2014 Constitution, which states in the Preamble that the reference for the interpretation of the principles of Islamic Sharia is “the relevant texts in the collected rulings of the Supreme Constitutional Court”. As such, the current Constitution “restores the status quo which existed prior to the 2012 Constitution” under which “the Supreme Constitutional Court was solely competent to determine the scope of the Sharia clause”.¹⁸⁸

Article 180 of the Constitution, which regulates the election of local councils, includes quotas for certain groups – such as youth under the age of 35, and women – and provides for “proper representation of Christians”. However, Article 180 does not elaborate on what is meant by “proper representation”

¹⁸⁷ See section 2.2.1 for discussion of the criminalisation of discrimination, As discussed there, international best practice dictates that discrimination is a civil, not a criminal, matter, for a number of reasons.

¹⁸⁸ See above, note 30.

in this context, and it also fails to apply the same requirement to individuals belonging to other religious minorities.

Article 161*bis* of the “Penal Code” provides that discrimination on the basis of “religion or creed” is a crime which shall be punished with imprisonment and a fine of not less than LE 30,000 and no more than LE 50,000 “if this discrimination resulted in a violation of the principle of equal opportunities, social justice or public peace”. As discussed in Part 2 of this report, this broad criminalisation of discrimination is contrary to international best practice, which dictates that discrimination should be treated as a civil rather than criminal law matter.

Discriminatory Laws and Policies

There are several discriminatory provisions within Egyptian legislation which limit the right to freedom of religion or belief for practitioners of certain faiths and grant legal benefits to other faith groups. Discriminatory provisions are found in the Constitution, the Penal Code and other legislation. Furthermore, the government has in recent years pursued national policies which are discriminatory against atheists, and certain political actors have even proposed making atheism a criminal offence under the Penal Code.

Constitution

The HRC has stated that where a religion is recognised as an official state religion, states are required to ensure that such recognition does not impair or violate the rights of other individuals, nor result in any discrimination against either adherents of other religions or non-believers.¹⁸⁹ In particular, states must ensure that recognition of an official religion does not impose “special restrictions on the practice of other faiths”.¹⁹⁰

The Egyptian Constitution does not meet this standard. Notably, while Article 64 of the Constitution states that freedom of belief is “absolute”, it goes on to limit the “freedom of practising religious rituals and establish-

189 HRC, *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion*, UN Doc. CCPR/C/21/Rev.1/Add.4, 1993, Para 9.

190 *Ibid.*

ing worship places” to the “revealed religions”.¹⁹¹ In practice, the so-called “revealed religions” are commonly understood to be, Islam, Christianity and Judaism.¹⁹² Thus, the Constitution embeds a directly discriminatory principle into the constitutional right to freedom of religion itself – that the right to practice and to manifest one’s faith is recognised only for adherents of certain specific faiths. Whilst members of the Bahá’i community reportedly lobbied during the constitutional drafting process for recognition of their rights to practice their own religious laws and to establish places of worship, they were unsuccessful.¹⁹³

Penal Code

The Penal Code contains a number of provisions which are discriminatory or are open to discriminatory interpretation and application on the grounds of religion or belief. Firstly, Article 98(f) contains a criminal prohibition of blasphemy:

*Whoever shall, by speech or in writing or by any other means, use religion for the purpose of propagating or approving extremist ideas intending to stir up discord, contempt or disdain within or of any of the Divine Religions or the sects belonging thereto, or prejudicing national unity or social peace, shall be punished by imprisonment for a period of not less than six months and not exceeding five years, or by a fine of not less than 500 Egyptian pounds and not exceeding 1,000 Egyptian pounds.*¹⁹⁴

As with Article 64 of the Constitution, the term “Divine Religions” is not defined, but is understood and interpreted as referring to the religions of Islam, Christianity and Judaism.¹⁹⁵ Article 161(1) criminalises “[p]rint-

191 See above, note 93, Article 64.

192 Although the “three revealed religions” are not expressly defined, the Constitution goes on to make special provisions (Articles 2-3) concerning the status and place of Islam, Christianity and Judaism in the legal system. See also, above, note 30.

193 See above, note 184, Minority Rights Group International.

194 See above, note 49, Article 98(f).

195 A reference that can also be found in the Preamble to the Constitution; See above, note 186.

ing or publishing a book which is viewed as holy by members of a religion whose rituals are publicly held, if the text of this book is deliberately distorted in a way that changes its meaning”,¹⁹⁶ whilst Article 161(2) imposes a criminal penalty for individuals “imitating a religious ceremony in a public place or gathering, with the intention of ridiculing it or for the viewing of those present”.¹⁹⁷

Articles 98(f), 161(1) and 161(2) of the Penal Code are directly discriminatory on the grounds of religious belief insofar as they criminalise actual or perceived criticism of Islam, Christianity, and Judaism, but do not impose any criminal prohibition in respect of the criticism of other religions. Moreover, these provisions may be indirectly discriminatory, in that their application in practice is likely to have a disproportionate impact on non-Muslims (or those practicing heterodox interpretations of Islam), given the status of Islam as the official state religion and the fact that the faith is practiced by a large proportion of the population. In practice, blasphemy provisions such as these discriminate against all those who profess alternative views of a particular religion, whether this be on the basis of their alternative religion, their atheism, or their belief in a heterodox interpretation of that religion. Such provisions therefore violate the right to non-discrimination in respect of the right to freedom of thought, conscience and religion protected under Article 18(1) ICCPR read in conjunction with Article 2(1). The HRC has urged states to remove provisions such as these, warning that “prohibitions of displays of lack of respect for a religion or other belief system (...) are incompatible with the Covenant”.¹⁹⁸ The UN Special Rapporteur on freedom of religion or belief has made similar observations, noting that such laws “typically have a stifling effect on open dialogue and public discourse, often particularly affecting persons belonging to religious minorities”.¹⁹⁹

In 2016, three Christian children in Minya Governorate were sentenced to five years in prison pursuant to Articles 98(f), 160 and 161 of the Penal Code for imitating Islamic prayer and the act of beheading in a video filmed by their

196 See above, note 49, Article 161(1).

197 *Ibid.*, Article 161(2).

198 See above, note 2, Para 48.

199 Human Rights Council, *Report of the Special Rapporteur on Freedom of Religion or Belief*, Heiner Bielefeldt, UN Doc. A/HRC/25/58, 2013, Para 70(e).

teacher.²⁰⁰ A fourth child was placed in a juvenile facility, while the teacher was sentenced to three years imprisonment in a separate trial.²⁰¹ The convictions were condemned by Egyptian and international human rights groups, who called for the repeal of Article 98(f).²⁰² Article 98(f) was also used to prosecute writer Fatma Naoot in 2016; Ms Naoot received a three year prison sentence (later reduced to six months on appeal) for criticising the tradition of slaughtering sheep as part of the Islamic holiday of Eid Al-Adha on Facebook.²⁰³ In 2015, TV presenter Islam al-Behairy, was sentenced to one year in prison for defaming Islam on television; he was pardoned by President al-Sisi in 2016.²⁰⁴ As discussed further below, these provisions of the Penal Code have also been used to clampdown on atheism.

Law No. 143 of 1994 on Civil Status

Under Article 48 of Law No. 143 of 1994 on Civil Status, every citizen must apply for a national identity card within six months of turning 16 years of age. Such identity cards record *inter alia* an individual's religious identity and are required in order to enrol in educational institutions, gain employment, access medical treatment and open a bank account.²⁰⁵

Consistent with the special constitutional status afforded to the “revealed religions”, historically, the Egyptian government only recognised Islam, Christianity

200 Human Rights Watch, “Egypt: Reverse Blasphemy Sentences against Christian Children”, *Human Rights Watch*, 13 March 2016, available at: <https://www.hrw.org/news/2016/03/13/egypt-reverse-blasphemy-sentences-against-christian-children>.

201 *Ibid.*

202 *Ibid.*; EIPR, “EIPR condemns five-year prison sentence for children on blasphemy charges”, 25 February 2016, available at: <https://eipr.org/en/press/2016/02/eipr-condemns-five-year-prison-sentence-children-blasphemy-charges-12-defendants>.

203 Gamal El-Din, E., “Egyptian court upholds three year jail sentence for writer Fatma Naoot”, *Ahram Online*, 31 March 2016, available at: <http://english.ahram.org.eg/NewsContent/1/0/198367/Egypt/0/Egyptian-court-upholds-three-year-jail-sentence-fo.aspx>; Masriya, A., “Writer Fatma Naoot’s sentence reduced to six months”, *Egypt Independent*, 24 November 2016, available at: <http://www.egyptindependent.com/writer-fatma-naoot-s-sentence-reduced-six-months>.

204 Lahham, L, “President al Sisi grants amnesty to Islamic thinker Islam Al-Behairy”, *AsiaNews*, 21 November 2016, available at: <http://www.asianews.it/news-en/President-al-Sisi-grants-amnesty-to-Islamic-thinker-Islam-Al-Behairy-39193.html>.

205 Human Rights Watch, *Prohibited Identities: State Interference with Religious Freedom*, 2007, available at: <https://www.hrw.org/report/2007/11/11/prohibited-identities/state-interference-religious-freedom>.

and Judaism when recording an individual's religious identity. In the mid-2000s, Human Rights Watch and the Minority Rights Group both reported that pursuant to Circular 49/2004 issued by the Ministry of the Interior, the Civil Status Department of the Ministry of the Interior (which is responsible for the issuance of national identity cards) was instructed to refrain from providing identity cards to anyone who did not self-identify as Muslim, Christian or Jewish.²⁰⁶ As such, members of other religious groups and atheists were prevented from listing their true belief on their national identity card, and were therefore denied official status. The Bahá'í, for example, found themselves excluded from education, health services, employment and the ability to secure death certificates or legally inherit.²⁰⁷ In 2004, the UN Special Rapporteur on freedom of religion or belief noted that the practice of excluding any mention of religions other than Islam, Christianity or Judaism "appears to be somewhat at variance with the freedom of religion or belief", and would therefore "appear to be a violation of international law".²⁰⁸

In April 2006, members of the Bahá'í community won a case before the Egyptian Administrative Court in which the Court held that the Bahá'í had the right to be registered on legal documents,²⁰⁹ The ruling was subsequently overturned by the Supreme Administrative Court in December 2006,²¹⁰ following pressure by the government and Al-Azhar.²¹¹ However, in 2009, the Supreme Administrative Court finally ruled that members of the Bahá'í faith have the right to obtain an identity card without having to incorrectly identify themselves as Muslim or Christian.²¹²

206 See above, note 184, Minority Rights Group International; *Ibid.* As noted by Human Rights Watch, while government documents make reference to this Circular, a copy of it has not been published by the Egyptian government.

207 *Ibid.*, Minority Rights Group International.

208 Commission on Human Rights, *Report submitted by Mr. Abdelfattah Amor, Special Rapporteur on freedom of religion or belief, to the Commission on Human Rights, 60th session, UN Doc. E/ CN.4/2004/63, 2004, Para 42.*

209 Decision of the First Circuit of the Court of Administrative Justice in Case no. 24044/45, issued on 4 April 2006.

210 Decision of the Supreme Administrative Court in Case no. 16834/52, issued on 16 December 2006.

211 See above, note 184, Minority Rights Group International.

212 Decision of the Supreme Administrative Court of 16 March 2009, by which an appeal against the Administrative Court (brought not by the Government but by an Egyptian citizen with no direct interest) was dismissed and the lower court's decision upheld; See above, note 184, Minority Rights Group International.

Human Rights Watch reported in 2007 that in addition to the Bahá'í, converts from Islam were experiencing particular problems in obtaining identity documents.²¹³ In respect of converts, whilst Article 47 of Law No. 143 of 1994 permitted changes or correction of information on an identity card – including information regarding religion – Human Rights Watch found that individuals who wished to change their recorded religion from Islam to Christianity faced “official refusal and harassment”.²¹⁴ By contrast, individuals who wished to convert to Islam reportedly faced “no problems whatsoever”, with one individual explaining that her papers “were changed in the blink of an eye”.²¹⁵

A decree issued by the Ministry of the Interior in 2009 recognised the right of adherents of “non-recognised” religions to obtain a national identity card.²¹⁶ According to this decree, officials from the Civil Status Department were instructed to place a dash (-) on the identity cards of members of “non-recognised” religions, instead of stating the individual in question’s religion.²¹⁷

Personal Status Laws

As discussed in Part 2 of this report, Egyptian personal status law is the only branch of domestic law that still operates under the principle of religious personality of laws, meaning that each recognised religious group (Muslims, Christians and Jews) has its own set of rules applicable to matters of personal status.²¹⁸ Article 3 of the Constitution provides that the “principles of the laws of Egyptian Christians and Jews are the main source of laws regulating their personal status, religious affairs, and selection of spiritual leaders”.²¹⁹ As such, matters of personal status for Christians and Jews are governed by laws adopted by the religious leaders of the relevant denomination, rather than

213 See above, note 205.

214 *Ibid.*

215 *Ibid.*

216 Ministry of the Interior, Ministerial Decree No. 520 of 2009.

217 Human Rights Watch, “Egypt: Decree Ends ID Bias Against Bahai’s”, *Human Rights Watch*, 15 April 2009, available at: <https://www.hrw.org/news/2009/04/15/egypt-decree-ends-id-bias-against-bahais>.

218 Bernard-Maugiron, N., and Dupret, B., “From Jihan To Susanne Twenty Years Of Personal Status Law In Egypt”, *Recht van de Islam*, Vol. 19, 2002, p. 1.

219 See above, note 93, Article 3.

by legislation.²²⁰ Personal status matters for Muslims²²¹ are governed by both codified statutory law²²² and non-codified Islamic Sharia.²²³

A significant impact of the legal regime governing personal status in Egypt is that only Muslim, Christian and Jewish marriages are legally recognised: there is no concept of civil marriage. As such, depending on the religious beliefs of the participants,²²⁴ marriages must be conducted according to Islamic law, Christian canon law or Jewish law.²²⁵ Marriages of religious minorities such as the Bahá'í faith, are not legally recognised, thus creating "a myriad of legal issues and difficulties in areas such as banking, real estate, inheritance, and sometimes even school registration."²²⁶

More broadly, the maintenance of separate personal status laws creates a fragmented framework of legal protection, affording different groups different rights to, *inter alia*, marriage and divorce, contrary to international law,²²⁷ in violation of the right to non-discrimination.²²⁸

220 German Technical Corporation, *Promotion of Women's Rights (Egypt), Personal Status Laws in Egypt*, 2010, p. 26, available at: http://horizon.documentation.ird.fr/exl-doc/pleins_textes/divers17-07/010048687.pdf.

221 By virtue of Article 2 of the Constitution, which establishes Islamic Sharia as "the principle source of legislation."

222 Decree Law No. 25 of 1920 "on Maintenance and Some Questions of Personal Status, as amended by Law No. 100 of 1985 "on Amending Decree Laws No. 25 of 1920 and 1929" and Law No. 4 of 2005 "on Amending Article 20 of Decree-Law No. 25 of 1920"; Decree Law No. 25 of 1929 "on Certain Personal Status Provision Law", as amended by Law No. 100 of 1985 "on Amending Decree Laws No. 25 of 1920 and 1929"; Law No. 77 of 1943 "on Inheritance" and Law No. 1 of 2000 "on Certain Conditions and Procedures of Litigation in Matters of Personal Status".

223 In the absence of a codified rule on a specific matter, the Procedural Personal Status Law instructs judges to employ the predominant opinion of the Hanafi school of Sharia: Law No. 1 of 2000 "on Certain Conditions and Procedures of Litigation in Matters of Personal Status", Article 3.

224 Where the married couple are members of different religions, the personal status law applicable to Muslims takes precedence: See above, note 220, p. 25.

225 Risley, D.E., "Freedom of Religion" in Ferrari, A., *Religions and Constitutional Transitions in the Muslim Mediterranean: The Pluralistic Moment*, Taylor & Francis, 2016, p. 174.

226 *Ibid.*

227 In particular, states' obligations to ensure that the right to freedom of religion is afforded equally to all individuals. ICCPR, Articles 18, 2(1), and 26(1).

228 Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation on Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/29, 2013, Para 10; See the extended discussion and analysis of Egypt's Personal Status laws in Part 2 of this report.

National Policies Against Atheism

According to the International Humanist and Ethical Union, Egypt has been pursuing “an explicit agenda of hatred against those with no religion”.²²⁹ In 2015, the Ministry of Religious Endowments and the Ministry of Sports and Youth launched a national campaign warning of the “dangers of atheism”,²³⁰ which had the stated aims of:

*[Spreading] awareness concerning the dangers of atheism and how it creates a threat to society, and to treat this phenomenon by having a dialogue with atheists and giving them a chance to reconsider their decisions and go back to their religion.*²³¹

In 2015, the Jubilee Campaign reported to the UN Human Rights Council that the authorities had arrested a number of individuals under the blasphemy provisions of the Penal Code, where such individuals had been deemed to be promoting atheism or had publicly disclosed or discussed their atheist views.²³² In one such case, a student who had spoken about his atheism on Facebook was arrested in November 2014 as part of a state operation to close and demolish an “atheist café” in Cairo.²³³ Commenting on the closure of the cafe, the regional police chief stated, “[w]e have destroyed the café of the devil worshipers (...) for being illegal and for having a number of atheists spreading their thoughts”.²³⁴ On 21 December 2017, the Egyptian police arrested and charged another individual who had been supposedly promoting atheism on his Facebook page.²³⁵

229 Human Rights Council, *Written statement submitted by the International Humanist and Ethical Union, a non-governmental organization in special consultative status*, UN Doc. A/HRC/31/NGO/141, 22 February 2016, available at: http://iheu.org/wp-content/uploads/2016/03/A_HRC_31_NGO_141.pdf.

230 See above, note 186.

231 *Ibid.*

232 *Ibid.*; Human Rights Watch, “Egypt: 3-Year Sentence for Atheist”, *Human Rights Watch*, 13 January 2015, available at: <https://www.hrw.org/news/2015/01/13/egypt-3-year-sentence-atheist>.

233 Samir, A., “Café destroyed in Abdeen to counter its ‘atheist’ patrons”, *The Cairo Post*, 14 December 2014, available at: <http://www.thecairopost.com/news/130812/news/cafe-destroyed-in-abdeen-to-counter-its-atheist-patrons>.

234 *Ibid.*

235 The Law Library of Congress, “Egypt: Parliament Discusses New Bills Criminalizing Atheism and Homosexuality”, 26 January 2018, available at: <http://www.loc.gov/law/foreign-news/article/egypt-parliament-discusses-new-bills-criminalizing-atheism-and-homosexuality>.

On 24 December 2017, the Committee on Religion in the Council of Representatives discussed a bill that would criminalise atheism under the Penal Code.²³⁶ Introducing the draft bill, the head of the Committee stated that atheism “must be criminalised and categorised as contempt of religion because atheists have no doctrine and try to insult the Abrahamic religions”.²³⁷ The proposed bill received support from Al-Azhar, with the Head of Al-Azhar’s Supreme Council stating that it was necessary to “punish those who have been seduced into atheism” and to “stop this poisonous thinking from spreading among Muslims and young people”.²³⁸ The bill was proposed a few months after a draft bill criminalising homosexuality was presented to Parliament,²³⁹ amidst a “growing moral panic” in the country regarding homosexuality (see further discussion in Part 3.8).²⁴⁰ Commentators have noted that the government has drawn a link between atheism and homosexuality, with the proposed law on atheism being seen as a way to repress the lesbian, gay, bisexual and transgender (LGBT) community.²⁴¹

The state’s policy on atheism, coupled with its actions against atheists, is a violation of both the Egyptian Constitution – Article 64 of which guarantees that freedom of belief is “absolute” – and Egypt’s obligations under international law. Under Article 18 ICCPR, the right to freedom of thought, conscience and religion includes the freedom to have or adopt a religion or belief, which the HRC has clarified includes “the right not to profess any religion or belief”.²⁴²

236 Whitaker, B., “Egyptian parliament moves to make atheism a crime”, *Al-bab*, 23 December 2017, available at: <http://al-bab.com/blog/2017/12/egyptian-parliament-moves-make-atheism-crime>.

237 The New Arab, “Egypt lawmaker moves to criminalise atheism amid moral panic”, *The New Arab*, 24 December 2017, available at: <https://www.alaraby.co.uk/english/news/2017/12/24/egypt-lawmaker-moves-to-criminalise-atheism-amid-moral-panic>.

238 *Ibid.*

239 Amnesty International, *Egypt: Draft bill to criminalise same-sex relations amid unprecedented homophobic crackdown*, 9 November 2017, available at: <https://www.amnesty.org/en/latest/news/2017/11/egypt-draft-bill-to-criminalize-same-sex-relations-amid-unprecedented-homophobic-crackdown/>; See also, Human Rights Council, *Communication report of special procedures: the Working Group on Arbitrary Detention and others*, UN Doc. UA/EGY/17/2017, 2017, pp. 4–5.

240 See above, note 237.

241 Morgan, J., “Egypt to ban atheism in case it turns people gay”, *Gay Star News*, 24 December 2017, available at: <https://www.gaystarnews.com/article/egypt-ban-atheism-case-turns-people-gay/#gs.BfPgKqk>.

242 See above, note 189, Para 2.

Freedom of thought, conscience, religion or belief under Article 18 ICCPR is “protected unconditionally”, and it is not permissible to impose any limitation on this right.²⁴³ Furthermore, such a law would be in violation of the prohibition of discrimination “against adherents of other religions or non-believers”, as emphasised by the HRC in its General Comment No. 22.²⁴⁴

Discriminatory Torture and Ill-treatment

Torture and ill-treatment is prohibited by both the ICCPR under Article 7, and the CAT under Article 16. The ICCPR provides for non-discrimination – including on the grounds of religion or belief – in the enjoyment of all other treaty rights,²⁴⁵ while non-discrimination is included within the definition of torture under the CAT.²⁴⁶ States are obliged under the CAT to take “effective legislative, administrative, judicial or other measures to prevent acts of torture.”²⁴⁷ The CAT Committee has stated that:

*The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment (...) States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection.*²⁴⁸

243 *Ibid.*, Para 3.

244 *Ibid.*, Para 9.

245 ICCPR, Article 2(1).

246 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), G.A. Res. 39/46, 1984, Article 1(1).

247 CAT, Article 2(1).

248 CAT Committee, *General Comment No. 2: Implementation of article 2 by States parties*, UN Doc. CAT/C/GC/2, 2008, Para 21; For a more detailed discussion on discriminatory torture and ill-treatment and states’ obligations to prevent such acts, see: Equal Rights Trust, *Shouting Through the Walls: Discriminatory Torture and Ill-Treatment, Case Studies from Jordan*, 2017, Part Two, available at: http://www.equalrightstrust.org/ertdocumentbank/Jordan%20report_ENG_0.pdf.

There are reports that Christian individuals have been subject to discriminatory torture and ill-treatment at the hands of law enforcement officials, which has resulted in death on a number of occasions. For example, in November 2016, it was reported that a Coptic Christian man was tortured to death by 10 Egyptian police officers at Al-Amiriya police station after being arrested on 13 November 2016 for accidentally hitting a police car whilst driving a horse and cart; after the victim's family were informed of his death, they transferred his body to hospital and found signs of assault and torture on his body.²⁴⁹

Similar incidents were reported in 2017. On 18 July 2017, Gamal Aweida, a 43-year-old Coptic Christian man, was arrested and taken to a police station in Cairo for questioning related to a minor offence; approximately 15 hours later the authorities informed his family of his death, claiming that he had committed suicide by hanging.²⁵⁰ However, one of the family members told Amnesty International that he had seen bruises on the upper part of Mr Aweida's body and legs, suggesting he may have been tortured by the police.²⁵¹ Amnesty International also reported that the victim had got into "a verbal altercation" with the police officer in charge after the officer insulted his religion, after which he was taken by officers to another part of the police station.²⁵² A week later, the body of a Coptic Christian teenager, Tharwat Sameh, was found outside the town of al-Fayyum two days after he had been arrested by the police.²⁵³ His body was covered in extensive bruising, burn marks and signs of having been whipped, leading to calls for an investigation into the circumstances of his death.²⁵⁴

249 Ali, N., "Christian citizen tortured to death by Egyptian police forces: Reports", *Middle East Observer*, 22 November 2016, available at: <https://www.middleeastobserver.org/2016/11/22/christian-outrages-from-makeens-death-and-a-cold-statement-from-the-church>; The New Arab, "Egypt probes cart vendor's death in police custody", *The New Arab*, 21 November 2016, available at: <https://www.alaraby.co.uk/english/news/2016/11/21/egypt-probes-cart-vendors-death-in-police-custody>.

250 Amnesty International, "Egypt: Investigate apparent torture and death in custody of Coptic man", *Amnesty International*, 21 July 2017, available at: <https://www.amnesty.org/en/latest/news/2017/07/egypt-investigate-apparent-torture-and-death-in-custody-of-coptic-man>.

251 *Ibid.*

252 *Ibid.*

253 McKernan, B., "Teenager found dead bearing signs of torture two days after arrest in Egypt", *Independent*, 26 July 2017, available at: <http://www.independent.co.uk/news/world/middle-east/teenager-torture-beating-dead-egypt-police-cairo-tharwat-sameh-giulio-regeni-a7861681.html?amp>.

254 *Ibid.*

Discriminatory Violence

Despite the Constitutional guarantee of the right to freedom of religion or belief and the prohibition of discrimination on the grounds of religion or belief, sectarian violence has become “an increasingly prominent issue in post-revolutionary Egypt”.²⁵⁵ Minority Rights Group International has reported that Coptic Christians have been particularly affected by such violence: in the two years following the removal of former President Mubarak in 2011, almost 100 Coptic Christians were killed in sectarian violence, more than in the entirety of the previous decade.²⁵⁶ Further violent attacks against Coptic Christians occurred after the removal of President Morsi from office in July 2013, with levels of violence peaking in August 2013 as Coptic churches, houses and shops were subject to attack.²⁵⁷ The Coalition of Coptic Egypt reported at least 72 cases of kidnappings, extortion and related violence against Coptic Christians in the period from 2011 to 2014,²⁵⁸ and the EIPR documented that 74 sectarian attacks occurred in Egypt between 25 January 2011 and August 2016, including attacks on Christian homes and churches.²⁵⁹

There was a significant escalation in the level of violence against Coptic Christians in Egypt from December 2016 onwards, after a suicide bombing at St. Mark’s Coptic Orthodox Cathedral in Cairo (for which so-called Islamic State claimed responsibility) killed at least 25 people.²⁶⁰ In February 2017, hundreds of Egyptian Christians were forced to flee their homes in the northern Sinai peninsula following a targeted campaign of violence by so-called Islamic

255 See above, note 178.

256 *Ibid.*

257 *Ibid.*

258 World Watch Monitor, “Coptic teenager kidnapped for ransom in Upper Egypt”, *World Watch Monitor*, 21 April 2016, available at: <https://www.worldwatchmonitor.org/2016/04/copt-teenager-kidnapped-for-ransom-in-upper-egypt>.

259 EIPR, *Closed on security grounds: Sectarian tensions and attacks resulting from the construction and renovation of churches*, 2017, p. 4, available at: https://eipr.org/sites/default/files/reports/pdf/closed_on_security_grounds_web.pdf.

260 Human Rights Watch, “Egypt: Horrific Palm Sunday Bombings”, *Human Rights Watch*, 12 April 2017, available at: <https://www.hrw.org/news/2017/04/12/egypt-horrific-palm-sunday-bombings>.

State,²⁶¹ in which seven Coptic Christians were murdered.²⁶² Just months later, in April 2017, two suicide bombings in Coptic churches in Tanta and Alexandria on “Palm Sunday” killed at least 45 people and injured at least 126 others in what was described as “one of the deadliest days of violence against Christians in Egypt in decades”.²⁶³ So-called Islamic State again claimed responsibility for the bombings.²⁶⁴ The attacks prompted the declaration of a national state of emergency by President al-Sisi,²⁶⁵ which remains in force as at the date of this report, having last been extended for an additional three months in October 2018.²⁶⁶ In May 2017, at least 28 individuals were killed after gunmen attacked a bus carrying Coptic Christians travelling to a monastery south of Cairo,²⁶⁷ and in December 2017, gunmen killed at least 11 Christian worshippers at the Coptic Marmina church in the Helwan City district.²⁶⁸ In July 2018, a Coptic bishop was found murdered inside a monastery in Beheira province in what was described as “the latest suspected attack on Christians in the country”.²⁶⁹

261 Walsh, D., and Youssef, N., “Targeted by ISIS, Egyptian Christians Flee Violence”, *The New York Times*, 24 February 2017, available at: <https://www.nytimes.com/2017/02/24/world/middleeast/egypt-coptic-christians-sinai.html>.

262 Human Rights Council, *Communication report of special procedures: Mandates of the Special Rapporteur in the field of cultural rights and others*, UN Doc. AL/EGY/6/2017, 2017, p. 1.

263 *Ibid.*; Samaan, M. and Walsh, D., “Egypt Declares State of Emergency, as Attacks Undercut Promise of Security”, *The New York Times*, 9 April 2017, available at: <https://www.nytimes.com/2017/04/09/world/middleeast/explosion-egypt-coptic-christian-church.html>; See also, above, note 260.

264 *Ibid.*, Samaan and Walsh.

265 See above, note 260.

266 Reuters, “Egypt extends state of emergency for three months”, *Reuters*, 21 October 2018, available at: <https://www.reuters.com/article/us-egypt-security-emergency/egypt-extends-state-of-emergency-for-three-months-idUSKCN1MV0MI>.

267 BBC News, “Egypt Coptic Christians killed in bus attack”, *BBC News*, 26 May 2017, available at: <https://www.bbc.co.uk/news/world-middle-east-40059307>.

268 Youssef, A., “Gunmen kill Christian worshippers at Coptic church near Cairo”, *The Guardian*, 29 December 2017, available at: <https://www.theguardian.com/world/2017/dec/29/gunman-launches-deadly-attack-on-coptic-church-near-cairo>; Reuters Staff, “Gunman kills 11 in attacks on Coptic church, Christian-owned shop in Egypt”, *Reuters*, 29 December 2017, available at: <https://www.reuters.com/article/us-egypt-security/gunman-kills-11-in-attacks-on-coptic-church-christian-owned-shop-in-egypt-idUSKBN1EN0SX>.

269 The New Arab, “Coptic Christian bishop found dead in Egypt monastery”, *The New Arab*, 30 July 2018, available at: <https://www.alaraby.co.uk/english/news/2018/7/30/coptic-christian-bishop-found-dead-in-egypt-monastery>.

As discussed above, the CAT Committee has noted that states parties to the CAT are under an obligation to fully prosecute and punish all acts of violence and abuse against minority and marginalised groups, and ensure implementation of other positive measures of prevention and protection.²⁷⁰ Nevertheless, the Egyptian authorities have failed to take sufficient steps to investigate and prosecute this sectarian violence. A large number of cases involving sectarian violence, particularly in Upper Egypt, are referred to customary reconciliation where parties to a conflict are brought together in a neutral setting where they can present their account of the incident and supply appropriate evidence, before a reconciliation agreement, signed by both parties, is proposed by ostensibly neutral arbitrators.²⁷¹ Thus, rather than investigating and prosecuting crimes of religiously-motivated violence, the authorities generally refuse to refer such disputes to the courts.²⁷² Moreover, despite purporting to be neutral, the composition of the arbitration councils, and the customs they rely on, often reflect the influence of the Muslim majority.²⁷³ In addition, the sessions reportedly lack guarantees for effectiveness and legitimacy.²⁷⁴ The Coptic community and Egyptian churches are therefore critical of these sessions, arguing that they constitute a “disturbing encroachment on the sovereignty of the state, its judicial system and on the principles of citizenship and non-discrimination.”²⁷⁵ Human Rights Watch has reported that the failure to prosecute suspects through the formal judicial system has created a climate of impunity for perpetrators.²⁷⁶

Coptic Christians are not the only religious group that has been subject to discriminatory violence. Members of the Bahá’i faith have been subject to violent

270 See above, note 248, Para 21.

271 EIPR, *According to Which Customs: The Role of Customary Reconciliation Sessions in Sectarian Incidents and the Responsibility of the State*, 2015, p. 15, available at: <https://eipr.org/en/press/2015/06/%E2%80%9Cwhose-customs-role-customary-reconciliation-sectarian-disputes-and-state>.

272 Kårtveit, B.H., “Egyptian Copts Under Attack: The Frailty of a National Unity Discourse”, *Middle East Institute*, 13 July 2017, available at: <http://www.mei.edu/content/map/egyptian-copts-under-attack-frailty-national-unity-discourse>.

273 See above, note 271, p. 16.

274 *Ibid.*, p. 4.

275 *Ibid.*, p. 4.

276 Human Rights Watch, “Egypt: New Church Law Discriminates against Christians”, *Human Rights Watch*, 15 September 2016, available at: <https://www.hrw.org/news/2016/09/15/egypt-new-church-law-discriminates-against-christians>.

attack on a number of occasions: in 2009 and 2011, the homes of a number of Bahá'í individuals in Sohag were burned down by Muslim youths, forcing the residents to flee.²⁷⁷ Sufi Muslims – who, as noted above, number approximately 15 million – have also been targeted in the deadliest militant attack in modern Egyptian history.²⁷⁸ On 24 November 2017, 235 people were killed during Friday prayers at Al-Rawdah mosque in northern Sinai, which was largely attended by Sufi Muslims. Whilst no group officially claimed responsibility for the attack, the perpetrators were reportedly carrying the black flag of so-called Islamic State.²⁷⁹ According to media reports, the mosque was targeted “because of its ties to Sufism, a mystical form of Islam that hardline Islamist groups consider heretical”.²⁸⁰

Religious Practices and Places of Worship

The right to freedom of thought, conscience and religion, as provided by Article 18(1) ICCPR, includes the right to manifest one's religion or belief in worship, observance, practice and teaching. The HRC has stated that the freedom to manifest one's religion or belief entails the establishment, maintenance and protection of places of worship.²⁸¹

However, as noted above, Article 64 of the Constitution provides that “[t]he freedom of practicing religious rituals and establishing places of worship for the followers of revealed religions is a right organized by law”. As such, only Muslims, Christians and Jews have a constitutionally guaranteed right to establish places of worship. In practice this has meant that members of religious minorities, such as followers of the Baha'i faith, have been forced to conduct religious practices and festivals in secrecy in their homes.²⁸²

277 Miller, E., “Five Years On: Egypt's Minorities”, *Atlantic Council*, 29 January 2016, available at: <http://www.atlanticcouncil.org/blogs/menasource/five-years-on-egypt-s-minorities>; See above, note 184, Minority Rights Group International.

278 BBC News, “Egypt attack: Gunmen kill 235 in Sinai mosque”, *BBC News*, 24 November 2017, available at: <http://www.bbc.com/news/world-middle-east-42110223>.

279 Mohamed, Y., and Mourad M., “Islamic State raises stakes with Egypt mosque attack”, *Reuters*, 26 November 2017, available at: <https://www.reuters.com/article/us-egypt-security-mosque/islamic-state-raises-stakes-with-egypt-mosque-attack-idUSKBN1DQ0K0>.

280 *Ibid.*

281 Human Rights Council, *Resolution 6/37: Elimination of all forms of intolerance and of discrimination based on religion or belief*, UN Doc. A/HRC/RES/6/37, 14 December 2007, Paras 9(e) and (g); see above, note 189, Para 4.

282 Information provided to the Equal Rights Trust by an Egyptian human rights defender, 9 July 2018.

Moreover, despite the fact that Article 64 of the Constitution guarantees the rights of Christians to construct places of worship, Coptic Christians have historically experienced discrimination in relation to the official requirements for the building or repair of churches. Restrictive rules regarding the construction of churches were issued by the Interior Ministry as early as 1934, which prevented the building of churches near mosques, schools, government offices, government facilities and railways, amongst other areas.²⁸³ Furthermore, until 2005, presidential approval was required for the repair of existing churches. Whilst the requirement of presidential approval was removed in 2005, Coptic Christians continued to face difficulties in obtaining approval from regional authorities.²⁸⁴ Local authorities reportedly rejected building permit applications “in fear of strong opposition or protests by ultraconservative Muslims”.²⁸⁵

Given these obstacles, Christian communities in Egypt resorted to building churches illegally or establishing churches in other buildings, actions which sometimes prompted violence.²⁸⁶ For example, in May 2016 a makeshift Coptic Virgin Mary Church in the village of Ismailia, Minya was reportedly burnt down due to opposition from local residents.²⁸⁷

The 2014 Constitution included a commitment, at Article 235, to issue new legislation to regulate church construction and repair:

[I]n its first legislative term following the effective date of this Constitution, the House of Representatives shall issue a law to regulate constructing and renovating churches, in a manner that guarantees the freedom to practice religious rituals for Christians.

On 30 August 2016, Egypt’s Parliament passed Law No. 80 of 2016 on the Construction and Renovation of Churches pursuant to Article 235 of the Con-

283 See above, note 276.

284 See above, note 178.

285 Human Rights Council, *Communication report of special procedures: Special Rapporteur on minority issues and Special Rapporteur on freedom of religion or belief*, UN Doc. AL/EGY/17/2016, 2016, p. 1.

286 *Ibid.*

287 See above, note 174, p. 18.

stitution.²⁸⁸ Many Christians welcomed the new law in the hope that, after decades of restrictions, it would guarantee the right to construct churches under the protection of the State.²⁸⁹

Law No. 80 of 2016 is inherently discriminatory, in that it creates a separate legal regime for the establishment of Christian churches, rather than regulating the construction and renovation of places of worship of all religions or beliefs; this is a point which has been noted by the Special Rapporteurs on minority issues and on freedom of religion or belief.²⁹⁰ Moreover, the Law establishes a regime which is not only separate but more difficult to comply with, exposing Christians to unfavourable treatment. Indeed, in 2017 the EIPR noted that the new law had simply “legitimated and codified into law pre-existing discrimination against Coptic citizens who seek to exercise the right to worship”.²⁹¹

The regime which the Law establishes on church construction is more restrictive than that governing the construction of mosques, established by a 2001 Decree of the Ministry of Awqaf (the Egyptian Ministry of Religious Endowments). For example, Article 2 of the Law provides that the size of a church must be “proportionate to the number and need of citizens of the Christian sect in the area, taking into account the rate of population growth”, a requirement which poses practical problems, given the lack of official census data on the number of Christians in the country.²⁹² In addition to these practical difficulties, the provision is discriminatory in that the Decree governing mosque construction does not require the area for which a permit to build a mosque is sought to be proportionate to the number of Muslims in the area.²⁹³

288 Article 235 required the Egyptian House of Representatives, in the first session subsequent to the coming into effect of the Constitution, to pass a law “regulating the construction and restoration of churches, to ensure the freedom of Christians to practise their religion”.

289 Middle East Eye, “Egypt’s law on building churches dashes Christian hopes for equality”, *Middle East Eye*, 16 November 2016, available at: <http://www.middleeasteye.net/in-depth/features/egypt-s-law-building-churches-dashes-christians-hope-equality-440271953>.

290 See above, note 285.

291 See above, note 259.

292 Law No. 80 of 2016, Article 2; See also, above, note 276.

293 Addeh, D., and Fuad, S., *The Legal framework of Mosque building and Muslim religious affairs in Egypt: towards a strengthening of State control*, 2011, available at: <https://www.arabwestreport.info/sites/default/files/pdfs/paper30.pdf>.

Article 5 of the Law requires the competent governor to determine an application for building or renovation within four months of the submission of the application, with the Explanatory Memorandum attached to the original bill reportedly stating that the governor is to examine the application “in light of his authorities to preserve public security and safety and oversee utilities and protect their security, as well as uphold the freedom to practice religious rites”.²⁹⁴ The Law does not provide a right of appeal or explain what action may be taken where an application is rejected, or where there is no determination of the application within the legally prescribed period.²⁹⁵ By providing broad discretion to regional governors, with no obligation to explain their decision, and no right of appeal, the Law creates the potential for discrimination in application. Furthermore, the requirement that applications should be considered in light of the need to preserve public security and safety means that decisions regarding church construction may be influenced by acts or threats of sectarian violence.²⁹⁶ Whilst the right to manifest one’s religion or belief may be limited where necessary to protect public safety under Article 18(3) ICCPR, there is a risk that this requirement could lead to discrimination in decision-making. Indeed, the HRC has made clear that “threats to life and killing” against those exercising their freedom of opinion or expression, is not a legitimate justification for the limitation of this right under Article 19(3) ICCPR.²⁹⁷

The Law provides for the possibility for existing places of worship to legalise their status provided that they comply *inter alia* with building regulations. However, the Special Rapporteur on freedom of religion or belief noted that compliance with this requirement is difficult for many existing church buildings which were converted from residential spaces.²⁹⁸ Having said this, Article 8 of Law No. 80 of 2016 specifically provides that, with the exception of decisions made by a committee established under that Article, authorities are barred from closing churches or church annexes, apparently irrespective of

294 See above, note 292, Article 5; The Explanatory Memorandum, which was produced by the Ministry of Legal Affairs, is referred to in the EIPR report, see above, note 259, p. 25.

295 See above, note 259.

296 See above, note 276.

297 See above, note 2, Para 23.

298 See above, note 285, p. 2.

whether they meet the conditions for legal status.²⁹⁹ The issuance of Law No. 80 of 2016 has not halted hostility towards and assaults on Christian places of worship. For example, the EIPR reported that in December 2017 a church in Kafr al-Wasilin was subject to attack by “hundreds of village Muslims” who “chanted religious and anti-Copt slogans and demanded the demolition of the church” on the grounds that the church was about to install a bell.³⁰⁰ The organisation also noted that between September 2017 and April 2018, 14 existing churches which were hosting religious services but which did not meet the conditions to be legalised under Law No. 80 of 2016 were closed down.³⁰¹

Employment

The Special Rapporteur on freedom of religion or belief has noted that states “have a formal responsibility to prevent and eliminate all forms of intolerance and discrimination based on religion or belief, including in the workplace”.³⁰² Nevertheless, religious minorities in Egypt reportedly face discrimination in employment, including harassment from their colleagues on account of their religious beliefs.³⁰³

Coptic Christians in Egypt have long raised the issue of inequality of opportunity in senior and mid-level public-sector jobs, including in the army, the police force, the judiciary, the diplomatic corps and education.³⁰⁴ They are

299 See above, note 292, Articles 8-10; EIPR, “EIPR demands reinvestigation into attacks on the Kafr al-Wasilin church in Atfih, re-opening of the church for worship, and the speedy legalization of all unlicensed churches”, *Egyptian Initiative for Personal Rights*, 1 February 2018, available at: <https://eipr.org/en/press/2018/02/eipr-demands-reinvestigation-attacks-kafr-al-wasilin-church-atfih-re-opening-church>.

300 *Ibid.*

301 EIPR, “EIPR decries state’s closure of churches that filed for legal status and demands the release of all arrested persons. Fourteen functioning churches shut down since the church construction law was issued”, 30 April 2018, available at: <https://eipr.org/en/press/2018/04/eipr-decries-state%E2%80%99s-closure-churches-filed-legal-status-and-demands-release-all>.

302 United Nations General Assembly, *Interim report of the Special Rapporteur on freedom of religion or belief*, UN Doc. A/69/261, 2014, Para 69, available at: <http://www.ohchr.org/Documents/Issues/Religion/A.69.261.pdf>.

303 Equal Rights Trust Interview D27.

304 World Watch Monitor, “Coptic Bishop: Egypt ‘diseased’ with discrimination”, *World Watch Monitor*, 14 July 2016, available at: <https://www.worldwatchmonitor.org/2016/07/coptic-bishop-egypt-diseased-with-discrimination>.

reportedly routinely denied high-level government jobs and jobs within the security services,³⁰⁵ and have for many decades complained of discriminatory denial of senior jobs in a variety of other fields, such as academia.³⁰⁶ There are no Coptic Christians serving as university presidents or deans, with religious discrimination cited as the reason for this lack of representation in senior academic posts.³⁰⁷ In 2016, there were reports that a Coptic Christian deputy headmistress was denied a promotion to the role of headmistress following student protests, although she had been listed for promotion by the Ministry of Education.³⁰⁸

There have also been reports that Christian athletes have been prevented from pursuing a professional career in sport due to religious discrimination.³⁰⁹ The organisation Coptic Solidarity has filed formal complaints with the International Olympic Committee and the Fédération Internationale de Football Association (FIFA) complaining of the “systematic religious discrimination” facing Coptic Christian athletes in Egypt after receiving numerous complaints regarding their exclusion from football clubs and other sports.³¹⁰ Despite successfully passing all relevant selection stages, these athletes have been denied the right to compete at the national and international level, for reasons which they believe are related to their religious background.³¹¹ One individual seek-

305 See above, note 260.

306 Al Jazeera, “Sisi names bomber of Cairo Coptic Christian church”, *Al Jazeera*, 12 December 2016, available at: <http://www.aljazeera.com/news/2016/12/sisi-suicide-bomber-cairo-church-attack-161212145751882.html>.

307 Tadros, S., “The Actual War on Christians”, *The Atlantic*, 17 December 2016, available at: <https://www.theatlantic.com/international/archive/2016/12/egypt-copts-muslim-christian-isis/511007>.

308 World Watch Monitor, “Coptic headmistress denied promotion ‘for being Christian’”, *World Watch Monitor*, 2 March 2016, available at: <https://www.worldwatchmonitor.org/2016/03/coptic-headmistress-denied-promotion-for-being-christian>.

309 Godden, M., ““I was told to change my name to play professionally”: the plight of Egyptian Christians in football”, *The New Statesman*, 15 June 2018, available at: <https://www.newstatesman.com/politics/sport/2018/06/i-was-told-change-my-name-play-professionally-plight-egyptian-christians>.

310 Vessey, L., “Coptic Solidarity Files Complaints with the IOC and FIFA Regarding Egypt’s Religious Discrimination Against Copts in Athletics”, *Coptic Solidarity*, 24 August 2016, available at: <https://www.copticsolidarity.org/2016/08/24/coptic-solidarity-files-complaints-with-the-ioc-and-fifa-regarding-egypts-religious-discrimination-against-copts-in-athletics/>.

311 *Ibid.*

ing to be a professional football player told a journalist that: “I was told by club officials to change my name in order to play professionally”.³¹²

Members of the Bahá’í faith also face discrimination in employment, for a number of reasons. Historically, the lack of national identity cards (discussed above) meant that Bahá’í individuals had difficulties accessing employment.³¹³ Individuals who were able to find employment reported experiencing discrimination and stigma from their employees: one Bahá’í individual who worked at Cairo University explained in a media interview that when she revealed her religion to her colleagues, they began to shun her and she was continually overlooked for promotion.³¹⁴

Multiple Discrimination on the Grounds of Religious Belief and Gender: Discriminatory Treatment of Unveiled Women

A number of women interviewed by researchers for the Equal Rights Trust reported facing discriminatory treatment in a range of areas of life – from employment, to access to goods and services – on account of being unveiled.³¹⁵ Such women reported being subject to unfavourable treatment by others, on the assumption that they were either atheist or Christian,³¹⁶ or on the basis that they were considered not to be fulfilling their duties as Muslim women.³¹⁷ As explained by one woman interviewed by the Trust’s researchers, certain assumptions are made about unveiled women in Egypt:

Because I am a woman who doesn’t belong to the religious majority in Egypt, I am always accused of having bad morals and of being promiscuous; people say that I don’t have any rules or morals, and so I am harassed

312 See above, note 309.

313 See above, note 184, Minority Rights Group International.

314 Provan, L., “Bahai’s in Egypt”, *Daily News Egypt*, 14 October 2012, available at: <https://dailynewsegypt.com/2012/10/14/bahais-in-egypt>.

315 Equal Rights Trust Interviews A37, D4, D7, D10, D18, D24, D27 and D45.

316 For example, Equal Rights Trust Interview D10.

317 For example, Equal Rights Trust Interview D45.

*on this basis. Because I am not veiled, I am considered to be a Christian and a prostitute.*³¹⁸

By way of example, one woman who worked in an international school told researchers of the difficulties she faced at work after she was seen not wearing her veil outside the school; one of the other teachers kept telling her that she was an atheist for taking off her veil outside the school, and she was subsequently subjected to a number of internal investigations by the school authorities:

*Then I was rejected inside the school and called "Miss [name], the atheist". They were speaking badly about me in the classes and the school was making the students scared of me, and the school wasn't giving me any work to do. I was obliged to leave the school after I was implicitly threatened that if I complained about them or did anything, they would expose me and say they dismissed me for moral reasons.*³¹⁹

Another woman explained the way in which she had been treated when sitting an exam earlier in 2018:

*I had the worst day of my life in the exam because of the invigilator. I was subjected to psychological harm and couldn't breathe a word. When the invigilator checked my ID and saw that I am Muslim, he looked at me and asked, "Why don't you wear a veil given that we're in Ramadan?" (...) He stood beside me during the whole exam in a way which made me tense, and I couldn't concentrate. Then he looked at the necklace I wear, which looks like a cross and made a very harsh comment. Finally, when he saw me writing on the question paper he accused me of cheating, pulled away my paper and insisted that he was going to file a cheating charge (...) When the supervisor intervened, he gave me my paper back, but it was blank without the answers I had written before; there was no time to write them again.*³²⁰

A number of other women explained to researchers they had been treated less favourably than other women when they were not wearing a veil:

318 Equal Rights Trust Interview D18.

319 Equal Rights Trust Interview A37.

320 Equal Rights Trust Interview D45.

I was living in the Port Fouad area, which is one of the places where there are Christians, but the majority of the people living in the city were Muslim and belonged to the Muslim Brotherhood and Salafis. The taxi drivers did not want to take me because I was not veiled and because they thought I was Christian. I used to wear the veil only to be treated fairly.³²¹

I was on my way to work using the underground, and while the security guard was managing the passengers he allowed many veiled women to pass before me; he left me to the last because I am unveiled and I was made to wait for a long time.³²²

Education

There is evidence that members of religious minorities have faced discrimination in education, and in particular in accessing higher education. For example, in October 2016, a Christian applicant to Cairo University alleged that his application had been rejected on the basis of his religious adherence, given that he had been unofficially notified that he had passed the admission interview. In response to his official complaint, the President of the University issued a directive to abolish the religion data field on all university documents and granted the applicant, as well as other Christians who had been denied admission, a place on the programme.³²³

According to media reports, in June 2017 the Islamic Al-Azhar University accepted a Christian student to complete a one-year medical residency; this is believed to be the first known case of the university accepting a Christian student.³²⁴ The admission of this student came mere months after a Member of Parliament, Mohamed Abu Hamed, proposed an amendment to

321 Equal Rights Trust Interview D13.

322 Equal Rights Trust Interview D4.

323 El-Dim, M. S., "Cairo University strikes religion from official documents in move to curtail discrimination", *Mada Masr*, 17 October 2016, available at: <https://madamasr.com/en/2016/10/17/feature/society/cairo-university-strikes-religion-from-official-documents-in-move-to-curtail-discrimination>.

324 Noureldin O., "Egypt's Al-Azhar admits Christian dental resident for first time", *Egypt Independent*, 4 June 2017, available at: <http://www.egyptindependent.com/al-azhar-christian-dental-resident>.

the law regulating Al-Azhar University's affairs, according to which non-religious faculties at the University – such as medicine, engineering, media and communications – would become affiliated with the Ministry of Higher Education rather than Al-Azhar.³²⁵ However, Abu Hamed's proposal sparked wide controversy and opposition, with Al-Azhar University representative, Abbas Shoman, commenting:

*There is no text that prevents any Egyptian from studying at Al-Azhar, but the conditions for enrollment can only be met by Muslims. Will Christians memorize the Quran so they can study at Al-Azhar? That won't happen, so the education system at Al-Azhar is not suitable for Christians, as the conditions for enrolling are hard for them and we cannot remove the Islamic education modules or exempt Christians from having to take them.*³²⁶

Conclusion

Whilst the Egyptian Constitution prohibits discrimination on grounds which include religion or belief and provides that freedom of belief is absolute, these protections are undermined by a wide range of discriminatory provisions both in the Constitution and other laws. Islam is declared to be the state religion, and the freedom to practice religious rituals and establish places of worship is guaranteed only for followers of Islam, Christianity and Judaism. These three “revealed religions” are given preferential treatment within Egypt's legal framework, including in respect of personal status laws and laws governing the establishment of places of worship. Atheists are at risk of being targeted by the authorities, with the government launching a national campaign against atheism in 2015, and a draft bill criminalising atheism having been presented to Parliament in December 2017.

325 Smith, S., “Egypt's Al-Azhar University Accepts Christian Student Amid Accusations of Discrimination”, *Christian Post*, 6 June 2017, available at: <https://www.christianpost.com/news/egypts-al-azhar-university-accepts-christian-student-amid-accusations-of-discrimination-186530>.

326 Mostafa A., “Will Christians soon be enrolling at Egypt's Al-Azhar?” *Al-Monitor*, 29 March 2017, available at: <https://www.al-monitor.com/pulse/ru/contents/articles/originals/2017/03/proposal-affiliate-scientific-faculties-endowment-ministry.html>.

Members of religious minorities are vulnerable to various forms of discrimination, including discriminatory torture and ill-treatment and discriminatory violence. The Coptic Christian community in Egypt has been particularly affected by such violence, with a number of violent attacks on Christian places of worship having resulted in hundreds of deaths in recent years. There have also been reports of Christian individuals being subjected to discriminatory torture and ill-treatment by law enforcement officials. Christians and members of the Bahá'í faith face discrimination in employment and education.

3.3 Discrimination and Inequality on the Basis of Gender

Egypt has specific obligations under Article 3 ICCPR and Article 3 ICESCR to ensure the equal enjoyment of both men and women of the rights set forth in these Covenants.³²⁷ Under Article 26 ICCPR, Egypt is required to ensure that the law guarantees “to all people equal and effective protection against discrimination on any ground such as (...) sex”.³²⁸ Article 26 provides an autonomous, free-standing right to non-discrimination which does not rely on the invocation of any other treaty provision.³²⁹ Egypt articulated a general interpretative declaration³³⁰ when ratifying the ICCPR and ICESCR, stating: “[t]aking into consideration the provisions of the Islamic Sharia and the fact that they do not conflict with the text annexed to the instrument, we accept, support and ratify it”.³³¹

327 See: ICCPR, Article 3; and International Covenant on Economic, Social and Cultural Rights (ICESCR), 993 U.N.T.S. 3, Article 3.

328 *Ibid.*, ICCPR, Article 26.

329 HRC, *General Comment No. 18: Non-Discrimination (Thirty-seventh session, 1989)*, 10 November 1989, Para 12.

330 According to the International Law Commission an “[i]nterpretative declaration’ means a unilateral statement, however phrased or named, made by a State or an international organisation, whereby that State or that organisation purports to specify or clarify the meaning or scope of a treaty or of certain of its provisions.” An interpretative declaration is considered to possess the same function as a reservation if the effect of the declaration is to “undermine the legal effect of one of the provisions of the treaty or the treaty as a whole”. See: Pellet, A., *International Law Commission, Fourteenth report on reservations to treaties*, UN Doc. A/CN.4/614/ADD.1, 2009, Para 134; Although ambiguously worded, Jasmine Moussa submits that Egypt’s declaration with respect to the ICCPR and ICESCR is likely to have the intended effects of a reservation. See: Moussa, J., “Competing Fundamentalisms and Egyptian Women’s Family Rights”, *Brill*, 2011, p. 115.

331 United Nations Treaty Collection, *Chapter IV: Human Rights: 3. International Covenant on Economic, Social and Cultural Rights*, updated 27 November 2018, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en#EndDec

Egypt is also required to eliminate and prohibit all forms of discrimination against women through its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As explained in Part 2, Egypt has submitted reservations to two material provisions of the CEDAW: Article 2, which outlines policy measures required to eradicate gender discrimination, and Article 16, which relates to marital and family affairs. In these reservations Egypt has stated that it will comply with Articles 2 and 16 provided that such compliance does not run counter to the Islamic Sharia.³³² In its report to the UN Human Rights Council in 2014, Egypt stated that it would scrutinise its reservations to Article 2 and 16 CEDAW.³³³

The Committee on the Elimination of Discrimination Against Women (CEDAW Committee) has urged Egypt to withdraw its reservations to Articles 2 and 16 CEDAW, which it has stated “are incompatible with the object and purpose of the Convention”.³³⁴ The CEDAW Committee has further made clear in its General Recommendation No. 21 that religious custom does not supersede respect for the principle of equality:

*The form and concept of the family can vary from State to State, and even between regions within a State. Whatever form it takes, and whatever the legal system, religion, custom or tradition within the country, the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people.*³³⁵

In addition to its obligations under the ICCPR, ICESCR and CEDAW, the state also has obligations at the regional level, arising under Article 18(3) ACHPR,

332 United Nations Treaty Collection, *Chapter IV: Human Rights: 8. Convention on the Elimination of All Forms of Discrimination against Women*, updated 27 November 2018, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en.

333 Human Rights Council, Universal Periodic Review, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Egypt*, UN Doc. A/HRC/WG.6/20/EGY/1, 22 July 2014, Para 13.

334 CEDAW Committee, *Concluding Observations: Egypt*, UN Doc. CEDAW/C/EGY/CO/7, 5 February 2010, Para 14.

335 CEDAW Committee, *General Recommendation No. 21: Equality in Marriage and Family Relations (Thirteenth session, 1994)*, 1994, Para 13.

which requires states parties to “ensure the elimination of every discrimination against women (...) as stipulated in international (...) conventions”.

Cultural Attitudes and the Position of Women in Society

According to the Egyptian Central Agency for Public Mobilization and Statistics, the total population as at 1 January 2017 was just over 92 million, of whom approximately 45 million (49%) were women.³³⁶ It is widely recognised that women face extensive challenges in Egypt.³³⁷ The World Economic Forum’s Global Gender Index in 2017 ranked Egypt 134th out of 144 countries for gender equality, with a score of 0.608 (where 1 equates to full gender parity).³³⁸

Discrimination against women in Egypt is underpinned by the prevalence of gender stereotypes and patriarchal attitudes. In 2010, the CEDAW Committee noted that “customs and practices perpetuate discrimination against women and girls; this is reflected in their disadvantageous and unequal status in many areas”.³³⁹

A 2017 attitudinal survey of Egyptians, conducted by UN Women and Promondo, revealed that more than half of men and 60% of women surveyed agreed that gender equality “is not part of our traditions and culture in Egypt”.³⁴⁰ Moreover, 86.8% of Egyptian men and 76.7% of women surveyed believed that a woman should have a domestic role, while 90.3% of men and 58.5% of women surveyed agreed the man should have the final decision in his home. Furthermore, 96% of men and 84% of women either agreed or strongly agreed with the statement “Husband expects wife to agree to have sex when

336 Central Agency for Public Mobilization and Statistics, *Statistical Yearbook 2017*, 2017, available at: http://www.capmas.gov.eg/Pages/StaticPages.aspx?page_id=5034.

337 See, for example: Thomson Reuters Foundation, *Cairo, The World’s Most Dangerous City for Women 2017*, 2017, available at: <http://poll2017.trust.org/city/?id=cairo>.

338 World Economic Forum, *The Global Gender Gap Report: 2017*, 2017, available at: http://www3.weforum.org/docs/WEF_GGGR_2017.pdf.

339 See above, note 334, Para 22.

340 UN Women/Promondo, *Understanding Masculinities: Results from the International Men and Gender Equality Statement, Middle East and North Africa*, May 2017, p. 74, available at: <https://imagesmena.org/wp-content/uploads/sites/5/2017/05/IMAGES-MENA-Multi-Country-Report-EN-16May2017-web.pdf>.

he wants to” in the context of their own relationship with their spouse.³⁴¹ Almost all of the men (98%) surveyed reported controlling what their wives wear and whether they can leave the house, and 93% of the men surveyed stated that they want to know where their wives are at all times.³⁴²

Such societal attitudes towards women and their role within Egyptian society were reflected in testimony gathered for this report. In particular, a number of women interviewed by the Equal Rights Trust’s researchers explained the societal pressure surrounding marriage:

*In terms of the idea of marriage and meeting men, the attitude is that I have no right to refuse a man even if I don't like him. This makes me feel discriminated against, because it puts me in a position where I have to get married like my cousins and my relatives, and where people consider that the most important thing that I will achieve in my life is marriage – if I don't get married, anything else I achieve doesn't count and I will be seen as a failure. Despite having two jobs, travelling and having an apartment, I am seen as less than other women who are married and have children, so whatever else I do I will remain a failure in my mother and other people's eyes.*³⁴³

The state has been subject to criticism by treaty bodies for failure to take effective action to combat gender stereotypes and associated harmful cultural practices. In 2010, the CEDAW Committee cited traditional practices – such as early marriage, Female Genital Mutilation (FGM) and polygamy – as areas where the cultural stigma against women is condoned by *laissez-faire* state policies. The Committee urged Egypt to review its laws and bring them into line with the CEDAW, and also advocated that this be complemented by educational campaigns to improve awareness regarding the rights of women and gender equality.³⁴⁴

341 *Ibid.*

342 *Ibid.*

343 Equal Rights Trust Interview D16; Statement also corroborated by other interviewees, such as: Equal Rights Trust Interview D23.

344 See above, note 334, Paras 27–47.

The Committee on Economic, Social and Cultural Rights (CESCR) has also condemned “the serious widespread discrimination against women”,³⁴⁵ highlighting the lack of legislative or investigative action into the gang rapes of women during the 2011 protests, wide wage gaps and high unemployment rates among females. The CESCR further criticised the fact that the state has not enforced criminal sanctions for violence against women nor introduced targeted measures to increase women’s equal access to the employment market.³⁴⁶

Legal and Policy Framework

As discussed in Part 2 of this report, Article 53 of the Constitution provides that citizens are equal before the law and prohibits discrimination on grounds including sex. The Constitution also contains a number of specific provisions relating to aspects of gender equality. Article 11 provides that “the state guarantees equality between men and women in the enjoyment of their civil, political, economic, social and cultural rights” and includes an express commitment to tackle gender-based violence (GBV).³⁴⁷ However the same Article entrenches gender stereotypes and patriarchal attitudes by making reference to the “duties of a woman toward her family”:

The state commits to the protection of women against all forms of violence, and ensures women empowerment to reconcile the duties of a woman toward her family and her work requirements.

The Constitution also provides for positive action measures in relation to the political participation of women. Article 11 states that the state will “take the necessary measures” to ensure appropriate representation of women in the legislature, and guarantees women “the right to hold public posts and high management posts in the state” and to be appointed to judicial bodies and entities “without discrimination”.³⁴⁸ Furthermore, Article 180 of the Constitution provides that a quarter of local council seats are

345 Committee on Economic, Social and Cultural Rights (CESCR), *Concluding Observations: Egypt*, UN Doc. E/C.12/EGY/CO/2-4, 13 December 2013, Para 9.

346 *Ibid.*, Paras 10–15.

347 See above, note 93, Article 11.

348 *Ibid.*

allocated to women. These provisions are supplemented by Presidential Decree Law No. 46 of 2014 “on the House of Representatives”; as explained in Part 2, this requires that parties in the party list system to reserve a certain number of seats for women and that half of the 28 members appointed by the President are female.³⁴⁹

The Labour Law No. 12 of 2003 “on the Labour Law” (the “Labour Law”) contains a number of provisions relating to gender equality: Article 88 prohibits discrimination between men and women, Article 92 provides for protection from dismissal because of pregnancy. Provision for maternity leave, maternity pay and the establishment of workplace nurseries are dealt with under Articles 91 to 96.

Gender equality is listed as the mandate of the National Council for Women (NCW), whose consultative role in formulating policy and drafting legislation was established by Presidential Decree No. 90 of 2000. Article 2 of the Decree provided that the 30 members of the NCW were to be appointed by the President of Egypt, thus compromising the independence of the organisation. However, in 2018, a new law, Law No. 30 of 2018, was adopted to regulate the NCW. The new law provides, *inter alia*, for the independence of the NCW, with Article 1 of the Law providing that the Council is “an independent national council” which enjoys “legal personality and artistic, financial and administrative independence in the exercise of its functions and activities”.

In 2015, the government established a five year National Strategy to Combat Violence against Women in collaboration with UN Women, with four strategic pillars: prevent (via education), protect (via legislative development and reinforcement), intervention (via the provision of psychosocial and health services) and legal procedure (developing special court mechanisms for women victims of domestic violence).³⁵⁰ Whether this strategy has been effectively implemented is as yet unknown as no evaluation has been undertaken.

³⁴⁹ See more detailed discussion of the quota system in section 2.2.3.

³⁵⁰ National Council for Women, *The National Strategy for Combatting Violence against Women 2015–2020*, 2015, pp. 21–22, available at: <http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/egypt%20national%20strategy%20for%20combating%20vaw%202015.pdf>.

As discussed in Part 2, the National Strategy for the Empowerment of Egyptian Women 2030 was launched in 2017.³⁵¹ Its objective is to “strengthen the status of women through a comprehensive approach that takes into consideration the different roles that women play at the different phases of their life”,³⁵² and it aims to ensure that women contribute to the sustainable development of Egypt and to provide them with political, social, and economic opportunities without discrimination.³⁵³

Discriminatory Laws

In 2010, the CEDAW Committee voiced its concerns at the “persistence of a high number of discriminatory laws” in Egypt.³⁵⁴ When conducting a further review in 2017, the Committee noted that it was not satisfied that these concerns had been sufficiently addressed.³⁵⁵ Laws that relate to personal status, family and employment were noted with particular concern.³⁵⁶

Personal Status and Family Laws

As noted above, Egypt has made a reservation to Article 16 CEDAW, which guarantees the equality of men and women in matters relating to marriage and its dissolution. The reservation states that acceptance of Article 16 is “without prejudice to the Islamic Sharia’s provisions whereby women are accorded rights equivalent to those of their spouses so as to ensure a just balance between them”, going on to state:

*This is out of respect for the sacrosanct nature of the
firm religious beliefs which govern marital relations in*

351 National Council for Women, *National Strategy for the Empowerment of Egyptian Women 2030*, 2017, Preface, available at: <http://ncw.gov.eg/wp-content/uploads/2018/02/final-version-national-strategy-for-the-empowerment-of-egyptian-women-2030.pdf>.

352 *Ibid.*, p. 9.

353 *Ibid.*, p. 21.

354 See above, note 334, Paras 16 and 59.

355 OHCHR, *Report on follow-up by the Rapporteur on Follow-Up of the Convention on the Elimination of all Discrimination against Women*, UN. Doc DB/follow-up/Egypt/67, 21 September 2017.

356 *Ibid.*

*Egypt and which may not be called in question and in view of the fact that one of the most important bases of these relations is an equivalency of rights and duties so as to ensure complementary which guarantees true equality between the spouses.*³⁵⁷

The CEDAW Committee has noted with concern that legal provisions relating to personal status – including those pertaining to marriage, divorce and inheritance – “do not provide equal rights for women and men”.³⁵⁸

As noted in section 3.2, personal status law in Egypt operates under the principle of religious personality of laws, meaning that each recognised religious group (Muslims, Christians and Jews) has its own set of rules applicable to matters of personal status.³⁵⁹ Personal status laws for Muslims consists of both codified statutory law and non-codified Islamic Sharia law, regulating matters including marriage, divorce, paternity, child custody and inheritance. Moreover, certain provisions of statutory personal status laws are based on the state’s particular interpretation of Islamic Sharia: as the state explained to the CEDAW Committee in 2014, “Egyptian legislation, based as it is on the principles of Islamic law, accords rights and duties to both husband and wife which, although not identical, are complementary”.³⁶⁰

The principal sources of personal status law for those of the Muslim faith are Decree Law No. 25 of 1920 “on Maintenance and Some Questions of Personal Status (the “Personal Status Law”),³⁶¹ Decree Law No. 25 of 1929 “on Certain Personal Status Provision Law” (the “Personal Status Law II”),³⁶² Law No. 77 of 1943 “on Inheritance” (the “Inheritance Law”) and Law No. 1 of 2000 “on Certain Conditions and Procedures of Litigation in Matters of Personal Status” (the “Procedural Personal Status Law”).³⁶³ Matters of personal status are

357 See above, note 332.

358 See above, note 334, Para 47.

359 See above, note 218, p. 1.

360 See above, note 333, Para 14.

361 Amended by Law No. 100 of 1985 “on Amending Decree Laws No. 25 of 1920 and 1929” and Law No. 4 of 2005 “on Amending Article 20 of Decree-Law No. 25 of 1920”.

362 Amended by Law No. 100 of 1985 “on Amending Decree Laws No. 25 of 1920 and 1929”.

363 See above, note 220, p. 6.

primarily regulated by reference to these codified sources of law; however, in the absence of a codified rule on a specific matter, the Procedural Personal Status Law instructs judges to employ the predominant opinion of the Hanafi school of Sharia.³⁶⁴

While historically, it was required that all participants to a marriage must “have reached puberty, and be of sound mind [or] otherwise (...) be represented by a guardian who has the right to conclude a marriage on their behalf”,³⁶⁵ amendments to the Law No. 12 of 1996 “on the Egyptian Child Law” (the “Child Law”), discussed below, ensure that the minimum marriageable age in Egypt is now set at 18, for both men and women.³⁶⁶ However, in respect of adult women, it is less clear whether the guardianship requirement remains: a 2013 study found that while in some cases judges have recognised the competence of adult women to marry,³⁶⁷ in others courts have required a guardian’s permission.³⁶⁸ Such requirements are clearly discriminatory in that they treat women differently from men, and directly contravene Article 16 CEDAW.³⁶⁹

In its 2010 review of Egypt, the CEDAW Committee stated that it was particularly concerned about the continued legal authorisation of polygamy in Egypt.³⁷⁰ The HRC has declared that polygamy is incompatible with the principle of equality of treatment with regard to the right to marry, noting that it “violates the dignity of women” and is “an inadmissible discrimination against women”.³⁷¹ The 2017 UN Women/Promondo survey found that approximately 1% of men engage in polygamous practices.³⁷²

364 See above, note 222, Law No. 1 of 2000, Article 3.

365 Lindbekk, M., “The Enforcement of Personal Status Law by Egyptian Courts”, in Giunchi, A. (ed.), *Adjudicating Family Law in Muslim Courts*, Routledge, 2013.

366 Law No. 126 of 2008 inserts Article 31*bis* into Law No. 143 of 1994 on “Civil Status”.

367 Ain Shams Family Court, Case No. 637, 31 December 2009; See also, above, note 365.

368 Misr Al-Geddia Family Court, Case No. 300, 28 June 2008; See also, above, note 365.

369 See: Convention on the Elimination of Discrimination against Women (CEDAW), 1249 U.N.T.S. 13, 1979, Article 16.

370 See above, note 334, Para 47.

371 Human Rights Committee, *General Comment No. 28: Equality of rights between men and women* (article 3), UN Doc. CCPR/C/21/Rev.1/Add.1, 2000, Para 24.

372 See above, note 340, p. 68.

Prior to the entry into force of the Procedural Personal Status Law in 2000, the ability to dissolve a marriage unilaterally was available only to men, who were required only to repudiate the marriage verbally three times over a certain period of time in order to effectuate the divorce (a practice known as “*talaq*”).³⁷³ There was no requirement to initiate judicial proceedings in order for such a divorce to be effective. By contrast, a woman seeking divorce had no recourse to unilateral divorce, and instead was required to demonstrate “fault” on the part of the husband.³⁷⁴

Whilst the Procedural Personal Status Law did not eliminate the *talaq* system, it granted women their own right to unilateral divorce (*khula*).³⁷⁵ This mechanism allows the wife to initiate judicial proceedings to dissolve the marriage without having to demonstrate fault, but only after the expiration of a three month period during which reconciliation must be attempted.³⁷⁶ As a matter of non-codified Islamic Sharia, a prospective husband must pay a dowry, half of which is due before the marriage is consummated, and the remainder on divorce or death.³⁷⁷ Pursuant to Article 20 of the Procedural Personal Status Law, a wife seeking a *khula* divorce must forfeit her dowry and other “financial rights”, including maintenance.³⁷⁸ This requirement operates as a practical barrier to women seeking a unilateral divorce. Thus, while the introduction of *khula* represents gains for married women generally, the law remains discriminatory, both because of the differential treatment of men and women in respect of dowry payments and the imposition of more stringent conditions for women to unilaterally initiate divorce than those applied to men.

The state’s ability to regulate marriage has been undermined by the continued prevalence of customary unregistered marriages, known as *Urfi* mar-

373 See above, note 222, Articles 3 and 5.

374 Proving “fault” requires evidence that the husband is either: ill; impotent; has not met his maintenance requirements; is absent; or has caused the wife mental or physical harm: See above, note 222, Section 3, Article 9.

375 See above, note 222, Law No. 1 of 2000, Article 20.

376 *Ibid.*

377 El Alimi, D.S., *The Marriage Contract in Islamic Law*, Graham and Trotman Ltd., 1992, pp. 109-110; Human Rights Watch, *Overview of Marriage and Divorce Laws in Egypt*, 2004, available at: <https://www.hrw.org/reports/2004/egypt1204/3.htm>.

378 See above, note 220, p. 17.

riages.³⁷⁹ *Urfi* marriages satisfy the conditions required for a marriage contract to be considered valid according to the doctrine of the Hanafi school of Islam, but are not legally registered.³⁸⁰ Until 2000, women were not able to enforce rights and duties arising from such marriages through the courts; however, Article 17 of the Procedural Personal Status Law granted women in *Urfi* marriages the right to petition the court for divorce, provided they are able to provide some form of written evidence proving their marriage.³⁸¹

Women do not have equal inheritance rights: the Inheritance Law provides that women may inherit only half of the share of men when both have the same relationship to the deceased.³⁸² Women have also faced obstacles in enforcing their inheritance rights under the Inheritance Law. According to Care International, discriminatory practices have led to women being deprived of their inheritance, and such issues have been compounded by the fact that court proceedings are costly and extremely lengthy.³⁸³ In December 2017, an amendment to the Inheritance Law made the denial of an heir's legitimate share of inheritance punishable with at least six months' imprisonment and a fine of at least LE 100,000 (EUR 478).³⁸⁴

Matters of personal status are dealt with in the family courts, following the abolition of Sharia courts in 1956.³⁸⁵ However, the family courts must still abide by the procedural norms of the Hanafi school when adjudicating matters of personal status, according to which the testimony of a woman is worth half of that of a man.³⁸⁶

379 See above, note 365, p. 91.

380 *Ibid.*, p. 90.

381 See above, note 222, Law No. 1 of 2000, Article 17.

382 See above, note 222, Law No. 77 of 1943, Article 19(3).

383 Care International, *Egypt: Empowering Women to Claim Inheritance Rights*, visited 28 November 2018, available at: <https://www.care.at/projects/egypt-empowering-women-to-claim-inheritance-rights-win-egy914>.

384 Law No. 219 of 2017 amending Law No. 77 of 1943, Article 49.

385 Sharia Courts were integrated into the national judicial system by the Sharia Courts and Community Tribunals (Abolition) Act of 1955.

386 See above, note 222, Law No. 1 of 2000, Article 3 which instructs the judge to employ the predominant opinion of the Hanafi school in the absence of a textual provision within the personal status laws; See also: Freedom House, *Women's Rights In The Middle East And North Africa – Egypt 2010*, 2010, p. 5, available at: https://freedomhouse.org/sites/default/files/inline_images/Egypt.pdf.

Penal Code

The Egyptian Penal Code contains a number of directly and indirectly discriminatory provisions.

The UN Working Group on the issue of discrimination against women in law and in practice has noted that the criminalisation of adultery is “both in concept and practice overwhelmingly directed against women and girls”.³⁸⁷ This assessment is borne out in Egypt, where adultery is a criminal offence, and where the relevant provisions of the Penal Code are directly discriminatory. Under Article 274 of the Code, a married woman is considered to have committed adultery irrespective of where the act took place and is subject to up to two years’ imprisonment. By contrast, a married man can only be charged with adultery under Article 277 of the Penal Code if he commits adultery in the marital home and is only liable to a punishment of a maximum of six months’ imprisonment. Thus, women can be found guilty of adultery in a wider range of circumstances than men and are also subject to harsher punishment if found to have committed an offence. A shadow report submitted to the CEDAW Committee by the Egyptian NGOs Coalition Committee in 2008 highlighted that these directly discriminatory provisions are inconsistent with Egypt’s obligations under the CEDAW.³⁸⁸

Article 267 of the Penal Code criminalises sexual intercourse with a woman without her consent. The Criminal Chamber of the Egyptian Court of Cassation ruled on 6 January 1988 that this requires full penal penetration of the vagina of the victim, the absence of which downgrades the act to a possible sexual assault.³⁸⁹ The current rape law has been criticised for not including digital, oral, and anal penetration or penetration with objects.³⁹⁰ Furthermore, according to

387 Human Rights Council, *Communication report of special procedures: Mandate of the Working Group on the issue of discrimination against women in law and in practice*, UN Doc. OL/EGY/18/2017, 2017, pp. 1–2.

388 CEDAW Committee, *Egyptian NGOs Coalition Committee, List of Issues presented*, UN Doc. EGY/INT_CEDAW_NGO_EGY_45_8669, 2008, p. 10.

389 Court of Cassation, Criminal Chamber, Petition No. 4113 of 1988, Hearing of 6 January 1988, Technical Office, vol. 39, p. 79 (in Arabic); See also: Euro-Mediterranean Human Rights Network, *Egypt: Report on Violence against Women in Egypt*, 2014, p. 1, available at: http://www.europarl.europa.eu/meetdocs/2014_2019/documents/droi/dv/57_emhrnfctsheetviolencewom/57_emhrnfctsheetviolencewomen.pdf.

390 *Ibid.*, Euro-Mediterranean Human Rights Network.

judicial interpretation, any withdrawal of consent must be physically manifest, and there must be forensic proof that the woman resisted the rape in order to establish that she did not consent.³⁹¹ This judicial interpretation directly contradicts international human rights law standards in relation to the definition of rape. The CEDAW Committee has stated that the definition of sexual crimes, including marital rape should be “based on lack of freely given consent, and take (...) account of coercive circumstances”,³⁹² emphasising:

*There should be no assumption in law or in practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence.*³⁹³

In addition to these serious defects, the way in which Article 267 has been interpreted by the judiciary also means that acts of marital rape are not expressly prohibited: the definition applied by the judiciary stems from a 1928 decision of the Court of Cassation, which held that a woman may not refuse sexual intercourse with her husband “without a valid reason according to Sharia”.³⁹⁴

Article 237 of the Penal Code provides for reduced sentences for so-called “honour crimes” – crimes committed by a man who “surprises his wife in the act of adultery and kills her on the spot together with her adulterer-partner”. The provision is directly discriminatory, in that no equivalent provision is made in the case of a wife who finds her husband in the act of adultery and kills him. The UN Working Group on the issue of discrimination against women in law and in practice has noted that Article 237 is “a clear violation of women’s rights”.³⁹⁵

391 Arab Republic of Egypt, Case No. 165 of 2009, *Jarayem al Ightisab bayn al Waqe’ wal Tashree’*, 2009.

392 CEDAW Committee, *General Recommendation No. 35 on Gender-Based Violence against Women, updating General Recommendation No. 19*, UN Doc. CEDAW/C/GC/35, 2017, Para 33.

393 CEDAW Committee, *Judgment in Karen Tayag Vertido v the Philippines*, UN Doc. CEDAW/C/46/D/18/2008, 22 September 2010, Para 8.5.

394 Court of Cassation, Case No. 45/1193, 22 November 1928.

395 See above, note 387, p. 2.

Articles 17 and 60 of the Penal Code enable judges to reduce sentences for crimes where the conditions of the crime “necessitate leniency on part of the judges”,³⁹⁶ or where the “deed [was] committed in good faith, pursuant to a right determined by virtue of the Shari’a”.³⁹⁷ Article 17 has been used to reduce sentences for perpetrators of domestic violence and rape,³⁹⁸ with the assertion that Islamic Sharia provides for husband’s right to discipline his wife being invoked in this context.³⁹⁹ The CEDAW Committee has criticised these provisions, which “condone acts of violence against women by exempting perpetrators from punishment or reducing the sentences imposed.”⁴⁰⁰

Labour Law

There are both directly and indirectly discriminatory provisions in the Labour Law, which governs access to, conditions of, and dismissal from employment. Under Article 89, the government minister in charge of labour relations is empowered to issue a decree preventing women from undertaking certain types of employment between the hours of 7 pm and 7 am. Pursuant to Article 89, in 2003, the Ministry of Manpower and Immigration Decree No. 183 of 2003 was issued, which restricts the right of women to work during these hours in “industrial establishments”.⁴⁰¹ Article 2 of the Decree lists a wide range of facilities as being “industrial establishments”.⁴⁰² The Decree contains

396 See above, note 49, Article 17.

397 *Ibid.*, Article 60.

398 Nazra Center for Feminist Studies, “*Qanun Nashaaz*” *A Campaign on the Legal Issues Associated with Violence Against Women in both Private and Public Spheres*, 2014, available at: <http://nazra.org/en/2014/12/%E2%80%9Cqanun-nashaz%E2%80%9D-campaign-legal-issues-associated-violence-against-women-both-public-and>.

399 New Woman Foundation, *Factsheet on Violence Against Women in Egypt*, 2014, p. 1, available at: <http://nwrcegypt.org/en/?p=10898>.

400 See above, note 334, Para 23.

401 Ministry of Manpower and Immigration Decree No. 183 of 2003, Article 1.

402 *Ibid.*, Article 2 provides that industrial establishments are defined as: “A) Establishments where substances are manufactured, modified, cleaned, repaired, decorated, prepared for sale, dismantled, destroyed or transformed, including the establishments operating in shipbuilding, or any generating, transforming or connecting, or the motive power of any kind. B) Establishments operating in building and civil engineering, including works of installations constructions, restoration, maintenance, modification and demolition. C) Establishments in respect of which a decree of the Minister of Manpower is issued upon the recommendation of the concerned quarter, for adding or excepting certain activities.”

several exceptions to the general prohibition of night shifts in these sectors, including female workers engaging in administrative or technical labour in these fields. Under Article 90 of the Labour Law, a relevant minister is afforded the power to judge which roles are “unwholesome and morally harmful to women”. Pursuant to this provision, under the Minister of Manpower and Immigration Decree No. 155 of 2003, women are prohibited from working in a range of professions, ranging from bars and gambling clubs to mines.⁴⁰³

The CEDAW Committee has emphasised that prohibitions on certain forms of work may perpetuate discriminatory stereotypes against women.⁴⁰⁴ Such prohibitions are also inconsistent with the state’s obligation to ensure the equal right of men and women to work under Articles 3 and 6 ICESCR, with the right to work under Article 6(1) ICESCR encompassing a right to “freely choose” work.⁴⁰⁵

Nationality Laws

Under Article 24(3) ICCPR every child has the right to acquire a nationality. This is reinforced by the CRC which provides that states must ensure the implementation of the right to acquire a nationality “in particular where the child would otherwise be stateless”.⁴⁰⁶

Prior to 2004, a child born to an Egyptian mother and a foreign father could not acquire Egyptian nationality: under Article 2 of Law No. 26 of 1975 “on the Egyptian Nationality” (the “Law on Nationality”) an Egyptian national was defined as anyone with an Egyptian father;⁴⁰⁷ which meant that Egyptian women married to non-Egyptians were prevented from passing on their nationality to

403 Minister of Manpower and Immigration Decree No. 155 of 2003, Article 1.

404 CEDAW Committee, *Svetlana Medvedeva v Russian Federation*, Communication No. 60/2013, UN Doc. CEDAW/C/63/D/60/2013, 2016.

405 CESCR, *General Comment No. 18: Article 6 of the International Covenant on Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/18, 2006, Para 4.

406 Convention on the Rights of the Child (CRC), 1577 U.N.T.S. 3, 1989, Article 7; Egypt originally entered a reservation to the CRC but withdrew it on 3 July 2003. See: United Nations Treaty Collection, *Chapter IV: Human Rights: 11. Convention on the Rights of the Child*, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-11&chapter=4&lang=en.

407 Law No. 26 of 1975 “on the Egyptian Nationality”, Article 2.

their children. However, legislation passed in 2004 amended this directly discriminatory provision, such that an Egyptian national is defined as:

1. *Anyone who is born of an Egyptian father, or an Egyptian mother.*
2. *Anyone who is born in Egypt from unknown parents. A foundling in Egypt shall be considered born in it unless otherwise established.*⁴⁰⁸

Gender equality in nationality and citizenship is consolidated under Article 6 of the Constitution, which provides that “[c]itizenship is a right to anyone born to an Egyptian father or an Egyptian mother”.

However, the Law on Nationality retains directly discriminatory provisions: Egyptian women are not able to pass their nationality on to their foreign husbands, whereas Egyptian men are able to pass their nationality on to their foreign wives after two years of marriage under Article 7 of the Law on Nationality. The CEDAW Committee has urged Egypt to amend the Law on Nationality in order to bring it into conformity with international law.⁴⁰⁹

Furthermore, Egyptian civil society groups report that women who have attempted to apply for citizenship for their children face administrative barriers and are often turned away from the registry offices, despite possessing the required documents.⁴¹⁰ An international NGO conducted interviews with Egyptian women who had attempted to register their children under these measures in 2013, who reported that the mechanisms for registering children under the law were complicated, and the location for processing these applications (Cairo) was difficult for women living in rural locations to attend.⁴¹¹ In comparison, children with Egyptian fathers can be registered at

408 Law No. 26 of 1975 “on the Egyptian Nationality”, as amended by Law No. 154 of 2004.

409 See above, note 334, Para 38.

410 Egyptian Association for Community Participation Enhancement, *Women and Development Association*, ACT, Dr. Fatema Khafagy of the Alliance for Arab Women, Egyptian Foundation for Family Development, *UPR Joint Stakeholder Report for Egypt 2014*, 2014, p. 2, available at: https://www.upr-info.org/sites/default/files/document/egypt/session_20_-_october_2014/js7_upr20_egy_e_main.pdf.

411 Women’s Refugee Commission, *Our Motherland, Our Country: Gender Discrimination and Statelessness in the Middle East and North Africa*, 2013, pp. 9–10, available at: www.refworld.org/docid/51c02a084.html.

any of the 4,417 local health units in the country.⁴¹² As such, whilst the 2004 amendment to the Law on Nationality removed the discriminatory denial of nationality to children born to Egyptian mothers and foreign fathers, in practice women face difficulties in registering their children.

Discriminatory Violence

The CEDAW Committee has stated clearly that the Convention's definition of discrimination includes GBV and that as such, states have an obligation to eliminate such violence.⁴¹³ GBV is violence that is directed against women or girls because of their gender or violence which affects women disproportionately; it includes:

*Acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.*⁴¹⁴

States are responsible for the acts or omissions of its organs and agents that constitute GBV against women, including acts or omissions by officials in its executive, legislative and judicial branches.⁴¹⁵ In addition, the CEDAW Committee has also emphasised that states will be held responsible if they fail to take "all appropriate measures" to prevent, investigate, prosecute, punish and provide reparations for acts or omissions by non-state actors that result in GBV against women.⁴¹⁶

GBV is prevalent in Egypt and takes various forms: according to a 2015 study by the United Nations Population Fund (UNFPA), approximately 1 million married women leave their marital homes each year due to domestic violence perpe-

412 UN Department of Economic and Social Affairs, Statistics Division, *Civil Registration and Vital Statistics System in Egypt*, 2008, available at: <https://unstats.un.org/unsd/vitalstatkb/KnowledgebaseArticle50088.aspx>.

413 CEDAW Committee, *General Recommendation No. 19*, UN Doc. A/47/38, 1992, Para 6; See also, above, note 392, Para 21.

414 See above, note 392, Para 14.

415 *Ibid.*, Para 22.

416 *Ibid.*, Para 24(b).

trated by their spouse, and around 200,000 thousand women each year suffer pregnancy-related complications as a result of violence perpetrated by their spouse; more than 1.7 million women experience various forms of sexual harassment on public transport; and around 2.5 million women had suffered various forms of sexual harassment on the streets in the previous year.⁴¹⁷

Domestic Violence

Under Articles 2 and 3 CEDAW, Egypt is obliged to prevent and punish acts of violence committed by private actors against women in its jurisdiction.⁴¹⁸ Domestic and family-based violence has been recognised by the CEDAW Committee as one of the “most insidious forms of violence against women”.⁴¹⁹

The CEDAW Committee has clarified that states are obligated under CEDAW to adopt specific legislation prohibiting all forms of GBV, including domestic violence.⁴²⁰ The Egyptian legal framework does not make adequate provision for the prevention or punishment of domestic violence. Domestic violence is not a separate offence under the Penal Code; the only provisions of the Penal Code which can be relied upon in cases of domestic violence are Article 241 – which criminalises the wounding or beating of another that “results in sickness or inability to perform work for a period exceeding twenty days” – and Article 242, which punishes beating or wounding that “does not reach the degree of gravity prescribed in [Article 241]” with a maximum of one year’s imprisonment.

According to Article 18*bis* of the Criminal Code of Procedure, victims of crimes can engage in reconciliation procedures with respect to certain offences in the Penal Code – offences which include those covered by Articles 241 and 242. Reconciliation results in the termination of criminal proceedings or the suspension of the execution of a criminal sentence if it has been already issued.⁴²¹ There are significant risks associated with the use of reconciliation procedures

417 UN Population Fund, *The Egypt Economic Cost of Gender-Based Violence Survey (ECGBVS) 2015*, 2015, pp. 2–4, available at: <https://egypt.unfpa.org/sites/default/files/pub-pdf/Costs%20of%20the%20impact%20of%20Gender%20Based%20Violence%20%28GBV%29%20WEB.pdf>.

418 See above, note 392, Para 24(b).

419 See above, note 413, Para 22.

420 See above, note 392, Para 26(a).

421 See above, note 119, Article 18*bis*.

for crimes of GBV, particularly where such violence occurs within a family relationship, where women may be under social, cultural or even economic pressure to “reconcile” with abusive partners or other family members. The CEDAW Committee has asserted that cases of GBV should not be “mandatorily referred to alternative dispute resolution procedures, including mediation and conciliation” and that such approaches must be “strictly regulated”, used only with the “free and informed consent” of the victim, and where there are “no indicators of further risks” for the victim or their family.⁴²²

Domestic violence is widely tolerated in society, with men in particular considering violence against their partners to be legitimate. The aforementioned 2017 UN Women/Promondo study found that more than half of male respondents considered that women “deserve to be beaten *on occasion*”, whilst 90% of male respondents “asserted that women should accept such treatment in order to preserve the family”.⁴²³ Research indicates that women themselves also believe that domestic violence is justified in some circumstances. For example, a 2009 study showed that 55% of women agreed that if they left the house without the permission of their husbands, their husbands would be justified in beating them.⁴²⁴ The UN Women/Promondo study found that one in six of the women surveyed reported to have “been forced to have sex” with their husband.⁴²⁵

In a joint statement, the CEDAW Committee and the Committee on the Rights of the Child (CRC Committee) have clarified that in order to fulfil their convention obligations, states should provide “adequate shelters” for women exposed to domestic violence, within which “specialized services for victims of violence” are accessible.⁴²⁶ According to the Egyptian Government, there are only nine shelters for women who have experienced domestic violence in the

422 See above, note 392, Para 45.

423 See above, note 340, p. 80.

424 El-Zanaty, F. and Way, A., *Egypt Demographic and Health Survey 2008*, 2009, Table 3.14, available at: <https://dhsprogram.com/pubs/pdf/fr220/fr220.pdf>.

425 See above, note 340, p. 80.

426 CEDAW and Committee on the Rights of the Child (CRC Committee), Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, UN Doc. CEDAW/C/GC/31-CRC/C/GC/18, 2014, Para 83.

country, situated in cities including Cairo and Qalyubia.⁴²⁷ It is expected that women contribute financially to their stay in these shelters through the payment of fees.⁴²⁸ The shelters are reportedly underfunded and understaffed, which, as a result, means that they cannot allow emergency admission or, in some shelters, admission at all after 3 pm.⁴²⁹

"Honour killings"

"Honour killings" have been defined by the UN Expert Group on good practices in legislation to address harmful practices against women as "the murder, or attempted murder, of a woman by members of her family who do not approve of her sexual behaviour".⁴³⁰ A study by the Association of Legal Aid for Women (CWELA) which examined news reports on domestic violence from mid-2002 to mid-2003 showed that 42% of cases of domestic violence were reported as "honour crimes".⁴³¹ More recently nearly 10% of respondents to the aforementioned 2017 UN Women/Promondo study recalled hearing of an "honour killing" in their local community in the previous year.⁴³² The same study showed high levels of public approval for "honour killings": more than 60% of men and nearly half of women interviewed stated that they believed that a victim usually deserves such punishment.⁴³³

Though the Penal Code is the primary law for the prosecution of perpetrators of violence against women including "honour killings", in practice it often serves

427 The shelters, including the addresses and phone numbers, are listed at the government website: Ministry for Social Solidarity, Department of Social Affairs, *Reception and Protection Centres for Women*: <http://www.moss.gov.eg/ar-eg/Pages/social-protection.aspx>.

428 Nazra Center for Feminist Studies, *Women Survivors of Violence - Where to Go? Problems Facing Shelters for Women in Egypt and Gaps in Responses to Needs of Women Survivors of Violence*, 2016, pp. 11–13, available at: <http://nazra.org/en/2016/08/women-survivors-violence-where-go>.

429 *Ibid.*

430 Gill, A., *'Honour' Killings and the Quest for Justice in Black and Minority Ethnic Communities in the UK*, UN Doc. EGM/GPLHP/2009/EP.03, 2009, p. 3, available at: http://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Expert%20Paper%20EGMGPLHP%20_Aisha%20Gill%20revised_.pdf.

431 Khafagy, F., *Honour Killing in Egypt*, 2005, p. 1, available at: <http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/khafagy.honorcrimes.pdf>.

432 See above, note 340, p. 83.

433 *Ibid.*

as a means to mitigate punishment.⁴³⁴ As noted above, Article 17 of the Penal Code provides broad judicial discretion to reduce sentencing in circumstances where leniency is “necessitated”.⁴³⁵ Judges have found “honour killings” to be “justified” on the basis that the victim allegedly violated prevailing social values or brought shame to the family.⁴³⁶ Article 237 of the Penal Code specifically enables judges to lower the sentencing in murders prompted by adultery.⁴³⁷

Child Marriage

In 2008, a provision was inserted into Law No. 143 of 1994 on “Civil Status”, which stated that a marriage in Egypt cannot be registered if one of the parties is under the age of 18.⁴³⁸ Prior to the promulgation of this law, notaries had been prohibited from registering the marriage of males and females under the ages of 18 and 16 respectively,⁴³⁹ a directly discriminatory provision.

However, research by scholars and CSOs in Egypt has found that the adoption of the 2008 amendment has not been sufficient in itself to eliminate the practice of child marriage of girls.⁴⁴⁰ According to a census conducted in 2017 by the Egyptian Central Agency for Public Mobilization and Statistics, nearly 11% of adolescent girls (15–19) were either married or had been married before.⁴⁴¹ Furthermore, research indicates that customary marriages are often used “in order to circumvent restrictions related to the minimum age of marriage”.⁴⁴²

In 2014 and 2017, legislators brought forward motions to overturn the minimum marriage age provision on the Child Law and reduce the age of mar-

434 USAID, *Egypt Violence Against Women Study: Summary of Findings*, 2009, p. 39, available at: https://www.cepal.org/mujer/noticias/paginas/7/42837/internal_link_EGYPT_VIOLENCE.pdf.

435 See above, note 49, Article 17.

436 See above, note 434.

437 See above, note 49, Article 237.

438 See above, note 366.

439 See above, note 365.

440 United Nations International Children’s Emergency Fund (UNICEF), *Egypt Country Brief: UNICEF Regional Study on Child Marriage in the Middle East and North Africa*, 2017, available at: <https://www.icrw.org/wp-content/uploads/2018/04/Egypt-FINAL.pdf>.

441 See above, note 336.

442 See above, note 365.

riage for girls to 16.⁴⁴³ These motions were reportedly met by resistance from many, including the NCW, and were not successful.⁴⁴⁴

The CRC Committee has noted that child marriage is a “harmful practice” in Egypt, and has recommended that Egypt “[i]ntensify efforts to prevent and eliminate all forms of child marriages, in particular by prohibiting by law any marriage between persons below the age of 18”.⁴⁴⁵ The Committee has observed that Egypt should criminalise child marriage in order to create an effective shift in social and cultural norms surrounding the practice.⁴⁴⁶ Recent reports indicate that the parliament’s Legislative Committee is drafting a bill which would prohibit child marriage and penalise any father who forces his daughter to marry before reaching the minimum age of marriage by depriving him of the authority of guardianship over the girl or her property.⁴⁴⁷ While this would be a welcome change in respect of child marriage, it should be noted that the proposed bill would reinforce the patriarchal and discriminatory norm of “guardianship” over female children.

Female Genital Mutilation

Female genital mutilation (FGM) is prevalent in Egypt: 92% of the women surveyed in the aforementioned UN Women/Promondo survey referred reported having been circumcised,⁴⁴⁸ a figure which is consistent with figures obtained from other national surveys.⁴⁴⁹ Furthermore, the survey found that 70% of men and over 50% of women interviewed approve of FGM.⁴⁵⁰

443 Gamal El-Din, E., “Draft Law Aimed at lowering age of marriage to girls to 16 sparks controversy in Egypt”, *Ahram Online*, 12 August 2017, available at: <http://english.ahram.org.eg/NewsContent/1/64/275230/Egypt/Politics-/Draft-law-aimed-at-lowering-age-of-marriage-for-gi.aspx>.

444 Girls Not Brides, *Egypt*, 2017, available at: <https://www.girlsnotbrides.org/child-marriage/egypt>.

445 CRC Committee, *Concluding Observations: Egypt*, UN Doc. CRC/C/EGY/CO/3-4, 15 July 2011, Para 68.

446 *Ibid.*, Para 32.

447 Reda, L., “11% of girls aged 15-19 are married: Health Min.”, *Egypt Today*, 5 July 2018, available at: <https://www.egypttoday.com/Article/2/53375/11-of-girls-aged-15-19-are-married-Health-Min>.

448 See above, note 340, p. 77.

449 Ministry of Health and Population, El-Zanaty and Associates and ICF International, *Egypt Demographic and Health Survey 2014*, 2015; See also, above, note 340, p. 77.

450 See above, note 340, p. 42.

In 2008, Egypt criminalised the practice of FGM, with Article 242*bis* of the Penal Code imposing a penalty of imprisonment for between three months and two years for those convicted of practicing FGM.⁴⁵¹ In 2016, Article 242*bis* was amended by Law No. 78 of 2016 such that practitioners of FGM may be subject to a punishment of imprisonment for a term of between five to seven years; this sentence is increased to up to 15 years in prison if FGM results in the death of the victim or permanent disability.⁴⁵² A new Article 242*bis*(a) was also introduced, pursuant to which anyone who requests the performance of FGM may be subject to a penalty of between one and three years.⁴⁵³

Despite these legislative reforms, Egyptian CSOs have noted that there is a “continuing failure to protect women and girls from FGM in Egypt” and “a lack of political will to implement and enforce the law”.⁴⁵⁴ The Anti-FGM Task Force – a coalition of Egyptian human rights organisations – has called on the state to conduct training and awareness-raising for police forces, prosecutors and judges who handle FGM cases.⁴⁵⁵ The CEDAW Committee has also recommended that states must do more than simply legislate against FGM in order to meet their obligations under the Convention: they must generate support from society for the eradication of the practice through engagement with “universities, medical associations, women’s organisations and religious and community leaders”.⁴⁵⁶ The CRC Committee has recommended Egypt to conduct awareness-raising programmes in order to eradicate FGM.⁴⁵⁷

451 Law No. 126 of 2008 amending Law No. 58 of 1937.

452 Human Rights Watch, “Egypt: New Penalties for Female Genital Mutilation”, *Human Rights Watch*, 9 September 2016, available at: <https://www.hrw.org/news/2016/09/09/egypt-new-penalties-female-genital-mutilation>; Thomas Reuters Foundation and 28 Too Many, *Egypt: The Law and FGM*, 2018, p. 4, available at: [https://www.28toomany.org/static/media/uploads/Law%20Reports/egypt_report_v1_\(june_2018\).pdf](https://www.28toomany.org/static/media/uploads/Law%20Reports/egypt_report_v1_(june_2018).pdf).

453 *Ibid.*, Thomas Reuters Foundation and 28 Too Many.

454 *Ibid.*, p. 7.

455 *Ibid.*

456 CEDAW Committee, *General Recommendation No. 14: Female Circumcision*, UN Doc. A/45/38, 1990.

457 See above, note 445.

Gender Based Violence in the Public Sphere

Public Demonstrations

Violence by state actors against women engaged in peaceful protest may constitute a violation of the rights to, *inter alia*, the prohibition of torture, inhuman or degrading treatment, freedom of expression, freedom of assembly and association, both alone and in conjunction with the right to non-discrimination on the basis of sex and political opinion.⁴⁵⁸ States also have due diligence obligations to prevent, investigate or punish violence against women engaged in peaceful protest by non-state actors.⁴⁵⁹

There is evidence that women were directly targeted with violence by both state and non-state actors during the public protests and marches which formed the basis of political uprisings between 2011 and 2013.⁴⁶⁰ The violent treatment of women during the protests and marches has been criticised as “render[ing] the [public] sphere itself one that is not safe for women’s existence, which results in their inability to express other rights, such as political participation.”⁴⁶¹

458 ICCPR, Articles 2(1), 7, 19(2), 21 and 22.

459 The CAT Committee has stated that “where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts (...) The Committee has applied this principle to States parties’ failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking”: See above, note 248, Para 18.

460 Amnesty International, *Gender-Based Violence Against Women on Tahrir Square*, 2013, available at: https://www.atria.nl/epublications/IAV_B00108541.pdf; FIDH, *Egypt, Keeping Women Out: Sexual Violence Against Women in the Public Sphere*, 2014, available at: https://www.fidh.org/IMG/pdf/egypt_sexual_violence_uk-webfinal.pdf.

461 Hassan, M., “Women’s Rights in the Aftermath of the Egyptian Revolution”, visited 28 November 2011, p. 8, available at: https://warwick.ac.uk/fac/soc/pais/research/researchcentres/irs/euspring/publications/euspring_paper_5_womans_rights_in_egypt.pdf.

Samira Ibrahim Mahmoud, Rasha Ali Abdel-Rahman v Egypt⁴⁶²

The case of *Samira Ibrahim Mahmoud, Rasha Ali Abdel-Rahman v Egypt*, which is currently before the African Commission on Human and People's Rights (ACmHPR), concerns allegations of violence suffered by women at the hands of state actors during a peaceful sit-in protest in Tahrir Square on 9 March 2011.

Samira Ibrahim Mahmoud was arrested and detained by the military and taken to a women's military prison. She and other women claimed that prior to the arrest, the soldiers subjected them to verbal harassment at Tahrir Square, calling them prostitutes. This verbal abuse continued throughout her experience, indicating that the crime of prostitution was used as a proxy ground for subjecting women to violence.⁴⁶³ Ms Mahmoud submitted that she was beaten and electrocuted in the military prison, before being forced to strip naked in front of male and female prison guards. She was subsequently subjected to a forced genital examination in front of male soldiers, before being required to sign a declaration that she was a virgin.⁴⁶⁴

Following global condemnation of the use of forced virginity examinations,⁴⁶⁵ and in light of the fact that such examinations had been conducted by members of the military, the head of the Military Justice Department ordered that the case be examined at a military court.⁴⁶⁶ However, the doctor who conducted the tests was exonerated by the military court.⁴⁶⁷

462 African Commission on Human and Peoples' Rights, *Samira Ibrahim Mahmoud, Rasha Ali Abdel-Rahman (Represented by EIPR, INTERIGHTS and REDRESS) v. Egypt*, Communication No. 424/12, 27 February 2014, Applicant's Submission on Merits, available at: <https://redress.org/wp-content/uploads/2017/11/1410samira-ibrahim-m-rasha-abdel-rahman-v-egypt-applicants-merits-submissions.pdf>.

463 *Ibid.*; See also: *Ibid.*, Annex 3, *Letter from Amnesty International, dated 22 February 2012, confirming SCAF member's admission of virginity tests and promise to halt them*.

464 *Ibid.*, p. 11.

465 See above, note 460, Amnesty International.

466 See above, note 462, p. 16.

467 Hussein, A.R., "The Future of Egyptian Women is in Danger – Samira Ibrahim Speaks Out", *The Guardian*, 13 March 2012, available at: <https://www.theguardian.com/lifeandstyle/2012/mar/13/women-samira-ibrahim-egypt-virginity-tests>.

Ms Mahmoud sought judicial review of the decision before the Administrative Court, but was not granted any remedy or reparations, nor were any criminal or civil penalties handed down to the perpetrators.⁴⁶⁸ As a result, Ms Hamoud took her case to the ACmHPR, complaining that her right to non-discrimination on the grounds of gender under Article 2 and 18(3) of the ACHPR had been violated. The case has been declared admissible and, at the time of writing this report, is still pending before the ACmHPR.⁴⁶⁹

In 2013 the CESCRC expressed concern at the “high incidence of sexual violence against women participating in protests and marches” in Egypt.⁴⁷⁰ In doing so, the CESCRC indicated measures to be taken by Egypt in fulfilling its “due diligence” obligations and protecting women against violence by non-state actors, as follows:

*[T]he State party should ensure effective and accessible reporting channels and protection measures that are sensitive to victim needs and confidentiality. The State party should also ensure the enforcement of appropriate criminal sanctions against perpetrators of violence against women, including by monitoring the number of prosecutions and convictions in this regard.*⁴⁷¹

Research indicates that violence against women perpetrated by non-state actors during the uprisings between 2011 and 2013 has not been adequately investigated. In 2013, Human Rights Watch found that 91 cases of rape occurring in the protest areas were reported to the Egyptian authorities between 2011 and 2013 but were not investigated.⁴⁷²

468 See above, note 462; and Court of Administrative Justice of Egypt, *Samira Ibrahim and Maha Maamoun v. SCAF & others*, Case No. 45029 of 2012.

469 See above, note 462.

470 See above, note 345, Para 15.

471 *Ibid.*

472 Human Rights Watch, “Egypt, Endemic of Sexual Violence”, *Human Rights Watch*, 3 July 2013, available at: <https://www.hrw.org/news/2013/07/03/egypt-epidemic-sexual-violence>.

Sexual Harassment

For women in Egypt, sexual harassment is a daily occurrence. In a 2013 study of sexual harassment in Egypt by UN Women, 99.3 % of those surveyed had been subject to some form of sexual harassment.⁴⁷³ A 2017 Thomson Reuters Foundation investigation into the world's most dangerous cities for women rated Cairo with a score of 3 (where a score of 1 is the worst and 19 is the best) in response to the statement "women can live in this city without facing sexual violence including rape, sexual assault and harassment".⁴⁷⁴ These conclusions are consistent with evidence gathered by the Equal Rights Trust's researchers. One woman shared her experience of sexual harassment, and the state authorities' failure to take action to prevent or investigate such harassment:

*One day I was shopping and I was physically harassed by a man who put his hand on me. When I screamed, the people in the market blamed me because I was a woman and I raised my voice. I went to the police to complain but they verbally harassed me too. I asked them to take my statement of the harassment but they refused and told me that my father or my husband needed to be present for them to take my statement.*⁴⁷⁵

Certain legal and political steps have been taken to counter sexual harassment. In 2014, Interim President Adly Mansour issued a decree creating two criminal offences of sexual harassment in the Penal Code which carry a penalty of up to six months imprisonment. Article 306bis(a) defines the offence of sexual harassment as "carrying out of sexual or obscene gestures in any manner, including by modern means of communication". The second offence, created by Article 306bis(b), criminalises sexual harassment conducted in order to obtain sexual gratification from the victim.⁴⁷⁶ Successful cases have been

473 UN Women, *Study on Ways and Methods to Eliminate Sexual Harassment in Egypt*, 2013, p. 6, available at: https://s3-eu-west-1.amazonaws.com/harassmap/media/uploaded-files/287_Summaryreport_eng_low-1.pdf.

474 See above, note 337.

475 Equal Rights Trust Interview C10.

476 Law No. 50 of 2014 amending Law No. 58 of 1937, Article 306bis(a) and 306bis(b).

brought under these new provisions, reflecting a significant opportunity for women subjected to sexual harassment to obtain redress.⁴⁷⁷

However, harmful attitudes concerning sexual harassment prevail. A lawyer with whom the Equal Rights Trust's researchers spoke stated that the media and police tend to shift blame for sexual harassment to women, including by accusing victims of not dressing modestly.⁴⁷⁸

Multiple Discrimination Against Women's Rights Defenders

Women who have spoken out against sexual harassment and other forms of GBV have been subject to victimisation, harassment and even arrest. One woman interviewed during the research for this report told the Trust's research team of the violence and victimisation she was subject to for speaking out about violence against girls:

*In December 2012, I was arrested for several days by the Military Police during a protest denouncing the beating of six girls in the events at the Council of Ministers in the Southern Military Region. I have suffered beatings by Military Police and I was detained for the night without charge and without a legal justification.*⁴⁷⁹

Human Rights Defender Azza Soliman has faced criminal charges, had her assets frozen and is currently under a travel ban as a result of her work on behalf of GBV survivors; writing recently in TIME magazine, Soliman explained that she had been "accused of damaging the image of Egypt by spreading "false news" of sexual harassment and rape".⁴⁸⁰ In May 2018, Egyptian activist Amal Fathy was arrested and detained after posting a 12 minute video on Facebook in which she explained how she had been

477 Reda, M., "Girl wins first case against harasser in Upper Egypt", *Egypt Today*, 23 February 2018, available at: <https://www.egypttoday.com/Article/2/43616/Girl-wins-first-case-against-harasser-in-Upper-Egypt>.

478 Information provided to the Equal Rights Trust by an Egyptian lawyer, 9 July 2018.

479 Equal Rights Trust Interview A4.

480 Soliman, A., "How #MeToo and #TimesUp Are Helping Egyptian Women Break the Silence Around Sexual Violence", *TIME*, 17 May 2018, available at: <http://time.com/5280726/how-metoo-and-timesup-are-helping-egyptian-women-break-the-silence-around-sexual-violence>.

sexually harassed twice that day, first by a taxi driver and then by a bank adviser, and criticised the Egyptian Government for failing to protect women against sexual harassment.⁴⁸¹ On 29 September 2018, Amnesty International reported that Fathy had received a two year suspended prison sentence as a result of her criticisms of the government.⁴⁸² Amnesty International has condemned the case as one of “shocking injustice”, noting that “[i]nstead of prosecuting perpetrators of violence against women, the Egyptian authorities are persecuting Amal Fathy for speaking out against sexual harassment”.⁴⁸³

Access to Education

A 2011 study by the United Nations Children Fund (UNICEF) revealed a gender disparity in net enrolment rates in both primary and secondary education: 92% of girls were enrolled in primary school compared with 95% of boys, while 64% of girls and 66% of boys were enrolled in secondary education.⁴⁸⁴ The CEDAW Committee has raised concerns regarding the rate at which girls and young women drop out of secondary school and university, and *de facto* gender segregation in students’ choice of field of education, which has inhibited women from entering traditionally male-dominated fields of study.⁴⁸⁵

The Equal Rights Trust’s work in Egypt also found examples of direct gender discrimination in education. For example, Ms Lina Sharif Kamel brought a case in which she successfully challenged the discrimination she faced in applying to study medicine at Al-Azhar University.

481 Amnesty International, “Egypt: Amal Fathy referral to trial a shocking case of injustice”, *Amnesty International*, 8 August 2018, available at: <https://www.amnesty.org/en/latest/news/2018/08/egypt-amal-fathy-referral-to-trial-a-shocking-case-of-injustice>.

482 Amnesty International, “Egypt: Woman human rights defender and sexual harassment survivor sentenced for speaking out”, *Amnesty International*, 29 September 2018, available at: <https://www.amnesty.org/en/latest/news/2018/09/egypt-woman-human-rights-defender-and-sexual-harassment-survivor-sentenced-for-speaking-out>.

483 *Ibid.*

484 UNICEF, *Egypt Equality Profile*, 2011, p. 4, available at: <https://www.unicef.org/gender/files/Egypt-Gender-Eqaulity-Profile-2011.pdf>.

485 See above, note 334, Paras 31–32.

Gender Discrimination in University Admissions: Case No. 67863

Ms Kamel applied to the Faculty of Medicine at Al-Azhar University in 2016, but her application was not successful; she was informed that she had not received the grades necessary to be admitted to the Faculty of Medicine, and so was admitted to the Faculty of Engineering instead. Ms Kamel subsequently discovered that the university required female applicants to have attained higher grades than male applicants in order to be accepted to the Faculty of Medicine, and that her grades would have been sufficient for her to be accepted to study medicine had she been a male applicant. Ms Kamel filed a lawsuit against the university, arguing that its admissions policy was discriminatory on the grounds of gender.⁴⁸⁶

Ms Kamel's case was successful, with the court holding that Al-Azhar University's admissions policy was in violation of Article 11 (which guarantees equality between women and men) and Article 53 (which prohibits discrimination on the grounds of sex) of the Constitution. The lawyers acting in the case noted that this was a historic ruling and an effective application of Article 53 of the Constitution by the courts.⁴⁸⁷ Ms Kamel herself commented as follows:

*I felt that I faced clear discrimination, as I lost my dream to be a doctor just because I am a woman! It was not fair in any way, but I did not know what I could do. I decided to file a lawsuit. [The outcome] was unexpected because Al-Azhar has a lot of power and respect as the official Islamic body.*⁴⁸⁸

Employment

The CEDAW Committee has raised concerns about the "high rate of unemployment affecting women, a wide gender gap, and occupational segregation."⁴⁸⁹ According to data from the International Labour Organization (ILO), only

486 Al Bawaba News, "A landmark judicial ruling that Al-Azhar discriminates between students", *Al Bawaba News*, 9 May 2018, available at: <http://www.albawabhnews.com/3093490>.

487 *Ibid*.

488 Information provided to the Equal Rights Trust, 4 September 2018.

489 See above, note 334, Para 33.

53.8% of women aged between 15 and 64 were participating in the labour force in 2017⁴⁹⁰, as compared to 80.6% of men in the same age group.⁴⁹¹

Research for this report indicates that a number of factors contribute to the low levels of participation by women in the workforce. First, as discussed above, the Labour Law contains provisions which directly discriminate against women, restricting them from undertaking certain types of employment and preventing them from working at night, so reducing women's opportunities to enter employment.

Second, there is significant evidence that women face harassment or other forms of GBV in the workplace.⁴⁹² For example, in a 2016 study conducted by the New Woman Foundation across eight governorates in Egypt, researchers interviewed 58 women working in both the public and private sector in relation to their experiences of sexual harassment in the workplace; the majority of women who participated in the interviews reported having been exposed to sexual harassment, which occurred regardless of the age, family status or education of the victim.⁴⁹³ A number of the women who had experienced sexual harassment stated that they were afraid to file a complaint against the perpetrator for fear of retaliation, including being dismissed from work.⁴⁹⁴ According to the 2015 study by the UNFPA referred to above, approximately 139,600 women had been exposed to violence in the workplace during the previous year, which equates to around 3.7% of the population of working women.⁴⁹⁵ The ILO Committee of Experts on the Application of Conventions

490 World Bank, *Data: Labor force participation rate, female (% of female population ages 15–64) (modeled ILO estimate)*, updated September 2018, available at: <https://data.worldbank.org/indicator/SL.TLFACTI.FE.ZS>.

491 World Bank, *Data: Labor force participation rate, male (% of male population ages 15–64) (modeled ILO estimate)*, updated September 2018, available at: <https://data.worldbank.org/indicator/SL.TLFACTI.MA.ZS>.

492 Al-Rawateb, "The barriers to women's participation in the job market", *Al-Rawateb*, 2017, available (in Arabic) at: <https://rawateb.org/home/tips-for-action/627644645631629-648627644639645644/63964262862762a-639645644-627644645631629>.

493 The New Woman Foundation, *Sexual Harassment at the Workplace*, 2016, pp. 7-8, available at: <http://nwrcegypt.org/en/wp-content/uploads/2016/06/Observatory-of-the-Economic-and-Social-Rights-of-Women-at-Work-15x21-EN.pdf>.

494 *Ibid.*, p. 10.

495 See above, note 417, p. 4.

and Recommendations, which is tasked with examining the application of international labour standards under the ILO Conventions that a country has ratified, has repeatedly recommended that Egypt take measures to include a definition of sexual harassment in the Labour Code and to establish a mechanism which provides remedies for victims and penalties for offenders.⁴⁹⁶

According to Safir Mounir, the Director of the Egyptian foundation Women and Work, other key factors that contribute to the low presence of women at work in Egypt include low female participation in higher education, dangers in taking public transportation and the lack of childcare.⁴⁹⁷ Researchers for this report interviewed a number of women who reported facing difficulties at work due to a lack of suitable childcare facilities:

*I suffered a lot as a working mother. Whilst I insisted on continuing to work, a number of mothers had to leave work and become housewives.*⁴⁹⁸

*[After my maternity leave] I was not able to return to my old job. I tried more than once to apply for private sector jobs, but either I was rejected, or the working hours didn't suit the fact that I was a mother with a child in a nursery – I had to collect my child at 3 pm, while the working day ends at 5 pm. There was no workplace which provided a nursery, even though the law obligates employers to do that, and I didn't complain because I was afraid of being targeted and I was on a short-term contract only. My husband never took responsibility for caring for the child, so I had many problems continuing work, and whenever I complained, my husband asked me to leave work to take care of my child.*⁴⁹⁹

496 International Labour Organization (ILO), *Direct Request (CEACR) – adopted 2016, published 106th ILC session (2017)*, 2017, available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3300900.

497 Mounir, S., "Will new Egyptian employment law help its women lean in?" *Al-Monitor*, 3 November 2015, available at: <https://www.al-monitor.com/pulse/originals/2015/11/egypt-women-participation-labor-market.html>.

498 Equal Rights Trust Interview D8.

499 Equal Rights Trust Interview D25.

As regards maternity rights, as discussed in Part 2, Article 91 of the Labour Law provides that female employees who have been in service for at least ten months are entitled to 90 days of fully paid maternity leave; under Article 94, where female employees work for an employer who has more than 50 employees, they have the right to take unpaid leave of up to two years in addition to the 90 days of paid leave. However, the fact that a female employee must have a minimum of ten months' service in order to be entitled to paid maternity leave has reportedly led to an increased practice of recruiting women on temporary contracts.⁵⁰⁰ Women interviewed by the Equal Rights Trust's researchers reported facing discrimination at work on account of their pregnancy: one pregnant woman, who worked as a broadcaster, explained that she was told that she was not allowed to appear on screen anymore as her "form was not appropriate".⁵⁰¹

Healthcare

Furthermore, under the CEDAW, Egypt is obliged to provide adequate maternity services, which include antenatal, maternity and post-natal services.⁵⁰² Additionally, the CEDAW places an obligation on states parties to "take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning."⁵⁰³

Under Article 16(1)(e) CEDAW, women are guaranteed equal rights in deciding "freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights". Women in Egypt have historically faced difficulties in accessing adequate information and counselling on contraception and reproductive health, giving rise to high birth rates and many Egyptian women "having more births than they consider ideal".⁵⁰⁴ Egypt has taken some steps

500 See above, note 388, p. 7.

501 Equal Rights Trust Interview D13.

502 CEDAW, Article 12(2).

503 *Ibid.*, Article 12(1).

504 UN Population Fund, *Egypt: Family Planning*, 2014, available at: <https://egypt.unfpa.org/en/node/22543>; See also: Devi, S., "Women's health challenges in post-revolutionary Egypt", *The Lancet*, Vol. 381, No. 9879, 2013, pp. 1705–1706.

in recent years to ensure that women have access to contraception and reproductive health services: for example, in July 2017, contraception provision in Egypt was boosted with “Operation Lifeline”, an initiative which involves the establishment of 12,000 educational centres in 18 (mainly rural) governorates which aim to increase women’s knowledge of reproductive health services⁵⁰⁵ and sell government subsidised contraception.⁵⁰⁶ NGOs such as Plan International have also been involved in running awareness-raising workshops on health-related issues in rural areas.⁵⁰⁷ However, such efforts have been undermined by a lack of readily available contraception: in 2017, it was reported that the country was experiencing a shortage in contraception, including birth-control pills and abortion pills, due to a reduction in the import of foreign medication, meaning many Egyptian women have reportedly struggled to obtain contraception, with some having to attempt to buy birth-control pills on the black market.⁵⁰⁸

Egyptian maternal mortality is lower than global and regional rates: in 2015 the maternal mortality ratio was 33 deaths per 100,000 live births;⁵⁰⁹ this compares with a global ratio of 216 per 100,000 and a ratio of 110 per 100,000 across the Middle East and North Africa.⁵¹⁰ Crucially, a recent study conducted in one hospital in Asiyut, Upper Egypt, showed that over 70% of maternal deaths were from avoidable causes, namely “delayed transfer from other hospitals and substandard practice” which lead to “preeclampsia and

505 Ahram Online, “Health Ministry launches “Lifeline” Strategy to combat population boom”, *Ahram Online*, 31 July 2017, available (in Arabic) at: <http://www.ahram.org.eg/NewsQ/606388.aspx>; and HuffPostArabi, “Cairo launches “Lifeline” to combat the population boom, so that the population drops by 16 million”, *HuffPostArabi*, 31 July 2017, available (in Arabic) at: http://www.huffpostarabi.com/2017/07/31/story_n_17640254.html.

506 Al-Jazeera, “Witness: Egypt’s ‘Lifeline’ strategy fights population growth”, *Al-Jazeera*, 2 September 2017.

507 Egyptian Streets, “Hundreds of Children Gather to Combat Gender Discrimination in Egypt”, *Egyptian Streets*, 3 January 2018, available at: <https://egyptianstreets.com/2018/01/03/hundreds-of-children-gather-to-combat-gender-discrimination-in-egypt>.

508 The Economist, “A shortage of birth control makes life tough for Egyptians”, *The Economist*, 23 March 2017, available at: <https://www.economist.com/middle-east-and-africa/2017/03/23/a-shortage-of-birth-control-makes-life-tough-for-egyptians>.

509 World Bank, *Data: Maternal Mortality Ratio*, 2015, available at: https://data.worldbank.org/indicator/sh.sta.mmrt?year_high_desc=false.

510 UNICEF, *Maternal mortality*, 2017, available at: <https://data.unicef.org/topic/maternal-health/maternal-mortality>.

post-natal haemorrhage”.⁵¹¹ The Special Rapporteur on the right to health has confirmed that a failure to prevent avoidable maternal mortality constitutes a violation of women’s rights to non-discrimination.⁵¹² More broadly, in its General Recommendation No. 24, the CEDAW Committee has stated that high maternal mortality rates indicate that maternal health services fall below the standard set by CEDAW.⁵¹³

Political Participation and Public Positions

In its 2010 review of Egypt, the CEDAW Committee raised concerns regarding the “continuing underrepresentation of women in public, political and professional life and in decision-making positions”.⁵¹⁴ In 2009, the state reported that in the parliamentary term spanning the period from 2005 to 2010, women held nine seats in the House of Representatives, representing 1.8% of the total number of members of Parliament; furthermore, there were only three female Government ministers, while women accounted for only 39.8% of all registered voters.⁵¹⁵

As noted above, the Constitution includes certain guarantees in relation to women’s political participation and the holding of public positions, which are supplemented by Presidential Decree Law No. 46 of 2014 “on the House of Representatives” which includes quotas for women’s election to the House of Representatives. Whilst the 2014 Decree resulted in historic gains in the 2016 parliamentary election, with women occupying 87 of the seats (15%),

511 Abbas, A.M. et al, “Maternal Mortality: a Tertiary Care Hospital Experience in Upper Egypt”, *International Journal of Reproduction, Contraception, Obstetrics and Gynaecology*, Vol. 5, No. 5, 2016, pp. 1466–1471.

512 UN General Assembly, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc. A/61/338, 2006, Paras 28–29.

513 CEDAW Committee, *General Recommendation No. 24: Article 12 of the Convention (women and health)*, UN Doc. A/54/38, 1999, Para 17.

514 See above, note 334, Para 30.

515 Human Rights Council, *National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Egypt*, UN Doc. A/HRC/WG.6/7/EGY/1, 16 November 2009, p. 17.

the Decree was valid for one election only.⁵¹⁶ Furthermore, irrespective of the quota, female politicians in Egypt “still face obstacles such as a lack of funding, patriarchal attitudes, and a lack of female party leadership”.⁵¹⁷

As regards women’s representation in the judiciary, out of a total of 16,000 judges, approximately just 0.4% are women, and there are reports that women have been prevented from applying for judicial positions on the basis of their gender, in contradiction to the Constitution.⁵¹⁸ In 2014, a number of aspiring female candidates for the position of assistant delegate to the State Council were denied the opportunity to apply for the role because of their gender; after a complaint was filed at the office of the State Council, the State Council’s Commissioners Authority issued a report rejecting the appointment of women within the Council’s ranks.⁵¹⁹ The International Commission of Jurists reported in 2016 that opposition from male judges to the election of female counterparts remained strong and that there needed to be wider support for women to be fully integrated into these positions.⁵²⁰

Conclusion

The Constitution guarantees the equality of men and women in the enjoyment of rights, and discrimination on the basis of sex is prohibited. A number of articles of the Constitution also make provision for positive action measures to be taken to achieve gender equality, including in relation to women’s political participation. These provisions are supplemented by a number of governmental policies which are aimed at eliminating discrimination and promoting the empowerment of women. However, such constitutional guarantees and

516 Fracolli, E., “Women and Quotas in Egypt’s Parliament”, *The Tahrir Institute for Middle East Policy*, 1 May 2017, available at: <https://timep.org/commentary/analysis/women-and-quotas-in-egypts-parliament>.

517 *Ibid.*

518 Farid, S., “Is there a place for women within Egypt’s judiciary?”, *Al Arabiya*, 21 February 2018, available at: <https://english.alarabiya.net/en/features/2018/02/21/Is-there-a-place-for-Egyptian-women-within-judicial-positions-.html>; Hassan, S., “Egyptian Judiciary: Is There Room for Women?”, *Raseef22*, 2 February 2018, available at: <https://raseef22.com/en/life/2018/02/02/egyptian-judiciary-room-women/>; See Part 2.4.1 for a detailed discussion of the competence of the State Council.

519 *Ibid.*, Hassan.

520 See above, note 130, p. 88.

policies are undermined by the existence of discriminatory laws in a number of different areas of life, in particular those relating to personal status and employment, and provisions of the Penal Code which exempt perpetrators from punishment or reduce the sentences imposed in cases of GBV. The effect of these laws is to entrench patriarchal attitudes and direct discrimination into the legal system governing significant areas of women's lives – family life, employment and personal safety.

Domestic violence is widely tolerated and widespread, while “honour killings”, child marriage and FGM remain prevalent, despite some legislative reforms. Women are also subjected to sexual violence in the public sphere, including when participating in public demonstrations, and sexual harassment is prevalent. Women experience discrimination and inequality in other areas of life, including education, employment, healthcare, and participation in political and public life.

3.4 Discrimination and Inequality on the Basis of Ethnicity or Race

Protection against discrimination in the enjoyment of other human rights on the basis of race and colour is enshrined in Article 2(1) ICCPR and Article 2(2) ICESCR. Article 26 ICCPR provides a free-standing, autonomous right to non-discrimination on grounds including race and ethnicity. As a state party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Egypt is also required to prohibit all forms of discrimination on the basis of race, colour, descent, national and ethnic origin, and pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.⁵²¹

A lack of disaggregated official data makes it difficult to accurately assess the ethnic composition of the country. However, recent studies estimate that ethnic Egyptians constitute 91% of the total population.⁵²² Ethnic minority groups include the Turks, Greeks, Abazas and Bedouin Arab tribes in the Sinai Peninsula and the deserts to the east of the country, as well as the Siwis (also

521 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 660 U.N.T.S. 195, 1965, Article 2(1).

522 World Population Review, *Egypt Population 2018*, 2018, available at: <http://worldpopulationreview.com/countries/egypt-population>.

known as Berbers or Amazighs) in the Siwa Oasis, and the Nubian people in the Upper Nile region.⁵²³

Egypt came under criticism from the Committee on the Elimination of Racial Discrimination (CERD) in 2016 for failing to provide comprehensive statistical data regarding the ethnic make-up of the population and its geographical distribution.⁵²⁴ In particular, the Committee raised concerns regarding the lack of socioeconomic indicators disaggregated by ethnic or national origin, “especially for small ethnic groups such as the Bedouin/nomads, Nubians and Berbers”.⁵²⁵ The CERD requested that Egypt collect and publish comprehensive statistical data on the ethnic make-up of the population and provide such disaggregated data in its next periodic report.⁵²⁶

This section of the report focuses on discrimination on the grounds of ethnicity or race, with a particular focus on the Nubian people and the Bedouin; discrimination against refugees, asylum-seekers and migrants is discussed in section 3.5 (discrimination on the grounds of nationality and citizenship).

Social and Political Context

In 2016, the CERD raised concerns regarding the situation of persons belonging to ethnic minority groups, such as the Bedouin, Nubians and Berbers, noting “the social stigmatisation from which they suffer” and “[t]he difficulties encountered by such persons in the full enjoyment of their economic, social and cultural rights”.⁵²⁷

Nubians

There are reportedly between three and four million Nubians living in Egypt, who originate from the region known as “Nubia” which once occupied terri-

523 *Ibid.*

524 Committee on the Elimination of Racial Discrimination (CERD), *Concluding Observations: Egypt*, UN Doc. CERD/C/EGY/CO/17-22, 6 January 2016, Para 7.

525 *Ibid.*

526 *Ibid.*, Para 8.

527 *Ibid.*

tory in modern-day southern Egypt and northern Sudan.⁵²⁸ When the boundary between Egypt and Sudan was fixed in 1899, a significant population of Nubians found themselves under direct Egyptian rule in the governorate of Aswan.⁵²⁹ Today, the governorate of Aswan has a significant population of non-Nubian inhabitants, meaning that “Nubians have found themselves a minority within their native province”.⁵³⁰

The Nubian people were subject to a series of forced displacements during the 20th century (discussed further below) in which thousands of Nubians were relocated to purpose-built resettlement communities north of Aswan.⁵³¹ This had a significant economic effect on the Nubian people, as well as threatening the continuation of their unique culture and customs which developed through living along the Nile River.⁵³² Nubians also reportedly face significant societal stigma and discrimination, with the Egyptian media portraying Nubians as “servants, drivers, or gatekeepers or even slaves with very narrow minds”.⁵³³

The Bedouin

There are no clear statistics on the size of the Bedouin population in the Sinai Peninsula, but recent estimates put the number between a quarter and a half of Sinai’s population of 550,000.⁵³⁴ The Bedouin have faced a difficult history

528 Minority Rights Group International, *Nubians*, updated October 2017, available at: <http://minorityrights.org/minorities/nubians>.

529 *Ibid.*

530 *Ibid.*

531 Janmyr, M., “Nubians in Contemporary Egypt: Mobilizing Return to Ancestral Lands”, *Middle East Critique*, Vol. 25, No. 2, 2016, p. 128.

532 Egyptian Center for Housing Rights, *Individual NGO submission to the Office of the High Commissioner for Human Rights on the occasion of the seventh session of the Universal Periodic Review 2010: Egypt: A submission on compliance with peoples’ rights under the Common Article No. 1 of the ICCPR and ICESCR and the rights of individuals who belong to this group of people*, 2010, Para 8, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/EG/ECHR_UPR_EGY_S07_2010_EgyptianCenterforHousingRights.pdf.

533 *Ibid.*, Para 20.

534 Idris, I., *Sinai Conflict Analysis*, 2017, p. 4, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/049%20Sinai%20Conflict%20Analysis%20%28new%20K4D%20template%29.pdf>; Minority Rights Group International, “Protecting and promoting the human rights of discriminated minorities in Egypt”, *Minority Rights Group International*, 12 December 2016, available at: <http://minorityrights.org/what-we-do/protecting-promoting-human-rights-discriminated-minorities-egypt>.

in the region, having fallen under the control of various states throughout the century before Israel relinquished control of the Peninsula to Egypt in 1982.⁵³⁵ After this point, the Egyptian government began to increase investment in the region's tourist industry; however, the Bedouin were not able to benefit from the economic growth in the region, with the government reportedly denouncing them as criminals and banning them from coming near tourist attractions.⁵³⁶ Bedouin representatives have complained that, despite the regional economic boom from tourists travelling to resorts such as Sharm al-Sheikh, they have been unable to benefit.⁵³⁷ The Bedouin reportedly face considerable societal stigma, with one Bedouin individual interviewed by the Equal Rights Trust's researchers for this report explaining:

*We, the Bedouin, face a lot of discrimination: people look at us differently because of our accent, our customs, our appearance. They can't imagine how a Bedouin man could drive a car, especially if it is expensive, and they start making comments.*⁵³⁸

Over the course of the last 15 years, the Bedouin have been repeatedly blamed by the Egyptian Government for terrorist attacks in the Sinai, notwithstanding the fact that transnational terrorist organisations have claimed responsibility for some of these attacks.⁵³⁹ The Egyptian army has conducted a number of military operations in the Sinai region since 2012, which increased in the wake of a number of terrorist attacks against churches and mosques, resulting in the launch of "Operation Sinai" in February 2018.⁵⁴⁰ According to Minority Rights Group

535 Khashan, I., "The Sinai Bedouins: An Enemy of Egypt's Own Making", *Middle East Forum*, 1 April 2018, available at: <https://www.meforum.org/articles/2018/the-sinai-bedouins-an-enemy-of-egypt-s-own-making>.

536 *Ibid.*

537 Melik, J., "Sinai Bedouin 'left out of region's economic development'", *BBC News*, 12 November 2012, available at: <http://www.bbc.co.uk/news/business-19267223>.

538 Equal Rights Trust Interview B28.

539 See above, note 535.

540 Khoury, J., "Egypt Launches Major Offensive Against ISIS 'Terrorists' in Sinai", *Haaretz*, 9 February 2018, available at: <https://www.haaretz.com/middle-east-news/egypt/egypt-launches-major-offensive-against-isis-terrorists-in-sinai-1.5806028>; Ahram Online, "Operation Sinai 2018 destroyed terrorism infrastructure in N Sinai: Egypt's army spokesperson in first-ever interview", *Ahram Online*, 26 July 2018, available at: <http://english.ahram.org.eg/NewsContent/1/64/308582/Egypt/Politics-/Operation-Sinai--destroyed-terrorism-infrastructure.aspx>.

International, these operations have given rise to food shortages, and resulted in the forced displacement of Bedouin communities from the Sinai region.⁵⁴¹

Legal and Policy Framework

Article 53 of the Constitution prohibits discrimination on the basis of, *inter alia*, origin, race, colour and language. The Constitution also contains a number of commitments to cultural diversity: Article 47 provides that the state “is committed to protecting Egyptian cultural identity with its diverse civilizational origins”; Article 48 guarantees the right to culture without discrimination, and provides that the state “gives special attention to remote areas and the groups most in need”; while Article 50 commits the state to protecting and maintaining “the components of cultural diversity”. However, the CERD has noted that Egypt has not included a definition of racial discrimination consistent with that in Article 1 ICERD in its criminal, civil and administrative law.⁵⁴²

Beyond this constitutional provision, there is neither specific legislation prohibiting discrimination on the basis of race, ethnicity and origin, nor comprehensive anti-discrimination legislation, despite the fact that the adoption of such legislation is necessary for compliance with the state’s non-discrimination obligations under international law.⁵⁴³

The Penal Code does not treat the existence of a discriminatory motive as an aggravating circumstance in the commission of violent crimes, as required as a matter of international best practice.⁵⁴⁴ Article 176 of the Penal Code

541 Minority Rights Group International, *Iraq, Egypt, India: MRG statement at the Human Rights Council*, 2018, available at: <https://minorityrights.org/advocacy-statements/mrg-statement-at-the-hrc-iraq-egypt-india>.

542 See above, note 524, Para 9.

543 See, *inter alia*: CESCR, *General Comment No. 20: Non-discrimination*, UN Doc. E/C.12/GC/20, 2009, Para 37, which provides that states are “encouraged to adopt specific legislation that prohibits discrimination”; *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 15 further elaborates that “[t]he realisation of the right to equality requires the adoption of equality laws and policies that are comprehensive and sufficiently detailed and specific to encompass the different forms and manifestations of discrimination and disadvantage.”

544 *Ibid.*, *Declaration of Principles on Equality*, Principle 7; ICERD, Article 4(a), which provides that states “[s]hall declare an offence punishable by law (...) acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin.”

provides that whoever incites hatred or derision of “a sect of people, if such incitement is liable to perturb public peace” shall be punished with imprisonment. The term “sect” encompasses ethnic and racial groups.⁵⁴⁵ As discussed in Part 2, Article 176 goes beyond the requirements of Article 20(2) ICCPR, which obliges states to prohibit any “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. Furthermore, the fact that such restriction applies where it is “liable to perturb public peace” fails to satisfy the conditions of Article 19(3) ICCPR in respect of the right to freedom of expression, which provides that the legitimate aims for restricting the right to freedom of expression are the respect of the rights or reputations of others and the protection of national security or public order, or of public health or morals.

Discriminatory Violence

There have been reports of violence against individuals of South Sudanese origin living in Egypt. For example, on 9 February 2017, a South Sudanese volunteer teacher who had lived in Egypt with his family since 2005 was murdered.⁵⁴⁶ The attacker was suspected to have targeted the victim on the basis of his ethnicity, and the authorities had reportedly failed to take any measures to protect the victim from violence even though his attacker had made a habit of targeting the school where he worked.⁵⁴⁷

Land Rights and Forced Displacement

Under Article 11(1) ICESCR, states are obliged to recognise the right of everyone to an “adequate standard of living”, including housing. The CESCR has noted that all persons should be protected against forced eviction, harassment and other threats,⁵⁴⁸ with the term “forced evictions” being defined as:

545 Dienne, D., *Study of the prohibition of incitement to national, racial or religious hatred in Africa*, visited 12 July 2018, p. 6, available at: <https://www.ohchr.org/Documents/Issues/Expression/ICCPR/Nairobi/NairobiStudyE.pdf>.

546 El-Mahdawy, H., “Strangers in another country: The murder of Gabriel Tut and anti-black discrimination”, *Mada Masr*, 19 March 2017, available at: <https://www.madamasr.com/en/2017/03/19/feature/politics/strangers-in-another-country-the-murder-of-gabriel-tut>.

547 *Ibid.*

548 CESCR, *General Comment No. 4: The right to adequate housing (art. 11 (1) of the Covenant)* (Sixth session, 1991), 1 January 1992, Para 8(a).

*[T]he permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.*⁵⁴⁹

The CESCR has noted that forced evictions can occur “in the name of development” in connection with development and infrastructure projects, including the construction of dams, and that ethnic minorities are particularly vulnerable to the practice of forced eviction.⁵⁵⁰ States are obliged to ensure that individuals affected by evictions are properly consulted and have a right to adequate compensation for any personal and real property which is affected.⁵⁵¹

Nubians

As discussed above, thousands of Nubian people were displaced from their ancestral lands in southern Egypt at various points during the 20th century, beginning in 1902 with the construction of the Aswan Dam. This continued throughout the 20th century until the last significant wave of displacement, caused by the construction of the Aswan High Dam in 1964.⁵⁵² Over this period approximately 60% of Egyptian Nubian territory was destroyed or rendered unfit for habitation, with approximately half of the Nubian population being displaced as a result.⁵⁵³ Those displaced were resettled in new villages in the desert north of Aswan, though these were some distance away from the Nile and consisted of inadequate housing and resources.⁵⁵⁴ Others were forced to migrate to cities such as Cairo or Alexandria.⁵⁵⁵

549 CESCR, *General Comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions* (Sixteenth session, 1997), 20 May 1997, Para 3.

550 *Ibid.*, Paras 7 and 10.

551 *Ibid.*, Para 13.

552 Eshhad: Center for the Protection of Minorities, *Minority Profile: Egypt's Nubians*, 2018, p. 2, available at: <https://static1.squarespace.com/static/5947e4266a49635915ac0a31/t/5a79255f419202954ded4793/1517888880708/MP+Egypt+Nubians.pdf>.

553 See above, note 528.

554 *Ibid.*

555 *Ibid.*

No effort was made to obtain the consent of the Nubian people during their displacement.⁵⁵⁶ The CESCR, in its General Comment No. 21, stated that the right to take part in cultural life under Article 15(a) ICESCR includes the right of indigenous peoples to their lands and called on states to respect the principle of free, prior and informed consent of indigenous peoples in all matters relating to this right. Where indigenous peoples have been removed from their lands without their free and informed consent, the CESCR emphasised that states must take steps to return these lands.⁵⁵⁷ As such, while the displacement of the Nubian people occurred prior to the ICESCR opening for signature, as a state party to the Covenant, Egypt is under an obligation to respect the right of the Nubians to their land and take steps to return these lands to them.

As a result of their displacement, the Nubians have experienced decades of economic marginalisation.⁵⁵⁸ However, the impact has been more than economic, as the displacement has posed a threat to the unique cultural characteristics of the Nubian people, the evolution of which was heavily influenced by the geography of Nubia.⁵⁵⁹ Successive governments have promised compensation for the Nubian people for the loss of their villages or to facilitate their resettlement near their original lands; however, this has not materialised.⁵⁶⁰

Since their forced relocation, Nubians have been calling for the right to return to their land.⁵⁶¹ As a result of campaigning by representatives of the Nubian community, the new Constitution, adopted in 2014, included legal recogni-

556 Minority Rights Group International, *MRG Submission to the UN Special Rapporteur on the Rights of Indigenous Peoples Regarding Criminalisation and Attacks on Indigenous Peoples Defending their Rights*, 2018, available at: <http://minorityrights.org/advocacy-statements/mrg-submission-un-special-rapporteur-rights-indigenous-peoples-regarding-criminalisation-attacks-indigenous-peoples-defending-rights>.

557 CESCR, *General Comment No. 21: Right of everyone to take part in cultural life*, UN Doc. E/C.12/GC/21, 2009, Paras 36–37.

558 See above, note 534, Minority Rights Group International.

559 See above, note 532.

560 See above, note 552.

561 Noshokaty, A., “Egypt Nubia: 50 years of displacement”, *Ahram Online*, 2 November 2013, available at: <http://english.ahram.org.eg/NewsContent/32/99/84158/Folk/Special-Files/Egypt-Nubia--years-of-displacement-.aspx>.

tion of the Nubians' "right to return" to their ancestral lands.⁵⁶² Article 236 of the Constitution provides that:

[T]he State shall work on developing and implementing projects to bring back the residents of Nubia to their original territories and develop such territories within 10 years, as regulated by law.

However, 10 months after the entry into force of this provision, Presidential Decree No. 444/2014 was adopted, designating 16 villages on traditional Nubian lands as military zones and thereby prohibiting their use for residential purposes, leading to fears of "a new wave of forced evictions".⁵⁶³ Furthermore, in 2016 the government included Nubian land for sale to investors as part of its land reclamation project named the "One and a Half Million Acres Project".⁵⁶⁴

In July 2017, the Prime Minister issued a decree regarding the compensation of Nubians for their land and a compensation committee was formed, including the Minister of Justice and the Governor of Aswan. However, the decree required the Nubian community to provide proof of their property, a requirement that was insurmountable for many individuals given the time that had elapsed since the displacements.⁵⁶⁵

The Bedouin

As noted above, the Egyptian Government has conducted a number of military operations in the Sinai region in recent years, in an effort to suppress suspected Islamist militants operating in the area.⁵⁶⁶ In 2015, Human Rights Watch reported that the Egyptian authorities had demolished at least 3,255 residential, commercial, administrative and community buildings in the Sinai

⁵⁶² See above, note 528.

⁵⁶³ *Ibid.*; Amnesty International, "Egypt: Release 24 Nubian Activists Detained After Protest Calling For Respect Of Their Cultural Rights", *Amnesty International*, 12 September 2017, available at: <https://www.amnesty.org/en/press-releases/2017/09/egypt-release-24-nubian-activists-detained-after-protest-calling-for-respect-of-their-cultural-rights>.

⁵⁶⁴ *Ibid.*

⁵⁶⁵ *Ibid.*

⁵⁶⁶ See above, note 540.

Peninsula between July 2013 and August 2015, resulting in the forcible eviction of thousands of people.⁵⁶⁷ In 2016, the CERD raised concerns that the Bedouin were being relocated without adequate compensation, ostensibly for “security reasons”.⁵⁶⁸

Such concerns increased in the wake of “Operation Sinai”, launched in February 2018: in May 2018, Human Rights Watch reported that the Egyptian army had “vastly expanded widespread destruction of homes, commercial buildings, and farms in the North Sinai governorate”, leading to the destruction of at least 3,000 homes and commercial buildings.⁵⁶⁹ This has led to a food crisis, with over 400,000 residents reportedly in urgent need of humanitarian aid.⁵⁷⁰ Human Rights Watch has asserted that the army’s operations in North Sinai “most likely amounts to collective punishment of local residents and discrimination against the Bedouin”.⁵⁷¹

Arbitrary Detention

Nubians: Suppression of Protests

In recent years, there have been several incidents involving the violent arrest and detention of Nubians involved in campaigning for their right to return to the remaining part of their ancestral lands, as guaranteed by Article 236 of the Constitution.

In November 2016, Nubian activists organised a peaceful protest against the government’s proposed sale of Nubian land under the “One and a Half Million Acres Project”; Minority Rights Group International reported that the protest was “besieged” by security forces, with forces preventing sup-

567 Human Rights Watch, *“Look for Another Homeland”: Forced Evictions in Egypt’s Rafah*, 2015, available at: <https://www.hrw.org/report/2015/09/22/look-another-homeland/forced-evictions-egypts-rafah>.

568 See above, note 524, Para 17.

569 Human Rights Watch, *Egypt: Army Intensifies Sinai Home Demolitions*, 2018, available at: <https://www.hrw.org/news/2018/05/22/egypt-army-intensifies-sinai-home-demolitions>.

570 Human Rights Watch, *Egypt: Looming Humanitarian Crisis in Sinai*, 2018, available at: <https://www.hrw.org/news/2018/04/23/egypt-looming-humanitarian-crisis-sinai>.

571 *Ibid.*

plies from reaching protestors for 24 hours and harassing activists.⁵⁷² On 2 January 2017, eight Nubian activists were arrested after protesting against the displacement of Nubian villagers in West Aswan; seven activists were detained by the police and charged with disrupting the implementation of a presidential decision, holding a collective gathering and road obstruction.⁵⁷³

As noted above, in July 2017, the Prime Minister issued a decree regarding the compensation of Nubians for their land; the decree imposed insurmountable obstacles for many Nubians whose families had been displaced. In response, Nubian activists organised a peaceful march called the “March of the Drums” on 3 September 2017, in which they demanded the Nubian peoples’ right of return to their lands in accordance with Article 236 of the Constitution and sang traditional songs.⁵⁷⁴ The police violently dispersed a peaceful protest in al-Guzzayra square in Aswan and detained 24 Nubian activists who attended the protest.⁵⁷⁵

The death of one of the activists, Gamal Sorour, on 5 November 2017, due to a failure to provide him with diabetes medication, lead to further protests which resulted in violent clashes with security forces.⁵⁷⁶ A consortium of the UN Working Group on Arbitrary Detention and various UN Special Rapporteurs suggested that the detention and subsequent death of Mr Sorour was a result of intersectional discrimination on the basis of his ethnicity in combination with his political opinion, connected with his work as a human rights defender.⁵⁷⁷ The detainees were eventually released on 15 November 2017.⁵⁷⁸

572 See above, note 556.

573 *Ibid.*

574 Human Rights Council, *Communication report of special procedures: Mandates of the Working Group on Arbitrary Detention and others*, UN Doc. AL/EGY/19/2018, 2017, pp. 1–2.

575 See above, note 563, Amnesty International.

576 See above, note 574, p. 2.

577 *Ibid.*

578 *Ibid.*

Interviews with Nubian Protestors

"In September 2017, we were calling for a big event in Aswan with the participation of the Nubian youth and public figures, with the aim of demanding the implementation of Article 236 of the Constitution concerning the return of the Nubians to their lands, and the establishment of an organisation for the development of Nubia, which still hasn't happened.

*On the day of event and before we moved to the chosen location, we knew that it was trapped by the central security forces and police armoured vehicles, so we decided to change the place; we went to a square called Algezira overlooking one of the Nubian villages and we started the event. We were carrying tambourines and singing and carrying banners with our demands, and we began to move till we reached the Nile Corniche where we found the central security vehicles surrounding us. There were some fights between the youth participants and the security manager after some of the officers assaulted some of the elderly Nubian leaders. Then there were negotiations and we said that we were going to break the march and go away, but the national security manager in Aswan said that no one should move and that we would all be arrested, and then he started to insult our leaders (...) the youth rejected the insults, so we were physically attacked and they began to arrest us (...) some were able to escape, but we were caught (...) they erased all the recordings and videos of their assault from our cell phones. Then they let us go with some of the elderly and arrested 24 persons."*⁵⁷⁹

*"In September 2017, it was Adha Eid vacation, and we conducted a sit-in with tambourines and songs to present our demands that the government activate Article 236 of the Constitution to reconstruct the Nubian villages that were abandoned in order to build the high dam. However, the sit-in was targeted by the security forces: they chased us and hit us, and 25 were arrested. They filed a case that turned the situation from an ordinary misdemeanor to a matter of national security (...) It's normal in Aswan to walk and sing, and that's what we did in the sit-in – however, we were confronted with violence, brutality and imprisonment (...) This made me feel discriminated against, because I am required to stay silent and not to express my opinion."*⁵⁸⁰

579 Equal Rights Trust Interview A34.

580 Equal Rights Trust Interview D40.

Violent suppression of peaceful protest and arrest and detention of protestors violates a range of Egypt's international human rights obligations under the ICCPR, including *inter alia*, the right to liberty and security of the person (Article 9) and the rights to freedom of expression (Article 19) and peaceful assembly (Article 21). Under Article 2(1) ICCPR, the state has an obligation to ensure these and other rights under the Covenant can be enjoyed without distinction of any kind, including on grounds of race and political opinion.

The Bedouin

Thousands of Bedouins have also been discriminatorily detained following security incidents.⁵⁸¹ As noted above, from around 2003 onwards, the Bedouin people have been held responsible for terrorist attacks. For example, security forces reportedly arrested over 3,000 Bedouins in response to bombings in Taba and Sharm el-Sheikh in 2004 and 2005.⁵⁸² A 2010 report suggested that between 1,000 and 3,000 Bedouins were still held in Egyptian prisons.⁵⁸³ In August 2011, the military launched "Operation Eagle" in which two special forces brigades were deployed to crack down on "militancy" in Sinai.⁵⁸⁴

A number of Bedouin individuals interviewed by the Equal Rights Trust's researchers for this report explained how they had been targeted by the state authorities. One person explained that the Bedouin are treated by the police as "traitors" and are always stopped for a much longer time than non-Bedouin individuals when they pass through police checkpoints.⁵⁸⁵ Another individual explained that he had been detained by the police on account of the fact that he is Bedouin:

581 IRIN, "Bedouins begin to demand equal citizenship rights", *IRIN News*, 16 June 2011, available at: <http://www.irinnews.org/news/2011/06/16/bedouins-begin-demand-equal-citizenship-rights>.

582 See above, note 535.

583 Walton, O., *Helpdesk Research Report: Conflict, Exclusion and Livelihoods in the Sinai region of Egypt*, 2012, p. 8, available at: <https://assets.publishing.service.gov.uk/media/57a08a5a40f0b64974000564/hdq834.pdf>, citing Mohyeldin, A. and Makary, A.

584 Ahmed, A. and Akins, H., "No Arab Spring for Egypt's Bedouin", *The Brookings Institution*, 15 February 2012, available at: <https://www.brookings.edu/opinions/no-arab-spring-for-egypts-bedouin>.

585 Equal Rights Trust Interview B17.

*A few months ago, I was in my car and I was stopped at a security inspection point; because of my clothes, accent and my personal info in my ID they started to ask illogical questions, they kept me for 3 hours or more and after lengthy discussions they finally let me to go. They treat us like we are responsible for all terrorist incidents!*⁵⁸⁶

Citizenship and Registration

Article 2 of the Law on Nationality governs Egyptian citizenship. It provides that nationality is “granted” through being born in Egypt or acquired from an individual’s parents.

There is evidence that this law has been applied in a discriminatory manner in respect of the Bedouin, with certain Bedouin tribes being designated by the government as ineligible for citizenship.⁵⁸⁷ For example, members of the Al-Azazma tribe, which consists of 12,000 people, are unable to acquire citizenship as the group’s territory straddles the north Sinai-Israel border.⁵⁸⁸

Where Bedouin individuals *are* eligible for citizenship, many reportedly face difficulties in registering themselves and their children as citizens and thus in obtaining a birth certificate and national identity card.⁵⁸⁹ Registration can often require long-distance travel across the desert to reach an administrative centre, a time and cost burden which deters many Bedouin individuals from registering.⁵⁹⁰ There are also a number of other registration requirements which pose a challenge to Bedouin people seeking to register as citizens. One Bedouin individual interviewed by IRIN News in 2012 explained that he had thought about obtaining an identity card, but felt that it was too complicated for him to do so:

586 Equal Rights Trust Interview B28.

587 See above, note 534, Idris.

588 *Ibid.*, p. 9; see also Ahmed, A. and Akins, H., “No Arab Spring for Egypt’s Bedouin”, *The Brookings Institution*, 15 February 2012, available at: <https://www.brookings.edu/opinions/no-arab-spring-for-egypts-bedouin>.

589 See above, note 534, Idris, p. 9.

590 Gilbert H., and al Jebaali M.K., *Voices on Arab Philanthropy and Civic Engagement: “Not Philanthropists but Revolutionaries: Promoting Bedouin Participation in the New Egypt”*, 2012, p. 18, available at: <http://ecology.nottingham.ac.uk/~plzfg/pdf%20files/2012%20Gilbert-H&Khedr.pdf>.

in order for him to apply, his parents would first need to register their marriage, and he would need to travel approximately 50km to the nearest registration office, which would cost the equivalent of US\$ 66 after that, there would also be a fee payable for the completion of the relevant paperwork, making the whole process unaffordable.⁵⁹¹ In 2012, the head of Sinai-based organisation Al Gora Community Development Association estimated that there were approximately 70,000 unregistered Bedouins living in the Sinai.⁵⁹²

Where individuals lack identity documents, they can find themselves unable to access public services such as education and healthcare: children must provide a birth certificate in order to enrol in school, and certain medical treatment – such as free vaccinations – are not provided unless an individual has a birth certificate.⁵⁹³ Individuals without identity cards are also unable to benefit from state subsidies on basic food items.⁵⁹⁴

Employment

Egypt's Labour Law prohibits discrimination in wages on the grounds of, *inter alia*, origin and language under Article 35, whilst Article 120 provides that colour (amongst other grounds) shall not be considered as a legitimate and adequate justification for termination. However, the Labour Law does not prohibit discrimination on the grounds of race, ethnicity or colour in employment more generally.

There is evidence that the Bedouin face discrimination in employment: whilst the Sinai Peninsula has seen significant growth in the tourism industry, it has been reported that employers “do not generally hire Bedouin”, preferring instead to hire Egyptians from the Nile Valley who have foreign language skills and better knowledge of the tourism industry.⁵⁹⁵ Another major industry in the region – the mining of minerals for cement production – has also report-

591 IRIN, “No ID, no government services”, *IRIN News*, 18 July 2012, available at: <http://www.irinnews.org/analysis/2012/07/18/no-id-no-government-services>.

592 *Ibid.*

593 *Ibid.*

594 *Ibid.*

595 See above, note 537.

edly excluded the Bedouin from employment opportunities,⁵⁹⁶ or subjected them to less favourable working conditions.⁵⁹⁷

Education

Arabic is the official language according to Article 2 of the Constitution, and as such, Arabic is the official language of instruction in schools. Article 24 of the Constitution also specifies that the Arabic language, religious education and national history “in all its stages” are core subjects of pre-university public and private education. The Egyptian Center for Housing Rights has noted that the state curriculum does not include provision for children to learn the Nubian language, and that educational materials “do not mention Nubian culture or history at all”; as such, the organisation asserts that the curriculum is “biased to the Arabic culture and language” at the expense of the Nubian languages and culture.⁵⁹⁸ In the absence of inclusion in the Egyptian school system, it has been left to civil society to fill the void and as such many associations have been established in Cairo which provide courses to study the Nubian language.⁵⁹⁹ Other organisations have worked to preserve the Nubian language by creating a dictionary and alphabet and documenting songs in the language.⁶⁰⁰

Egypt is obliged to ensure the right to education without discrimination on the basis of race and ethnicity under *inter alia* Articles 2(1) and 13 ICESCR. Whilst states are entitled to determine the language of instruction in schools,⁶⁰¹ this must be compatible with their obligations under ICESCR. Where multiple languages are spoken in a country, children from ethnic minorities may suffer indirect discrimination where the state’s policy regarding the language of instruction in schools means that they are unreasonably dis-

596 *Ibid.*

597 See above, note 581.

598 See above, note 532, Para 18.

599 Eldeeb, L., “Nubian language, generational schism and state refusal”, *Mada Masr*, 17 May 2017, available at: <https://www.madamasr.com/en/2017/05/17/feature/society/nubian-language-generational-schism-and-state-refusal>.

600 Emam, A., “Egypt’s Nubians struggle to save their language”, *The Arab Weekly*, 29 January 2016, available at: <https://the arabweekly.com/egypts-nubians-struggle-save-their-language>.

601 United Nations Educational, Scientific and Cultural Organisation (UNESCO) and UNICEF, *A Human Rights-Based Approach to Education for All*, 2007, p. 58, available at: <http://unesdoc.unesco.org/images/0015/001548/154861e.pdf>.

advantaged or excluded from participating in primary education on an equal basis with other children.⁶⁰²

Healthcare

Members of the Nubian community reportedly face difficulties in accessing healthcare in Egypt. For those living in Aswan governorate, the Aswan hospital is the only one to serve the needs of the 22 villages of Aswan; whilst there are eight medical centres in the governorate, Minority Rights Group International has reported that these are “difficult to access, lack basic medical equipment and often have no personnel”, and some are unable to treat injuries or deliver babies.⁶⁰³ Inadequate provision of healthcare facilities in an area which is predominantly occupied by members of a minority ethnic group may constitute indirect discrimination, where a disparity in levels of expenditure and investment between the area in question and other parts of the country.

For Nubians living in cities such as Cairo, Minority Rights Group International has reported that the quality of the healthcare they are able to access depends on their income, which is “usually among the lowest in the country”.⁶⁰⁴ In order to tackle this problem, Nubians living in Cairo have “consolidated networks of individuals inside hospitals and medical centres who are willing to help Nubians in dire need of health care”.⁶⁰⁵ There have also been reports that the Malaha Bedouin tribe lacks access to hospitals in Rafah on the Gaza-Egypt border.⁶⁰⁶

602 See above, note 543, CESCR, Para 21, which provides that “[s]tates parties should ensure that any language requirements relating to employment and education are based on reasonable and objective criteria”; For a more detailed discussion, see: Equal Rights Trust, *Learning InEquality: Using Equality Law to Tackle Barriers to Primary Education for Out-of-School Children*, 2017, p. 103, available at: <http://www.equalrightstrust.org/resources/learning-inequality-using-equality-law-tackle-barriers-primary-education-out-school-children>.

603 Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2013: Focus on health*, p. 198, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/State%20of%20the%20World%27s%20Minorities%20Report%202013.pdf>.

604 *Ibid.*, p. 197.

605 *Ibid.*, pp. 197–198.

606 Daily News Egypt, “Egyptian Bedouins claim government denying 75,000 citizenship”, *Daily News Egypt*, 23 May 2007, available at: <https://dailynewsegypt.com/2007/05/23/egyptian-bedouins-claim-government-denying-75000-citizenship>.

Political Participation

Article 180 of the Constitution, which regulates the election of local councils, includes quotas for certain groups – such as youth under the age of 35, and women – and provides for “proper representation” of Christians and persons with disabilities. The CERD has noted that minority groups such as Nubians and the Bedouin were excluded from the positive action measures established under Article 180 of the Constitution and has recommended that Egypt include such minorities in the quota system in order to ensure that different segments of the Egyptian population are properly represented.⁶⁰⁷

The Egyptian Center for Housing Rights has noted that there is limited representation of Nubians in the government or parliament due to the way in which the electoral provinces have been divided: whilst Nubians once had their own separate electoral province that allowed them to have a representative in parliament, the resettlement process during the 20th century led to the merger of the Nubian electoral province with another province, and thus the dilution of Nubian representation within this new electoral province.⁶⁰⁸ The Egyptian Center for Housing Rights has stated that this has made it difficult for Nubians to obtain adequate parliamentary representation.⁶⁰⁹

Conclusion

While there is a lack of official data, recent studies indicate that as much as 9% of the population of Egypt is from an ethnic minority, with the two most prominent minority groups being the Nubian people in the Upper Nile region and the Bedouin Arab tribes in the Sinai Peninsula. As with the grounds examined in sections 3.1, 3.2 and 3.3 of this report, Article 53 of the Constitution prohibits discrimination on grounds which include origin, race, colour and language, but beyond this, there is inadequate legislative protection from discrimination or ethnic or racially-motivated violence.

Both the Nubian and Bedouin peoples have been subject to eviction from their traditional lands and homes. In the case of the Nubians, following the

607 See above, note 524, Paras 27–28.

608 See above, note 532, Para 24.

609 *Ibid.*

construction of the Aswan Dam and Aswan High Dam in the 20th century, successive governments have failed to provide compensation for the loss of villages, or to resettle them near their original lands. Activism by members of the Nubian community has resulted in the violent suppression of peaceful protests and the detention of Nubian human rights defenders, leading to the death of one such individual in November 2017. Members of the Bedouin community have also been subject to forced relocation as a consequence of a government campaign against terrorism in the Sinai Peninsula, leading to thousands of homes being demolished and food insecurity in the region. There is also evidence that Bedouin individuals have experienced discrimination in obtaining registration documents, leading to difficulties in accessing other services such as healthcare and education. Nubians also face challenges in accessing education in the Nubian language, and have difficulties accessing healthcare facilities.

3.5 Discrimination and Inequality on the Basis of Nationality and Citizenship

Egypt has made various commitments to respect, protect and fulfil the right to non-discrimination on the grounds of nationality. Under Article 2(1) ICCPR, Egypt must ensure to all individuals in its jurisdiction the rights recognised in the Covenant without distinction on grounds of “national origin” or other status; while Article 26 provides a freestanding, autonomous right to non-discrimination on the same ground. The CESCR has found that nationality falls under the category of “other status” in the ambit of Article 2(2) ICESCR.⁶¹⁰ Egypt has also ratified the Convention on the Protection of Migrant Workers and their Families (ICRMW) which obliges states parties to respect and ensure the rights of all migrant workers and members of their families without discrimination.⁶¹¹

Egypt has also ratified the Convention relating to the Status of Refugees (the Refugee Convention).⁶¹² Under Article 1 of the Refugee Convention, a refugee

610 See above, note 543, CESCR, Para 30.

611 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 2220 U.N.T.S. 39481, 1990, Article 7.

612 UN High Commissioner for Refugees (UNHCR), *state Parties to the 1951 Convention relating to the status of refugees*, 2015, p. 2, available at: <http://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>.

is defined as any person who, “owing to well-founded fear of being persecuted” on the basis of race, religion, nationality, membership of a particular social group or political opinion, is unable to return to his or her country of origin.⁶¹³ Article 3 requires that the Convention is applied without discrimination on the basis of race, religion or country of origin. Egypt has made reservations to Articles 20, 22(1), 23 and 24 of the Convention, which guarantee equal treatment for refugees and non-nationals in respect of matters such as housing, education and aspects of labour law.⁶¹⁴

Social and Political Context

Egypt is home to a growing number of refugees and asylum seekers. In 2011, the UN High Commissioner for Refugees (UNHCR) reported that there were 40,000 refugees, asylum seekers and stateless persons in the country.⁶¹⁵ By 2016, this figure had increased to 179,000.⁶¹⁶ As at August 2018, the UNHCR reported that there were 233,045 refugees and asylum seekers of 58 nationalities registered in the state, over half of whom were Syrian.⁶¹⁷ This figure does not include some 70,000 Palestinian refugees who are unregistered with UNHCR.⁶¹⁸

Human rights defenders have reported that prejudice against non-nationals is both embedded at the societal level and reinforced by the discriminatory policies and practices of the authorities. Muhammad al-Kashef, a researcher at the EIPR, has stated that racism is a structural problem and that reservations made to the Refugee Convention have enabled Egypt to restrict refugees’ access to employment and public services, including public education

613 See: Convention relating to the Status of Refugees, 189 U.N.T.S. 137, 1951, Article 1(a)(2), read together with: Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, 1967, Article 1(2).

614 UNHCR, *Convention relating to the Status of Refugees*, 1951, p. 7, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3d9abe177&query=1951%20Refugee%20Convention>.

615 UNHCR, *Global Appeal 2011 Update*, 2011, p. 1, available at: <http://www.unhcr.org/4cd96bae2c.pdf>.

616 UNHCR, *Egypt Fact Sheet 2016*, 2016, available at: <http://www.unhcr.org/protection/operations/53cd1f429/egypt-fact-sheet.html?query=Egypt>.

617 UNHCR, *Egypt Fact Sheet 2018*, 2018, available at: <http://reporting.unhcr.org/sites/default/files/UNHCR%20Egypt%20Fact%20Sheet%20-%20August%202018.pdf>.

618 UNHCR, *Global Focus: Egypt*, 2018, available at: <http://reporting.unhcr.org/node/2540?y=2018#year>.

and healthcare.⁶¹⁹ The CERD has noted that asylum seekers, refugees and migrants experience a wide range of human rights abuses and noted that the “black community” faces considerable social stigma, with non-citizens being particularly vulnerable.⁶²⁰

These observations corroborate testimony gathered by the Equal Rights Trust’s researchers. A number of non-nationals interviewed by the Trust’s researchers reported being subject to verbal insults and abuse, including overtly racist and xenophobic language.⁶²¹ For example, the Trust’s researchers gathered testimony from a number of Sudanese refugees who had fled violent conflict in Sudan, only to suffer discrimination and social stigma in Egypt:

*From my first day I found myself facing problems every day, people scold me all the time with very ugly words about my black skin, they called me Zola (a Sudanese slang word which means guy, but in Egypt it is used as a sarcastic word) and Othmanah (a well-known name for servants when there was a custom that all servants and slaves in Egypt were Sudanese). Sometimes they spit on my face for no reason. Just because I am black and talk in Sudanese accent. I tried to learn and use the Egyptian accent to avoid all of this but they still attack me because I am still black.*⁶²²

*I am discriminated against on daily basis because I am Sudanese, whether in the work place or on public transport. One day, one of the passengers on the train verbally insulted me just because I was sitting in one of the chairs.*⁶²³

619 El-Mahdawy, H., “Strangers in another country: The murder of Gabriel Tut and anti-black discrimination”, *Mada Masr*, 19 March 2017, available at: <https://www.madamasr.com/en/2017/03/19/feature/politics/strangers-in-another-country-the-murder-of-gabriel-tut>.

620 See above, note 524, Para 19.

621 Equal Rights Trust Interviews B7, B10, B13, B35, B47, B43, B44 and B45.

622 Equal Rights Trust Interview B2.

623 Equal Rights Trust Interview B35.

*I suffer repeated harassment because I am Sudanese: people call me words like “black, chocolate” on a daily basis, and scare me and my children by releasing their dogs on us in the street. I have complained to the authorities but nothing happened.*⁶²⁴

A Somali refugee who arrived in Egypt in 2016 also explained to the Trust’s researchers the discrimination that she and her sister face:

*We are alone here, with no family or friends to protect us (...) the words I hear are full of hate just because we are not Egyptians and our accent and look are different, it makes me feel like I am from a different world (...) when I say that my origin is Somali, they start saying hateful things like: “are you still suffering hunger, leave our country (...) we can barely look after ourselves”.*⁶²⁵

The CERD has stated that non-nationals face a range of discriminatory human rights abuses, including *inter alia*: arbitrary detention and prolonged administrative detention; problems related to security and protection, including attempts on their lives and physical, sexual or psychological violence; and difficulties in access to basic public services such as education, healthcare and justice.⁶²⁶

Legal and Policy Framework

As noted in Part 2, Article 6 of the Constitution provides that “[c]itizenship is a right to anyone born to an Egyptian father or an Egyptian mother”. The legal framework for citizenship is set out in the Law on Nationality, whilst immigration law is regulated by Law No. 88 of 2005 “on the Entry, Residence and Exit of Foreigners” (the “Law on Foreigners”).

The Law on Foreigners regulates the entry and exit of foreigners, the registration of foreigners on arrival in Egypt, and the issuance of residence permits,

624 Equal Rights Trust Interview B47.

625 Equal Rights Trust Interview B8.

626 See above, note 524, Para 25.

visas and travel documents. Under Article 1 of the Law, a “foreigner” is defined as “someone who does not have Egyptian nationality”.

Prior to 2004, the Law on Nationality defined an Egyptian national as anyone born to an Egyptian father; Egyptian women were prevented from passing on their nationality to their children unless the nationality of the father was unknown, or the identity of the father was unknown,⁶²⁷ which constituted a clear case of direct discrimination on the basis of sex. Following an amendment in 2004, the definition of an Egyptian citizen is as follows:

1. *Anyone who is born of an Egyptian father, or an Egyptian mother;*
2. *Anyone who is born in Egypt from unknown parents. A foundling in Egypt shall be considered born in it unless otherwise established.*⁶²⁸

While the 2004 Law removed the discriminatory provision in respect of passage of citizenship to children, the Law continues to discriminate between women and men in respect of acquisition of citizenship through marriage. Article 7 of the Law on Nationality sets out the conditions for foreign women married to Egyptian men to acquire Egyptian citizenship: the procedure simply requires the woman to file an application with the Minister of Interior after two years of marriage. In contrast, foreign men are not able to acquire citizenship when they marry Egyptian women under the law.

Additionally, the Law on Nationality provides for naturalisation of foreigners of full age whose normal residence has been in Egypt for 10 consecutive years, providing the following conditions are satisfied:

1. *That he should be mentally sane and suffering from no disability rendering him a burden on society;*
2. *That he should be of a good conduct and reputation, and that no criminal penalty or penalty restricting his freedom should have been passed against him in a crime against honor, unless he has been rehabilitated;*

⁶²⁷ See above, note 407, Article 2.

⁶²⁸ See above, note 408, Article 2.

3. *That he should be acquainted with the Arabic language;*
4. *That he should have a legal means of earning his living.*⁶²⁹

Furthermore, the Law on Nationality provides that nationality may be granted by decree of the Minister of Interior to any foreigner: born in Egypt to a foreign father also born in Egypt, whose country of origin is majority Arabic or Muslim and who applies for nationality within one year of reaching full age;⁶³⁰ born in Egypt and whose ordinary residence has been in Egypt since attaining full age and who applies for citizenship within one year of attaining full age, providing the above conditions are fulfilled;⁶³¹ or who renders honourable service to Egypt or the heads of the Egyptian religious sects.⁶³² Thus, the provisions regarding acquisition of citizenship through naturalisation and decree discriminate on various grounds, including disability, nationality and language.

Article 91 of the Constitution provides for political asylum to “any foreigner who has been persecuted for defending the interests of peoples, human rights, peace or justice” and prohibits the extradition of political refugees. In accordance with this provision, the right to asylum is limited to persecution on political grounds and is thus not compliant with Egypt’s obligations under Article 1 of the Refugee Convention, which defines a refugee as a person who cannot return to their country of origin “owing to well-founded fear of being persecuted” on the basis of race, religion, nationality, membership of a particular social group or political opinion.

Egypt has not adopted comprehensive legislation on refugees and asylum seekers. Instead, activities pertaining to refugee registration, documentation and refugee status determination are conducted by the UNHCR under a 1954 Memorandum of Understanding between Egypt and the UNHCR.⁶³³ As discussed in more detail below, the government has barred the UNHCR’s ability to provide

629 See above, note 407, Article 4, Para 5.

630 *Ibid.*, Article 4, Para 3.

631 *Ibid.*, Article 4, Para 4.

632 *Ibid.*, Article 5.

633 Memorandum of Understanding between Egypt and the UNHCR, 10 February 1954, Articles 2 and 6.

refugee status determination and other services to Palestinians, which means that the UNHCR is unable to provide legal advice, shelter, healthcare or education to Palestinian refugees as they would to other refugees.⁶³⁴

Treatment of Palestinian Refugees

According to the UNHCR, there are around 70,000 Palestinian refugees in Egypt.⁶³⁵ However, as elsewhere in the region, individuals from Palestine are unable to register as refugees in Egypt.⁶³⁶ The uncertain legal status of Palestinian refugees in Egypt means that the UNHCR is unable to provide services such as legal advice, shelter, healthcare or education as it would for other refugees.⁶³⁷ Furthermore, the UN Relief and Works Agency for Palestine Refugees in the Near East does not operate in Egypt, and cannot therefore fill the gap left by the UNHCR, as it does in Jordan, Syria, Lebanon, the Gaza Strip and the West Bank.⁶³⁸ In 2016, the CERD recommended that Egypt grant UNHCR access to Palestinian refugees living in Egypt so that it can afford them the support and protection that they need.⁶³⁹

The conflict in Syria has led to particular disadvantage for persons of Palestinian origin. Refugees from Syria who are of Palestinian origin and who have not acquired Syrian nationality are unable to enjoy the same rights as other Syrian refugees once in Egypt.⁶⁴⁰ Studies indicate that the wave of forced migration from Syria has been accompanied by growing social stigma

634 Reuters, "Most Syrian and Palestinian Refugees Held in Egypt Released", *Reuters*, 11 December 2013, available at: <http://data2.unhcr.org/en/news/13039>.

635 See above, note 618.

636 IRIN, "Palestine Refugees: locations and numbers", *IRIN*, 16 January 2018, available at: <http://www.irinnews.org/report/89571/middle-east-palestinian-refugee-numberswhereabouts>; The Law Library of Congress, *Legal Status of Refugees: Egypt*, 2013, available at: <https://www.loc.gov/law/help/refugees/legal-status-refugees.php>.

637 UNHCR, "Most Syrian and Palestinian Refugees Held in Egypt Released", *UNHCR*, 11 December 2013, available at: <http://data2.unhcr.org/en/news/13039>.

638 UN Relief and Works Agency for Palestine Refugees in the Near East, *Where we work*, visited 17 October 2018, available at: <https://www.unrwa.org/where-we-work>.

639 See above, note 524, Para 26(d).

640 UNHCR, *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: EGYPT*, 5 November 2014, UN. Doc. UNHCR_UPR20_EGY_E_Main.

towards Palestinians.⁶⁴¹ In 2016, Mada Masr (an Egypt-based media organisation) conducted an interview with a Palestinian refugee, who explained:

*[T]he media says Palestinians and Syrians are the devil; my social relationships were poisoned and I was always scared when walking in the street.*⁶⁴²

Indeed, it appears that individuals may be subject to discrimination on the basis of association with Palestine and Palestinians. One student interviewed by researchers for the Equal Rights Trust explained how he was detained and threatened for wearing Palestinian clothing at university:

*I was a student in the Faculty of Rights. I was detained by security personnel in civilian clothing because I was wearing a Palestinian Kefiyyeh and I carried a Palestinian flag. We were detained for two hours during which I was threatened for wearing the Kefiyyeh.*⁶⁴³

Discriminatory Laws

Numerous provisions of the Constitution create a distinction between the rights of citizens and non-citizens, thus directly discriminating on the basis of nationality. Indeed, even the guarantee of equality and non-discrimination in Article 53 is limited to citizens: “Citizens are equal before the law, possess equal rights and public duties, and may not be discriminated against”. This is contrary to Article 2 of both the ICCPR and the ICESCR, both of which provide that states should ensure enjoyment of other Covenant rights without discrimination “to all individuals within its territory and subject to its jurisdiction”; Article 26 IC-CPR provides simply that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination”.

A number of other rights provided in the Constitution are also guaranteed to citizens only; these include the rights to state social security services (Arti-

641 Afify, H., “Palestinians of Egypt: collateral damage since 2013”, *Mada Masr*, 30 November 2016, available at: <https://www.madamasr.com/en/2016/11/30/feature/politics/palestinians-of-egypt-collateral-damage-since-2013>.

642 *Ibid.*

643 Equal Rights Trust Interview A5.

cle 17(2)), healthcare (Article 18(1)), education (Article 19(1)), use of public means of communication (Article 57(3)), freedom of assembly (Article 73), freedom to form political parties (Article 74), housing (Article 78) and food and water (Article 70).⁶⁴⁴ It should be noted that the international human rights treaties to which Egypt is party do not require that *all* rights be guaranteed to non-citizens, though exceptions to the general principle of equality between citizens and non-citizens are strictly limited.

Under the ICCPR, certain political rights contained within Article 25 are guaranteed only to citizens, and the right to liberty of movement and to choose one's residence under Article 12(1) is guaranteed only for persons "lawfully within the territory of a State". Thus, the restrictions on the rights to use of communication and to freedom of assembly under the Constitution are manifestly impermissible under the Covenant.

Under the ICESCR, whilst Article 2(2) provides that the rights contained therein must be guaranteed "without discrimination of any kind", "developing countries"⁶⁴⁵ may limit economic rights (and economic rights only) in respect of non-citizens.⁶⁴⁶ However, the CESCR has stated in its General Comment No. 20 that:

*[N]ationality should not bar access to Covenant rights, e.g. all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care. The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.*⁶⁴⁷

644 Manby, B., *Citizenship Law in Africa*, African Minds Publishers, 2016, p. 100, citing Howeidi, A.

645 Determining whether a state is a "developing country" is not straightforward as there is no single universal definition of what constitutes a "developing country". The UN Development Programme (UNDP) ranked Egypt in 111th place out of 188 countries in its Human Development Index (HDI) for 2015, with an HDI of 0.691: UNDP, *Human Development Report: Egypt*, 2016, available at: http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/EGY.pdf.

646 ICESCR, Article 2(3).

647 See above, note 543, CESCR, Para 30.

Thus, it is clear that the limitation of the rights to social security, healthcare, education, housing and food and water to citizens alone go far beyond the exceptions permitted under the ICESCR, and so constitute directly discriminatory provisions.

Beyond the rights provisions of the Constitution, Article 14 states that only citizens may become civil servants, a provision which is directly discriminatory on the basis of nationality, and not permitted under Article 25 ICCPR. Article 141 sets strict eligibility criteria for election as President or the Prime Minister, requiring that a given candidate be an “Egyptian born to Egyptian parents, and neither he nor his parents or spouse may have held any other nationality”. This means that a dual national, a person married to a foreign national or a person whose parents were dual nationals or foreigners cannot be elected as the President or Prime Minister of Egypt. Similarly, persons with dual nationality are not permitted to work as Members of Parliament, following a Supreme Administrative Court judgment in 2001.

In addition to these discriminatory provisions of the Constitution, there are a number of legal provisions which discriminate against or otherwise restrict the rights of non-nationals. In particular, the Law on Nationality contains a number of discriminatory legal provisions. Article 1, which regulates who is “considered Egyptian”, provides that “Zionists shall not benefit by any of the provisions of the present article”. Furthermore, Article 16(7) provides that an individual may be stripped of Egyptian nationality “if at any time he has been qualified as Zionist”. Such provisions are inconsistent with Egypt’s obligations under the CERD: the CERD Committee has stressed that states must “[e]nsure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization”.⁶⁴⁸ The Committee has also made clear that deprivation of citizenship on the basis of national or ethnic origin is “a breach of the state’s commitment to ensure non-discriminatory enjoyment of the right to nationality”.⁶⁴⁹

Recent legislative changes also mean that individuals who have acquired Egyptian nationality by naturalisation are vulnerable to being deprived

648 CERD, *General Recommendation No. 30: Discrimination against Non-citizens*, UN Doc. CERD/C/64/Misc.11/rev.3, 2004, Para 13.

649 *Ibid.*

of their nationality. On 20 September 2017, the Minister of the Interior amended Article 15 of the Law on Nationality such that the government is empowered to deprive naturalised persons of nationality where they are found to have fraudulently acquired nationality, or where they commit a felony inside or outside the country that is considered to endanger state security.⁶⁵⁰ The guidance on what constitutes a felony provides that this includes working in Israel or enrolling in a foreign military without giving notice to the Egyptian Government.⁶⁵¹ Moreover, Articles 10 and 16 of the Law on Nationality provide that an Egyptian who acquires a foreign nationality without the permission of the Minister of the Interior may be stripped of their Egyptian nationality.

The government limits the access of migrant workers to certain categories of jobs, thereby restricting their employment opportunities.⁶⁵² Article 12 of Decree No. 700 of 2006 “on the Rules and Implementing Measures Surrounding Work Permits for Foreigners” states that work permits allowing migrant workers the right to work may only be issued after receiving the approval of the Ministry of Manpower and Immigration, and only “in cases necessitated by humanitarian, social or practical circumstances.” While the ICERD states that the Convention’s provisions do not apply to differential treatment between citizens and non-citizens,⁶⁵³ the CERD has made clear that differential treatment will constitute discrimination if the criteria are “not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim”.⁶⁵⁴ The Committee has further called on states to “[t]ake measures

650 Egypt Independent, “Egypt amends law to strip citizenship from those convicted in crimes ‘harming public order’”, *Egypt Independent*, 21 September 2017, available at: <https://www.egyptindependent.com/egypt-amends-law-strip-citizenship-convicted-crimes-harming-public-order>.

651 HuffPostArabi, Egypt enters the age of the “stateless”: Where will the Government put its opponents after it has removed citizenship from them?, 23 September 2017, available (in Arabic) at: http://www.huffpostarabi.com/2017/09/23/story_n_18081222.html; and AlMasryAlYawm, The Government agrees to change some provisions of the law on Egyptian nationality, 20 September 2017, available at: <http://www.almasryalyoum.com/news/details/1194164>.

652 International Labour Office, *Discrimination at Work in the Middle East and North Africa*, visited 29 November 2018, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_92_en.pdf.

653 ICERD, Article 1(2).

654 See above, note 648, Para 4.

to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects.”⁶⁵⁵

Discriminatory Violence

The CERD has raised concerns that asylum seekers, refugees and migrants in Egypt are subject to physical, sexual or psychological violence, noting in its 2016 concluding observations that non-citizens from sub-Saharan Africa are particularly vulnerable to harassment and stigmatisation.⁶⁵⁶ There have been a number of historic incidents of violence against non-nationals, the most serious of which occurred on 30 December 2005 when 27 Sudanese refugees were killed whilst being forcibly removed by security personnel from a protest near the UNHCR offices in Cairo, while two others died in detention.⁶⁵⁷ In defending their actions, it was reported that the police spoke about the victims using racist language, describing them as “disease ridden”.⁶⁵⁸

The CERD has expressed concern over reports of the economic and sexual exploitation of foreign workers, especially domestic workers, as well as the use of violence against them.⁶⁵⁹ Domestic workers do not benefit from protection under the Labour Law,⁶⁶⁰ meaning that migrant domestic workers do not have any form of legal protection or remedy against abuse meted out by their employers and are thus exposed to mistreatment.⁶⁶¹ Since 2010, Eritreans fleeing their country for Israel have been targeted by Sudanese traffickers and sold to Egyptian traffickers in the Sinai Peninsula where they

655 *Ibid.*, Para 33.

656 See above, note 524, Paras 19 and 25.

657 American University in Cairo, *A Tragedy of Failures and False Expectations: Report on the Events Surrounding the Three-month Sit-in and Forced Removal of Sudanese Refugees in Cairo, September–December 2005*, Forced Migration and Refugee Studies Program, 2006, p. 40, available at: http://schools.aucegypt.edu/GAPP/cmrs/reports/Documents/Report_Edited_v.pdf.

658 *Ibid.*, p. 5.

659 See above, note 524, Para 31.

660 Law No. 12 of 2003 “on the Labour Law”, Article 4(b).

661 EIHR and International Federation for Human Rights, *Egypt: Protection of the Rights of All Migrant Workers and Members of Their Families*, 2007, p. 4, available at: http://www2.ohchr.org/english/bodies/cmw/docs/eihr_fidh.pdf.

have been subjected to torture in order to extort money from relatives.⁶⁶² There have been reports of the Egyptian border patrol shooting at trafficking victims who were released or managed to escape.⁶⁶³ Furthermore, the police and military have reportedly often been complicit in trafficking, allowing it to go ahead without properly investigating and prosecuting the traffickers.⁶⁶⁴

There have also been reports that migrants from sub-Saharan Africa and Asia, as well as Syrian refugees, are vulnerable to forced labour and sex trafficking,⁶⁶⁵ with refugee and migrant women being at risk of multiple discrimination.⁶⁶⁶

Detention and Detention Conditions

Non-citizens, including refugees, asylum seekers and migrants, can be subjected to both criminal penalties and administrative detention for unauthorised entry, stay or exit though authorities generally opt to detain them until they can be deported or their cases otherwise resolved.⁶⁶⁷ Migrants in Egypt who do not have valid leave to remain are liable to mandatory detention, pending expulsion, under Articles 25 to 31 of the Law on Foreigners. This law does not contain any provisions which guarantee detained migrants access to a lawyer.⁶⁶⁸

662 Human Rights Watch, *"I Wanted to Lie Down and Die": Trafficking and Torture of Eritreans in Sudan and Egypt*, 2014, available at: <https://www.hrw.org/report/2014/02/11/i-wanted-lie-down-and-die/trafficking-and-torture-eritreans-sudan-and-egypt>; Hotline for Migrant Workers, *Tortured in Sinai, Jailed in Israel: Detention of Slavery and Torture Survivors under the Anti-Infiltration Law*, 2012, pp. 9–14, available at: <https://hotline.org.il/wp-content/uploads/202509720-Tortured-in-Sinai-jailed-in-Israel.pdf>.

663 *Ibid.*

664 *Ibid.*

665 See above, note 38.

666 See above, note 524, Para 33.

667 Global Detention Project, *Immigration Detention in Egypt: Military Tribunals, Human Rights Abuses, Abysmal Conditions, and EU Partner*, 2018, p. 8, available at: <https://www.globaldetentionproject.org/immigration-detention-egypt>.

668 See: Global Detention Project, *Submission to the United Nations Committee on Migrant Workers, Egypt*, 2017, p. 2, available at: <https://www.globaldetentionproject.org/submission-to-the-un-committee-on-migrant-workers-egypt>.

The lack of legal assistance for detained migrants has been highlighted by international and national NGOs.⁶⁶⁹ For example, Human Rights Watch documented the violation of the due process rights of Syrian refugees who remained in detention after charges of illegal entry had been dropped by prosecutors in 2013; lawyers interviewed by Human Rights Watch reported that the “[r]efugees received no official written explanation for why they are being held and have no legal recourse to challenge their detention”.⁶⁷⁰

The UN Working Group on Arbitrary Detention published guidance on immigration detention in 2018, advising that those detained in the course of migration proceedings should “enjoy the same rights as those detained in the criminal justice (...) context” and stated that “all migrants must have access to legal representation”.⁶⁷¹ The UNHCR has also issued guidelines on detention, which stress that individuals seeking asylum may only be detained as a “last resort”.⁶⁷² In all circumstances, individuals should be allowed to challenge their detention,⁶⁷³ and asylum seekers should be afforded access to asylum application procedures.⁶⁷⁴ The CERD has recommended that Egypt should take measures to end the detention of asylum seekers and refugees and should use detention “solely for very particular specific cases and for the shortest possible period”.⁶⁷⁵ The CERD has further recommended that the state should allow the UNHCR to visit the persons concerned “with a view to identifying those who may be entitled to international protection”.⁶⁷⁶

669 Human Rights Watch, “Egypt: Syria Refugees Detained, Coerced to Return”, *Human Rights Watch*, 10 November 2013, available at: <https://www.hrw.org/news/2013/11/10/egypt-syria-refugees-detained-coerced-return>; Coalition of Egyptian Human Rights Organisations, *Human Rights Organizations Express Concern Over Detention of Dozens Syrians & Palestinian Refugees*, 2013, available at: <http://ecers.org/en/2013/08/21/human-rights-organizations-express-concern-over-detention-of-dozens-syrians-palestinian-refugees>.

670 *Ibid.*, Human Rights Watch.

671 UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, Paras 31 and 35, available at: <https://www.refworld.org/docid/5a903b514.html>.

672 UNHCR, *Detention of Asylum-Seekers and Alternatives to Detention*, 2012, Para 2, available at: <http://www.unhcr.org/505b10ee9.pdf>.

673 Including an initial review of the detention decision and subsequently of the legality of detention. *Ibid.*, Paras 47(iii)–(v).

674 *Ibid.*, Para 47(vi).

675 See above, note 524, Para 26.

676 *Ibid.*

NGOs and international organisations have faced difficulties accessing immigration detention facilities in Egypt.⁶⁷⁷ There are differences in access to and monitoring of places of detention in different regions of the country: in the period 2011–2013, the UNHCR and its implementing partners were able to access places of detention on the north coast and provide services to detainees, while accessibility was remarkably different in other regions, such as in the south, the location of irregular crossings from Sudan.⁶⁷⁸

The International Detention Coalition has highlighted the fact that the lack of separate immigration detention facilities results in migrants being incarcerated in criminal prisons, police stations and ad hoc places such as military camps, in which conditions are poor and the ability for independent organisations to monitor the places of detention is limited.⁶⁷⁹ Despite the lack of access for independent monitors to immigration detention facilities, reports of the inadequate conditions of detention are numerous.⁶⁸⁰ For example, the Global Detention Project documented the case of an Eritrean male detainee who died in El-Mostaqbal police station in Ismailia in May 2011 because “he never received medical treatment for tuberculosis”.⁶⁸¹ In 2013, a coalition of Egyptian NGOs reported that hundreds of Syrian refugees who were held in detention facilities in Alexandria had skin diseases and respiratory and gastrointestinal illnesses as a result of insect infestations and poor sanitary conditions.⁶⁸²

677 Both the UN Working Group on Arbitrary Detention and the UNHCR are unable to access detention facilities. See: UN Working Group on Arbitrary Detention, *Country visits 1994–2018 – Requests for Visits*, visited 29 November 2018, available at: <http://www.ohchr.org/EN/Issues/Detention/Pages/Visits.aspx>; See also, above, note 640, p. 4.

678 See above, note 667, p. 18.

679 International Detention Coalition, *Alternatives to immigration detention in Africa*, 2015, p. 22, available at: <https://idcoalition.org/publication/view/alternatives-to-immigration-detention-in-africa>.

680 See above, note 668, p. 1; Global Detention Project, *Immigration Detention in Egypt*, 2014, p. 16, available at: https://www.globaldetentionproject.org/wp-content/uploads/2016/06/Egypt_report.pdf.

681 *Ibid.*, Global Detention Project, 2014, p. 16.

682 EIPR, “Joint press statement: Egyptian government must provide urgent health care to Syrian refugees detained in Egypt”, 25 November 2013, available at: <https://eipr.org/en/press/2013/11/egyptian-government-must-provide-urgent-health-care-syrian-refugees-detained-egypt>.

There have also been reports that refugees and migrants from certain countries are subjected to harsher treatment in detention than refugees from other countries. For example, the International Detention Coalition has noted that migrants from sub-Saharan Africa routinely lack protection in comparison with migrants from neighbouring countries and/or countries which are more culturally and linguistically similar to Egypt.⁶⁸³

Deportation

Under Article 31 of the Law on Foreigners, non-citizens can be deported if they: enter Egypt illegally; fail to obtain a residence permit following expiry of an entry visa; violate the “purpose” for which they obtained residency; fail to depart from the country within 15 days from the expiry of the residence period unless a renewal is approved; or fail to depart from the country within 15 days from refusal to grant or renew residency. As noted above, the standard practice of Egyptian authorities is to deport non-citizens deemed to be in the country without legal justification, often subjecting them to periods of detention until they can be deported. For instance, following tightening of immigration regulations in July 2014, 476 Syrians were reportedly deported or denied access to the country in that month alone.⁶⁸⁴

Human Rights Watch has reported that the Egyptian state has worked with the Chinese authorities to violate the rights of Uyghurs, an indigenous ethnic population originating from China’s Xinjiang region, living in Egypt.⁶⁸⁵ In early July 2017, the Egyptian authorities were reported to have arrested at least 62 Uyghurs, without informing them of the grounds for their detention, and denied them access to lawyers and their families.⁶⁸⁶ The UN Working Group on Arbitrary Detention reported on 19 July 2017 that more than 70 individuals had been detained at the Chinese embassy in Cairo, where they were questioned and forced to sign documents declaring their membership in the Turkistan Islamic

683 See above, note 679.

684 Al Kashef, M., “Egypt: The Escape Portal,” *Border Criminologies*, 8 December 2017, available at: <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2017/12/egypt-escape>.

685 Human Rights Watch, “Egypt: Don’t Deport Uyghurs to China”, *Human Rights Watch*, 7 July 2017, available at: <https://www.hrw.org/news/2017/07/07/egypt-dont-deport-uyghurs-china>.

686 *Ibid.*

Movement.⁶⁸⁷ According to aviation officials, at least 12 Chinese nationals were deported in July 2017 and put on a flight to China and 22 more were detained pending immediate deportation.⁶⁸⁸ Although two aviation officials said that the police had not provided an explanation when ordering them to carry out the deportations,⁶⁸⁹ reports suggest that Uyghur students enrolled in schools outside of China are being ordered by Chinese authorities to return to China, with family members in some cases being held hostage to force their return.⁶⁹⁰

Birth Registration

Under Article 24(2) ICCPR, Article 7 CRC and Article 29 ICRMW, every child has a right to be registered immediately after birth. This is reflected in Article 5 of the Child Law, which states “the name shall be registered immediately after birth in the births’ registers according to the provisions of this Law”. Yet the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families has reported that the Egyptian Birth Registry operates a policy under which children born to migrant workers are not registered and are not granted a birth certificate.⁶⁹¹ This directly violates both national law and Egypt’s obligations under international law.

Education

Under the CRC and the ICESCR, Egypt is required to guarantee free primary education for all children.⁶⁹² The ACHPR, to which Egypt is a party, further

687 OHCHR, *Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 2017, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23221>.

688 Youssef, N., “Egyptian Police Detain Uighurs and Deport Them to China”, *The New York Times*, 6 July 2017, available at: <https://www.nytimes.com/2017/07/06/world/asia/egypt-muslims-uighurs-deportations-xinjiang-china.html>.

689 *Ibid.*

690 Radio Free Asia, “Uyghurs Studying Abroad Ordered Back to Xinjiang Under Threat to Families”, *Radio Free Asia*, 9 May 2017, available at: <http://www.rfa.org/english/news/uyghur/ordered-05092017155554.html>.

691 Committee on Migrant Workers, *Concluding Observations: Egypt*, UN Doc. CMW/C/EGY/CO/1, 25 May 2007, Para 34; and CRC Committee, *Concluding Observations: Egypt*, 15 July 2011, Para 44; See also, above, note 640, p. 1.

692 ICESCR, Article 13(2)(a); CRC, Article 28(1)(a).

stipulates that every individual has the right to an education under Article 17, and according to the non-discrimination provisions under Article 2, this right must be enjoyed without distinction of any kind. Furthermore, Article 22(1) of the Refugee Convention provides that states shall “accord to refugees the same treatment as is accorded to nationals with respect to elementary education.” As discussed above, Egypt maintains a reservation to Article 22(1) of the Refugee Convention to the effect that it does not consider refugees to be equal to citizens in education: the state has noted that the reservation was made to “avoid any obstacle which might affect the discretionary authority of Egypt in granting privileges to refugees on a case-by-case basis.”⁶⁹³

Ministerial Decree No. 24 of 1992, issued by the Ministry of Education, allows children of recognised refugees from Sudan, and of political asylum seekers from Libya and Jordan, to attend public schools: Syrian refugees are allowed to attend public school by operation of a Ministerial Circular issued in 2013.⁶⁹⁴ Refugees and asylum seekers from these countries must be able to produce a valid residency permit in order to be admitted to school.⁶⁹⁵

The government’s approach of permitting access to education for refugee and asylum-seeking children from particular countries is directly discriminatory, in that it excludes all those originating from states other than the four provided for, including notably the children of the large Palestinian population. Furthermore, in 2016, the UN Educational, Scientific and Cultural Organisation reported that the Egyptian authorities only permit refugee children from Sudan and Syria to enrol in government-run schools, thus directly discriminating against refugee children from other countries.⁶⁹⁶ The CRC Committee has expressed concern “at legal and de facto restrictions in equal and effective access to education” for asylum seeking and refugee children in Egypt.⁶⁹⁷

693 See above, note 614.

694 British Institute of International and Comparative Law, *Protecting Education In the Middle East And North Africa Region*, 2016, p. 63, available at: https://www.biiicl.org/documents/1263_protecting_education_in_the_mena_region_-_full_report_-_june_2016_web_version_v2.pdf?showdocument=1, citing Out-of-School Children Initiative, UNICEF.

695 UNHCR, *Information For Asylum-Seekers and Refugees in Egypt*, 2013, p. 24, available at: <http://www.refworld.org/pdfid/5267a1d9b.pdf>.

696 UNESCO, *No more excuses: Provide education to all forcibly displaced people*, 2016, p. 8, available at: <https://en.unesco.org/gem-report/no-more-excuses>.

697 See above, note 445, Para 76.

Even among those permitted to attend government schools, economic or other barriers – such as the costs of education, or a lack of documentation – mean that it is difficult for refugee children to enrol in Egyptian schools.⁶⁹⁸ Research from UNICEF found that in 2014, up to 12% of Syrian refugee children of school age (6–17 years old) had either never enrolled in or had dropped out of school.⁶⁹⁹ Research conducted by the Equal Rights Trust’s researchers also indicates that refugee children are vulnerable to bullying and insults whilst in school: one Syrian father explained that his children are subject to physical violence and humiliation from their classmates, who call them “traitors” for leaving their country, something which has had a serious negative impact on their mental health.⁷⁰⁰ Another mother explained to researchers that her children were treated very badly by their classmates: the other students tore up their books and broke their pens, and called them names such as “chocolate”; as a result, her children refused to go to school.⁷⁰¹

Employment

Under Article 26 ICCPR, Egypt is obligated to prohibit discrimination in law or fact in any field regulated and protected by public authorities,⁷⁰² including employment, on the basis of national origin. Under Articles 2(2) and 7 ICESCR, the state should confer the right to just and favourable conditions of work to all within its jurisdiction without distinction on the grounds of national origin and nationality. In addition, in respect of refugees, Egypt has obligations under Article 24 of the Refugee Convention, though the state made reservations upon ratifying the Convention, including a general reservation to Article 24 which objected to the way in which Article 24 “consider[s] the refugee as equal to the national”.⁷⁰³ In 2014, the UNHCR urged Egypt to “take immediate steps” to remove this reservation.⁷⁰⁴

698 See above, note 696, p. 10.

699 UNICEF, *Annual Report, Egypt 2016*, 2016, p. 23, available at: https://www.unicef.org/about/annualreport/files/Egypt_2016_COAR.pdf.

700 Equal Rights Trust Interview B5.

701 Equal Rights Trust Interview B9.

702 See above, note 329, Para 12.

703 See above, note 614.

704 See above, note 640, p. 7.

Whilst Article 2(3) ICESCR permits developing countries to differentiate between citizens and non-citizens in respect of the right to work, there are legitimate questions over the extent to which laws which prevent non-citizens from accessing certain types of employment meet the requirement arising under Article 26 ICCPR – whose application is “not limited to those rights which are provided for in the Covenant” – that the content of legislation should not be discriminatory.⁷⁰⁵

In practice, work permits are only issued to refugees who also hold residence permits. Accessing residence permits is a major obstacle to finding work for refugees, with respondents to a 2016 UN Development Programme survey explaining that the process is “expensive, long and complicated and must be repeated every six months”.⁷⁰⁶ Consequently, many refugees are unable to find stable work and live in a precarious financial situations. In 2016, the UNHCR reported that 40% of Syrian refugees, who make up the majority of registered refugees in Egypt,⁷⁰⁷ are living on cash assistance grants alone.⁷⁰⁸ Private organisations are also required to seek permission from the government before employing refugees.⁷⁰⁹

Interviews undertaken by the Equal Rights Trust’s researchers indicate that those non-nationals who do manage to obtain employment are vulnerable to workplace discrimination and harassment. A number of those interviewed reported facing unfavourable treatment when compared to nationals:

I worked as a salesman in an electricity shop and was the only non-Egyptian worker: there were two other

705 See above, note 329, Para 12.

706 UNDP, *Jobs make the difference: Expanding Economic Opportunities for Syrian Refugees in Host Communities: Egypt – Iraq – Jordan – Lebanon – Syria – Turkey*, 2017, p. 90, available at: <https://www.jobsmakethedifference.org/full-report>.

707 According to the UNDP, there are 500,000 Syrian refugees in Egypt. See: *ibid*, p. 89.

708 UNHCR, *3RP Regional Refugees Resilience Plan 2016–2017: Egypt*, 2015, p. 69, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/Egypt-%E2%80%93-Regional-Refugee-Resilience-Plan-2016-2017.pdf>.

709 Refugees International, *Field Report, Egypt, Tough Times for Syrian Refugees in Egypt*, 2014, p. 4, available at: https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/561e512de4b0ae904e8ceb21/1444827437303/050714+Syrian_Refugees_Tough_Times+letterhead+-+for+website.pdf.

*Egyptian workers as well as the manager who is Egyptian too. I did the same work as the other two Egyptian workers and on many occasions I worked beyond my set hours; however, I didn't receive the same salary as the other workers, I was not allowed to take vacations, and I also faced maltreatment from the workers, the manager and the clients. Once, a client came to the shop and wanted to buy an item for less than the specified price; when I refused, the client told me: "You have to sell it to me for my preferred price, it's enough that we're supporting you in our country". When I insisted, I was assaulted by the customer, and I was then fired from my job because the manager said I was a troublemaker. I have faced many similar situations, but I am unable to make any complaint against those responsible because I feel vulnerable and marginalised.*⁷¹⁰

I work in a factory from 7 am to 7 pm for a monthly salary of LE 900 [approximately EUR 43]. I was obliged to accept the position because of the bad economic situation, and the fact that the other available offers didn't provide the same salary. I face discrimination every day in my work place; for example, my manager asks me to carry out more difficult tasks because I am Sudanese.⁷¹¹

Conclusion

There are currently over 230,000 refugees and asylum seekers registered in Egypt, in addition to an estimated 70,000 refugees of Palestinian origin who are not registered. Whilst Egypt has ratified the Refugee Convention, it has made reservations to a number of key provisions which guarantee equal treatment for refugees and non-nationals. The state has failed to adopt comprehensive legislation on refugees and asylum seekers and has also barred the UNCHR from providing refugee status determination and other services to Palestinian refugees. The Constitution and other domestic laws contain a number of legal provisions which discriminate against or restrict the rights of non-nationals, including provisions of the Law on Nationality.

⁷¹⁰ Equal Rights Trust Interview B1.

⁷¹¹ Equal Rights Trust Interview B6.

Non-citizens in Egypt – including refugees, migrants and asylum seekers – are reported to face considerable social stigma, and are vulnerable to various forms of discriminatory violence, including physical violence, sexual exploitation and trafficking. There are also reports that refugees and migrants face ill-treatment in detention centres, and that individuals kept in mandatory detention have been denied access to legal representation. There is evidence of refugees and asylum seekers facing discrimination in accessing education and employment, thus contributing to their socio-economic marginalisation.

3.6 Discrimination and Inequality on the Basis of Disability

Egypt ratified the Convention on the Rights of Persons with Disabilities (CRPD) in April 2008. It is therefore required to “ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.”⁷¹² In addition, as a party to the ICCPR and the ICESCR, Egypt is required to prohibit discrimination on the basis of disability in the enjoyment of all civil, political, economic, social and cultural rights.⁷¹³

Regionally, rights for persons with disabilities are protected under Article 2 ACHPR, which provides that Egypt must guarantee the rights in the ACHPR to everyone “without distinction of any kind such as (...) other status”, and the ACmHPR has confirmed that the category of “other status” should be interpreted to include disability.⁷¹⁴

According to World Health Organization (WHO) estimates, approximately 15% of the world population has some form of disability;⁷¹⁵ as regards Egypt specifically, the WHO estimated in 2011 that there were 12 million people

712 Convention on the Rights of Persons with Disabilities (CRPD), 2515 U.N.T.S. 3, 2006, Article 4.

713 The CESCR has stated that discrimination on the basis of disability in the enjoyment of Covenant rights is prohibited by virtue of the term “other status” in Article 2(2). See above, note 543, Para 28.

714 African Commission on Human and Peoples’ Rights, *Purohit & Another v The Gambia*, Communication No. 241/2001, Ordinary Session, 2003, Paras 46–49.

715 World Health Organization (WHO), *World Report on Disability*, 2011, p. 261, available at: http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf?ua=1.

living with a disability in Egypt.⁷¹⁶ Experts have noted that in each country, national statistics regarding the prevalence of disability are likely to differ; for example, where disability is viewed as a predominantly medical issue, official statistics may under-represent the total number of individuals requiring social assistance.⁷¹⁷ This appears to be the case in Egypt: 2006 data provided by the government as part of its report for the UPR suggest that there were only 475,576 persons with disabilities in the country,⁷¹⁸ constituting approximately 0.5% of the total population of 86,813,723 at the time.⁷¹⁹ Thus, it is clear that historically, disability in Egypt has been substantially underreported.⁷²⁰ Yet the situation is changing: in 2017, the Egyptian National Council for Disability Affairs (NCDA), a now-dissolved state body dealing with disability issues,⁷²¹ estimated that 10.7% of the population has a disability.⁷²²

The historic underreporting of disability may be explained by reference to a number of factors, including the general failure by authorities to collect disaggregated data regarding marginalised groups in Egypt, including persons

⁷¹⁶ *Ibid.*, p. 272.

⁷¹⁷ Oxford Policy Management, *Consultancy to Support Organisational Development of the Care and Rehabilitation Fund of the Disabled, and the National Union of Disabled Associations (Social Fund For Development)*, 2011, pp. 4-5, available at: <http://www.opml.co.uk/sites/default/files/Yemen%20SFD.pdf>.

⁷¹⁸ Human Rights Council, Universal Periodic Review, *National Report Submitted in accordance with paragraph 15(a) to the annex of the Human Rights Council Resolution 5/1 Egypt*, UN Doc. A/HRC/WG.6/7/EGY/1, 21 July 2015, p. 19.

⁷¹⁹ Egypt Data Portal, *Egypt Census: 2006*, 2015, available at: <http://egypt.opendataforafrica.org/EGSNS2006/egypt-census-2006>.

⁷²⁰ World Bank, *A Roadmap to Achieve Social Justice in Health Care in Egypt*, 2015, p. 40, available at: <http://www.worldbank.org/content/dam/Worldbank/Feature%20Story/mena/Egypt/Egypt-Doc/egy-roadmap-sj-health.pdf>.

⁷²¹ In 2018 the National Council for Disability Affairs (NCDA) was replaced with the National Council for Persons with Disabilities. See: Egypt Independent, "Cabinet approves establishment of National Council for persons with disabilities", *Egypt Independent*, 7 February 2018, available at: <https://egyptindependent.com/cabinet-approves-establishment-national-council-persons-disabilities>.

⁷²² Allam, S., "Central Bureau of Statistics: 10.7% of persons with disabilities in Egypt in 2017", *Amwal Al Ghad*, 2 December 2017, available at: <http://www.amwalalghad.com/2017/12/02/%D8%A7%D9%84%D9%85%D8%B1%D9%83%D8%B2%D9%8A-%D9%84%D9%84%D8%A5%D8%AD%D8%B5%D8%A7%D8%A1-10-7-%D9%86%D8%B3%D8%A8%D8%A9-%D8%A7%D9%84%D8%A3%D9%81%D8%B1%D8%A7%D8%AF-%D8%B0%D9%88%D9%8A-%D8%A7%D9%84/>.

with disabilities, and the fact that – until very recently – Egyptian legislation adopted a narrow conception of disability.⁷²³

In 2011, the CRC Committee expressed concern at “the absence of a comprehensive data collection system” in Egypt.⁷²⁴ The state responded by establishing specialised diagnosis centres for children with disabilities in 10 governorates across Egypt,⁷²⁵ and by creating an information network between the Ministry of Health and the NCDA with the aim of collecting data on persons with disabilities in Egypt and delivering better care.⁷²⁶ However, in 2016 Egypt reported to the CRC Committee that persons with disabilities were not recognised as a distinct category of persons by the Ministry of Social Solidarity, which is responsible for collecting statistics.⁷²⁷ The resulting lack of data on persons with disabilities makes it difficult to assess the extent of discrimination against them, and to evaluate the effectiveness of existing laws and policies.

Interviews conducted by Equal Rights Trust researchers found evidence of high levels of societal stigma surrounding disability in Egypt. One individual with a physical disability explained as follows:

*Society sees a person with a disability as a dependent person who has no right to live on an equal basis with others. We always face harassment, receiving looks that are full of pity, and verbal harassment.*⁷²⁸

723 Meadows, L., Bamieh, N.A. and Lord, J.E., “Egypt” in Pretoria University Law Press, *African Disability Rights Yearbook*, 2014, p. 170, available at: http://www.adry.up.ac.za/images/adry/volume2_2014/adry_2014_2_full_text.pdf; See below for a more detailed discussion on the development of the definition of disability under Egyptian law.

724 See above, note 445, Para 21.

725 For administrative purposes Egypt is divided into 27 governorates which have associated healthcare governorates. The organisation of healthcare within the governorate is therefore managed within the healthcare governorate. See: World Health Organization, *Health Systems Profile, Egypt*, 2006, p. 19, available at: <http://apps.who.int/medicinedocs/documents/s17293e/s17293e.pdf>.

726 NCDA, *Response to the request for information on policies of inclusion of persons with disabilities*, November 2016, p. 5, available (in Arabic) at: <http://www.ohchr.org/EN/Issues/Disability/SRDIsabilities/Pages/DecisionMaking.aspx>.

727 *Ibid.*, p. 2.

728 Equal Rights Trust Interview C33.

Women with disabilities are particularly vulnerable to stigmatisation, particularly in rural areas, leading some families to hide female relatives with disabilities due to shame.⁷²⁹ This stigma can lead to an increased risk of domestic violence, labour exploitation and homelessness as compared with the general female population in Egypt.⁷³⁰

Legal and Policy Framework

As noted above, Egypt has ratified the CRPD. However, as discussed in Part 2, the state issued an interpretative declaration with respect to Article 12(2), which requires states to “recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life”. The declaration provides that “persons with disabilities enjoy the capacity to acquire rights and assume legal responsibility (*‘ahliyyat al-wujub*) but not the capacity to perform (*‘ahliyyat al-‘ada’*) under Egyptian law.”⁷³¹ These two forms of legal capacity derive from Islamic Sharia: the former, also known as “receptive legal capacity”, refers to the ability of an individual to acquire rights and obligations – every individual is considered to possess such capacity by birth; the latter, also known as “active legal capacity”, refers to an individual’s ability to fulfil his or her rights and discharge obligations, for example through conducting financial transactions and entering into a legal contract.⁷³² Thus, this reservation runs counter to the object and purpose of Article 12 CRPD, which requires states to “recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life”.⁷³³

Article 53 of the Constitution guarantees that citizens are “equal in rights, freedoms and general duties without discrimination based on (...) disability”. The rights of persons with disabilities are further guaranteed in Article 81 of the Constitution, which states:

729 See above, note 723, p. 184.

730 *Ibid.*, p. 183.

731 United Nations Treaty Collection, *Chapter IV: Human Rights: 15. Convention on the Rights of the Child*, updated 29 November 2018, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en.

732 Information provided to the Equal Rights Trust by an Egyptian lawyer, 4 September 2018; For a discussion on the operation of Islamic Sharia under Egyptian law, refer to Part 2.2.1 of this report.

733 Committee on the Rights of Persons with Disabilities (CRPD Committee), *General Comment No. 1: Article 12: Equal recognition before the law*, UN Doc. CRPD/C/GC/1, 2014, Para 13.

The state shall guarantee the health, economic, social, cultural, entertainment, sporting and education rights of dwarves and people with disabilities. The state shall provide work opportunities for such individuals, and allocate a percentage of these opportunities to them, in addition to equipping public utilities and their surrounding environment. The state guarantees their right to exercise political rights, and their integration with other citizens in order to achieve the principles of equality, justice and equal opportunities.

As such, the Constitution can be read as providing positive action measures to be taken in the field of employment, as well as requiring that reasonable accommodation should be made to ensure that public utilities and the physical environment are equipped for persons with disabilities. Nevertheless, the language of Article 81 is vague and imprecise in both respects, and as such, it is unclear to what extent persons with disabilities could rely upon it.

Article 180 of the Constitution, which regulates the election of local councils, includes quotas for certain groups – such as youth under the age of 35, and women – and provides for “proper representation” of persons with disabilities; however, Article 180 does not elaborate on what is meant by “proper representation” in this context.

Until recently, the primary piece of disability legislation in Egypt was Law No. 39 of 1975 “on the Rehabilitation of the Disabled”. This defined a person with a disability as follows:

[A]ny individual who became unable to depend on him/herself in performing his/her work. His/her inability to do so is the result of physical, mental, sensory or congenital impairment.⁷³⁴

This definition of disability was subject to criticism on the basis that it focussed solely on an individual’s ability to perform work, and ignored the way in which an individual’s impairment might affect their participation in other areas of

734 Law No. 39 of 1975 “on the Rehabilitation of the Disabled”, Para 1.

life.⁷³⁵ This definition also placed a person's impairment at the heart of the definition of disability, rather than recognising, as Article 1 CRPD does, that it is such impairments "in interaction with various barriers" which define disability.

As discussed in Part 2, in 2017 the Ministry of Social Solidarity launched the Strategy on the Protection, Rehabilitation, and Empowerment of Persons with Disabilities in Egypt 2017–2020.⁷³⁶ The Strategy contains six main goals, the first of which was the adoption of legislation and national policies to regulate the rights of persons with disabilities in line with international conventions.⁷³⁷ Pursuant to this, on 19 February 2018, Egypt passed Law No. 10 of 2018 "on the Rights of Persons with Disabilities" (the "Disability Rights Law"). According to a member of the Council of Social Security – a government institution – the Law is intended to implement provisions of the CRPD into the domestic legal framework, including a definition of disability.⁷³⁸ Article 2 of the Disability Rights Law defines a person with a disability as follows:

*A person who has a full or partial restriction or defect (be this physical, mental, psychological or sensory) which is permanent and which, in interaction with various barriers, prevents them from full and effective participation in society equally with others.*⁷³⁹

Whilst this definition is an improvement on the earlier definition of disability in Law No. 39 of 1975, it is seriously flawed in that it uses the term "defect" rather than the language of impairment used in Article 1 CRPD.⁷⁴⁰

735 Hegrass, H., "Definition of Disability and Disability Policy in Egypt", in Barnes, C. and Mercer, G., *The Social Model of Disability: Europe and the Majority World*, The Disability Press, 2005, pp. 148–162; See also, above, note 723, p. 170.

736 El-Din, M.S., "Ministry announces 3-year strategy for empowerment, integration of disabled persons", *Mada Masr*, 27 December 2016, available at: <https://www.madamasr.com/en/2016/12/27/news/society/ministry-announces-3-year-strategy-for-empowerment-integration-of-disabled-persons>.

737 *Ibid.*

738 Interview with Hiba Higree, Member of the Council of Social Security, ExtraNews, 13 April 2017, available (in Arabic) at: <https://www.youtube.com/watch?v=Qsf-LMf42Hc>.

739 Law No. 10 of 2018 "on the Rights of Persons with Disabilities", Article 2.

740 CRPD, Article 1(2) defines disability as follows: "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

Article 3 of the Disability Rights Law defines disability discrimination as “any exclusion, restriction, denial or invalidation of any of the fundamental human rights or freedoms established by the Constitution or any other legislation”. Whilst this utilises the language from the definition of “discrimination on the basis of disability” under Article 2 CRPD, it fails to specify that this includes all forms of discrimination, including direct discrimination, indirect discrimination, harassment and denial of reasonable accommodation.⁷⁴¹

The Disability Rights Law also includes several provisions governing access to education for persons with disabilities,⁷⁴² as well as provisions relating to equality and non-discrimination in employment,⁷⁴³ as discussed in more detail below. The Disability Rights Law also provides for the establishment of a National Council for Persons with Disabilities (NCPD).⁷⁴⁴ The NCPD replaces the NCDA, which was established in 2012.⁷⁴⁵ The NCPD is mandated to monitor compliance with the Disability Rights Law, and to provide health, social, technical and specialised legal assistance to detained persons with disabilities.⁷⁴⁶

Persons with disabilities may benefit from the government’s Karama cash transfer scheme, an unconditional cash transfer scheme which benefits persons who cannot work, including persons with severe and permanent disabilities.⁷⁴⁷ Disability status is validated through a process led by the Ministry of Health,⁷⁴⁸ though the distinction between “severe” and other disabilities seems to be unclear. Eligible persons receive LE 350 (EUR 17) per month.⁷⁴⁹ At the end of the third wave of the programme in December 2016, there were

741 CRPD, Article 2; CRPD Committee, *General Comment No. 6 on equality and non-discrimination*, UN Doc. CRPD/C/GC/6, 2018, Para 18.

742 See, for instance, discussion of Articles 10, 11 and 15 of the Law in section 2.2.2 of this report.

743 See above, note 739, Article 20.

744 See above, note 721, Egypt Independent.

745 Prime Minister Decree No. 410 of 2012.

746 *Ibid.*, Article 37.

747 Observatory of Public Sector Innovation, *Takaful & Karama Program*, visited 21 May 2018, available at: <https://www.oecd.org/governance/observatory-public-sector-innovation/innovations/page/takafulkaramaprogram.htm>.

748 International Labour Office, *Takaful and Karama (Solidarity and Dignity)*, visited 21 May 2018, p. 5, available at: <http://www.social-protection.org/gimi/RessourcePDF.action?ressource.ressourceId=53569>.

749 *Ibid.*

82,246 persons enrolled on the programme which included 67,470 persons with disabilities.⁷⁵⁰

Discriminatory Torture and Ill-treatment

As discussed in Part 3.1, the prohibition of torture is an absolute right which all states are required to uphold;⁷⁵¹ it is contained in numerous human rights treaties, including the ICCPR⁷⁵² and the CAT.⁷⁵³ Ill-treatment (that does not amount to torture) is prohibited by the ICCPR, the CAT, the CRC and the CRPD, with all of these treaties prohibiting “cruel, inhuman or degrading treatment or punishment”.⁷⁵⁴

The CAT Committee has noted the importance of taking additional steps to ensure that vulnerable groups are protected from torture and ill-treatment.⁷⁵⁵ The Special Rapporteur on torture has emphasised that states have a “heightened obligation to protect vulnerable and/or marginalised individuals from torture”,⁷⁵⁶ noting that persons with disabilities are particularly vulnerable to torture and other ill-treatment.⁷⁵⁷ Article 15(2) CRPD expressly requires states to take all effective measures “to prevent persons from disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment”.

Ill-Treatment in Detention

There have been reports of persons with disabilities being subject to ill-treatment in detention after being detained in connection with taking part

⁷⁵⁰ *Ibid.*

⁷⁵¹ As discussed in section 2.1.1.4, the prohibition of torture is a peremptory norm of international law, which is considered to be so fundamental that no derogation is possible.

⁷⁵² ICCPR, Article 7.

⁷⁵³ CAT, Article 1.

⁷⁵⁴ ICCPR, Article 7; CAT, Article 16; CRC, Article 37; CRPD, Article 15.

⁷⁵⁵ See above, note 248, Para 21.

⁷⁵⁶ Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Mendez, UN Doc. A/HRC/22/53, 2013, Para 26.

⁷⁵⁷ United Nations General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/63/175, 2008, Paras 37–41.

in popular protests. For example, the Forum of Egyptian Human Rights Organisations explained during Egypt's 2014 UPR that persons with disabilities had been detained without access to adequate healthcare during the protests of 2012 and 2013, and submitted that this potentially violated their right to freedom from torture or cruel, inhuman or degrading treatment.⁷⁵⁸ In 2015, Amnesty International documented the ill-treatment of Israa al-Taweel whilst in detention; Ms al-Taweel had sustained a permanent injury to her leg after being shot by security forces at a protest on 25 January 2014, and was thereafter only able to walk with the use of crutches.⁷⁵⁹ On 1 June 2015, Ms al-Taweel was arrested after taking part in a protest, and was detained in the National Security headquarters for 15 days before being transferred to Al-Qanatar prison on 15 June 2015.⁷⁶⁰ Ms al-Taweel was denied access to her crutches and physiotherapy treatment in prison, despite the fact that she had been diagnosed as having a disability:

*Today, they took me to the prison doctor to check on me for the leg injury I have; the diagnosis was that I suffer from permanent disability. I explained to [the doctor] the whole story of my injury and that I was getting better with the help of continuous physiotherapy. Yet, he insisted that his diagnosis was correct and he told me, "don't argue with me. Go back to your ward." Now I cannot walk on my own, and I need someone to take me to the toilet all the time.*⁷⁶¹

As a result of being denied access to adequate medical care, as well as being subjected to unsanitary conditions and being given limited access to water, Ms al-Taweel's condition deteriorated whilst she was in prison.⁷⁶²

758 Forum of Egyptian Human Rights Organizations, *The State of Human Rights in Egypt*, 2014, p. 10, available at: https://www.upr-info.org/sites/default/files/document/egypt/session_20_-_october_2014/js14_upr20_egy_e_main.pdf.

759 Amnesty International, "Urgent Action: Israa Al-Taweel denied vital medical care", *Amnesty International*, 3 November 2015, available at: <https://www.amnesty.org/download/Documents/MDE1227992015ENGLISH.pdf>; Al Jazeera, "Life in an Egyptian prison", *Al Jazeera*, 14 August 2015, available at: <https://www.aljazeera.com/news/2015/08/life-egyptian-prison-150812112621901.html>.

760 *Ibid.*, Amnesty International.

761 See above, note 759, Al Jazeera.

762 See above, note 759, Amnesty International, p. 2.

Forced Sterilisation

According to the NCDA, 400 forced hysterectomies are performed on adolescent girls with intellectual disabilities each year,⁷⁶³ despite Article 30 of the Egyptian Penal Code criminalising the removal of any part of the human body without medical necessity. Research suggests that many girls with intellectual disabilities are sterilised at the request of their families, who “[fear] the “dishonour” that would ensue if the girl were raped and became pregnant”.⁷⁶⁴ In a 2017 interview conducted by Raseef22, an independent news and media platform, one mother explained her decision to sterilise her 15-year-old daughter as follows:

*I leave my daughter alone all day long and someone may break into the house and assault her. If my daughter gets pregnant, that would shame and dishonour us (...) My daughter is physically mature, but her mind is still that of a three-year-old. I feel helpless, and I cannot send my only daughter to a specialised learning centre or association to train her to take care of herself. I explained to [the doctor] the situation my daughter was in, and he very much sympathised, reassuring me that the operation is easy and will not take more than two hours.*⁷⁶⁵

According to a former head of the Egyptian Medical Syndicate interviewed by Raseef22, the medical records of patients who undergo forced hysterectomies are falsified, with the cause of the operation being documented as uterine cirrhosis or bleeding: “[t]he real cause, which is intellectual disability, is rarely reported, which is why it is difficult to obtain accurate figures that illustrate how widespread these operations are”.⁷⁶⁶

The Special Rapporteur on torture has noted that the forced sterilisation of persons with disabilities amounts to a breach of the prohibition of torture and

763 El-Malky, O., “Unspeakable practices: Forced Hysterectomies for Egypt’s Disabled Daughters”, Raseef22, 28 May 2017, available at: <https://raseef22.com/en/life/2017/05/28/unspeakable-practices-forced-hysterectomies-egypts-disabled-daughters>.

764 *Ibid.*

765 *Ibid.*

766 *Ibid.*

other ill-treatment.⁷⁶⁷ Furthermore, the CRPD provides that states are under an obligation to require health and medical professionals to obtain the free and informed consent of persons with disabilities prior to any treatment.⁷⁶⁸ As the Committee on the Rights of Persons with Disabilities (CRPD Committee) has made clear, the existence of a disability is not a sufficient reason to deny a person's legal capacity,⁷⁶⁹ and states should not permit such consent to be provided by substitute decision-makers on behalf of persons with disabilities.⁷⁷⁰ In respect of children with disabilities, states are obligated under the CRPD to ensure that the best interests of the child are taken as a primary consideration in all actions concerning them and that their views should be given due weight.⁷⁷¹

Employment

Article 27(1) CRPD recognises the rights of persons with disabilities to work on an equal basis with others and requires states to take appropriate steps to safeguard and promote the realisation of the right to work of persons with disabilities. Such steps include prohibiting disability discrimination "with regard to all matters concerning all forms of employment",⁷⁷² ensuring that reasonable accommodation is provided to persons with disabilities in the workplace,⁷⁷³ employing persons with disabilities in the public sector,⁷⁷⁴ and promoting the employment of persons with disabilities in the private sector through appropriate policies and measures, including affirmative action programmes.⁷⁷⁵

Law No. 39 of 1975 contained a job quota for persons with disabilities, stipulating that persons with disabilities were to make up 5% of the workforce

⁷⁶⁷ See above, note 756, Para 48.

⁷⁶⁸ See above, note 733, Para 41.

⁷⁶⁹ *Ibid.*, Paras 13 and 42.

⁷⁷⁰ *Ibid.*, Para 41.

⁷⁷¹ CRPD, Article 7.

⁷⁷² *Ibid.*, Article 27(1)(a).

⁷⁷³ *Ibid.*, Article 27(1)(i).

⁷⁷⁴ *Ibid.*, Article 27(1)(g).

⁷⁷⁵ *Ibid.*, Article 27(1)(h).

of public and private companies with more than 20 workers.⁷⁷⁶ However, research indicates that this quota was not implemented in practice.⁷⁷⁷ Other attempts to improve access to employment for persons with disabilities have been blocked; for example, a proposed Civil Service Law, which provided for quotas and job reservation programmes for persons with disabilities in the civil service, was rejected by parliament in January 2016.⁷⁷⁸

Article 20 of the Disability Rights Law requires the state to guarantee the right of persons with disabilities to obtain equal opportunities for work commensurate with their academic qualifications and vocational training. It further provides that the state must adopt policies to ensure persons with disabilities have access to domestic and international labour markets. Article 23 incentivises employers to recruit persons with disabilities by providing tax breaks for employers; the tax benefits rise in accordance with the number of persons with disabilities employed. Furthermore, Article 22 imposes a quota for the employment of persons with disabilities on organisations with 20 persons or more, stipulating that employers of such organisations must ensure that 5% of all employees are persons with disabilities.⁷⁷⁹ This requirement applies to “governmental and non-governmental bodies and all employers.”⁷⁸⁰

In 2016, the Egyptian Center for Human Rights revealed that it had received a number of complaints from persons with disabilities who were unable to gain employment.⁷⁸¹ Research conducted for the purposes of this report indicates that disability discrimination in employment is widespread, with individuals encountering difficulties in obtaining employment and facing discriminatory treatment from colleagues in the workplace.

776 See above, note 734, Article 22.

777 National Council for Disability Affairs, *Response to the request for information on policies of inclusion of persons with disabilities*, November 2016, p. 5, available (in Arabic) at: <http://www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/DecisionMaking.aspx>.

778 *Ibid.*

779 See above, note 734, Article 23.

780 See above, note 734, Article 22.

781 National Council for Human Rights, *11th Annual Report 2015–2016*, 2016, p. 111, available (in Arabic) at: <http://www.nchregypt.org/media/ftp/report11.pdf>.

***Disability Discrimination in Employment:
Interviews with Persons with Disabilities***

One individual, interviewed by the Equal Rights Trust's researchers, who uses crutches after suffering from polio as a child explained the difficulties she faced when applying for a secretarial job:

I was applying for a job in an engineering company and when I went for the interview (...) I said to the employee who was interviewing me "please tell me now if you're going to accept me so that I don't keep calling you to ask". She said, "honestly I interviewed you because I was embarrassed, but you can't be at this position because it's for the role of secretary, which is representing the company's image, and can't be a handicapped person".⁷⁸²

Another individual described how he was not permitted to participate in the recruitment process for a public sector posting on account of his disability:

There was an announcement for vacancies in the governmental sector and I applied. When I went there to submit the rest of my papers, the employee asked me are you applying for this job, I said yes, he said ok give me your papers and wait for me. He entered an office and came back after a long time, bringing my papers and said take them – I asked why he had brought back the papers, and he answered that all the vacancies were occupied and that they didn't need more employees. I asked him why they didn't publicise this, and he said "don't be angry at least you're better off than others, you have a pension from the government while you're sitting at home, leave the job to someone who deserves it".⁷⁸³

Another individual interviewed by the Trust's researchers recounted a similar episode, explaining that he had faced many difficulties in obtaining a governmental job and that he had been subjected to discriminatory treatment by his colleagues after gaining employment. For example, his colleagues told him that he was receiving a pension from the government and was therefore "not supposed to seek a job because there are many youths who need it".

782 Equal Rights Trust Interview C48.

783 Equal Rights Trust Interview C49.

Education

Under the CRPD, access to education should be afforded without discrimination.⁷⁸⁴ States should ensure that persons with disabilities are provided access to the “general education system”,⁷⁸⁵ with reasonable accommodation provided where necessary⁷⁸⁶ and consideration given to the adoption of “effective individualized support measures”.⁷⁸⁷ The CRPD Committee has made clear that the right to non-discrimination under the CRPD “includes the right not to be segregated”, and that states must ensure the right of persons with disabilities to education through an “inclusive education system”.⁷⁸⁸

Article 19 of the Constitution guarantees the right to education for every citizen; this is supplemented by Article 81, which guarantees the right to education for persons with disabilities. Article 54 of the Child Law provides that free education in public schools “is a right for all children”, whilst Article 3(b) guarantees protection from all forms of discrimination among children, including on the basis of disability. The Child Law also includes a number of provisions which create obligations for the state with respect to the participation of children with disabilities in the education system: Article 76*bis* states that a child with a disability shall have the right to education, training and vocational rehabilitation at the same schools as are available to children without disabilities, “except in exceptional cases resulting from the nature and degree of disability”.

In 2015, the Ministry of Education issued Decision No. 42, which provides for the full integration of children with “mild disabilities” into general education schools. The Decision lists the types of disabilities which fit into this category, including visual impairments, all types of physical disability, hearing impairments (up to a moderately severe hearing loss of 60 decibels) and certain mental or intellectual disabilities (including autism). For “exceptional cases” – such as students with severe hearing impairments or mental disabilities – Article 76*bis* of the Child Law provides that the state must ensure

784 CRPD, Article 24.

785 *Ibid.*, Article 24(2)(a).

786 *Ibid.*, Article 24(2)(c).

787 *Ibid.*, Article 24(2)(e).

788 See above, note 741, CRPD Committee, Paras 8 and 13.

that children receive education and training in classes, schools, institutions, or special training centres, and that these institutions: (i) are linked to the regular education system; (ii) meet the needs of the disabled child and are located near his/her home; and (iii) provide comprehensive education or training, whatever the age or degree of disability of the child. As such, the Egyptian legal framework has remained reliant on the concept of “special” rather than “inclusive” education.⁷⁸⁹ In 2014, it was reported that there were 840 special education schools in operation in Egypt.⁷⁹⁰

As noted above, the CRPD Committee has stated that the right to inclusive education under Article 24 CRPD must be applied without discrimination, which includes the right not to be segregated in “special schools” separate from the mainstream education system.⁷⁹¹ It has further called on states to transfer resources from these segregated schools to inclusive environments.⁷⁹²

A research study conducted by a group of disabled persons’ organisations in 2015-2016 found that the inclusion of students with disabilities into public education is limited by the fact that many staff responsible for teaching in inclusive schools “lack a thorough understanding of educational inclusion decisions” and the fact that the admission criteria in relation to students with disabilities “are applied in accordance with the culture of each individual school”.⁷⁹³ Furthermore, the study found that students with disabilities faced difficulties in accessing schools due to a lack of public transport equipped to transport persons with disabilities, especially those with physical disabilities, as well as the hesitation of some parents of children with disabilities to take them to school.⁷⁹⁴ The study also found that school buildings themselves were often not accessible for children with disabilities: none of the 29 schools

789 Handicap International, *Inclusion of Students with Disabilities in Primary Education in Public Schools*, 2015–2016, p. 7, available at: http://haqqi.info/check_1.php?t=research_paper&f=Jordan%20Executive%20Summary_En.

790 See above, note 723.

791 CRPD Committee, *General Comment No. 4 on the right to inclusive education*, UN Doc. CRPD/C/GC/4, 2016, Para 13.

792 CRPD Committee, *General Comment No. 4 on the right to inclusive education*, UN Doc. CRPD/C/GC/4, 2016, Para 70.

793 See above, note 789, p. 11.

794 *Ibid.*, p. 13.

which were visited for research purposes had an elevator, and in many cases the bathrooms were not accessible for those with physical disabilities.⁷⁹⁵ Finally, the study found that school curricula had not been adapted to meet the needs of children with disabilities, and there was a lack of accessible technologies for children with visual, sensory and hearing impairments.⁷⁹⁶

Disability Discrimination in Education

Interviews conducted by researchers for this report found evidence of a lack of reasonable accommodation for children with disabilities and a failure to implement an effective system of inclusive education in Egypt. One individual interviewed by the Equal Rights Trust's researchers explained the difficulties she encountered due to the inaccessibility of her school:

My left leg was amputated and I have to use a wheelchair in order to get around any place. When I was at secondary school, the journey to school was very long and there was a place that I had to pass through which didn't have a passage suitable for those with disabilities (...) it was very hard and delayed me in getting to school on time. When I got bullied for arriving late, I asked if the school could make a special passage for us to be able to move and arrive on time – however, the teacher responsible for social affairs said: you want us to make a special passage for you just because your leg is amputated? It was in front of all my classmates and it was a very offensive and discriminatory situation.⁷⁹⁷

A mother whose child has Down's Syndrome explained how she had placed her daughter in a mainstream private sector school, and that whilst her classmates "were very gentle and treated her with love", the teachers treated her in a degrading manner:

One time [my daughter's] classmate told the teacher that [my daughter] knew the answer to a question, and the teacher said "no don't pay any attention to her, she's not here to learn, she has a narrow mind and doesn't know anything". When I complained to the manager of the school, she

⁷⁹⁵ *Ibid.*

⁷⁹⁶ *Ibid.*, p. 15.

⁷⁹⁷ Equal Rights Trust Interview C46.

*herself told me that my daughter wouldn't understand anything until I removed her from the school; indeed, I decided to take her papers and moved her to another school.*⁷⁹⁸

The Trust's research indicates that so-called "special education" schools may not be well-equipped to educate children with disabilities. One individual whose son has autism explained the difficulties his son faced in a special-needs school; he found it difficult to engage with his classmates and therefore faced harassment from the other children.⁷⁹⁹ The father explained that his son screams when someone else touches him, and that this led to him being expelled from the class by the specialist teacher responsible and punished by being made to stand still for two hours. The teacher called the father to complain about his son's behavior, referring to the child as "your crying son"; when the father asked how the teacher could treat the child in this way given that he is autistic, the teacher insisted that he was "mentally retarded" and unable to concentrate in class. The father explained that the problem lay with the "failed educational system":

*[The school] certified a person like this to be a specialist, even though she doesn't understand anything about how to deal with special needs persons. They also accepted her employment even though she doesn't know the difference between autism and mental disability.*⁸⁰⁰

The Disability Rights Law contains a number of provisions which are aimed at ensuring inclusive education. Article 10 provides that all educational institutions and ministries concerned with education are obliged to provide inclusive education for children with disabilities. Article 11 provides that all education institutions must adhere to "the rules and policies of educational integration of persons with disabilities" and provide equal educational opportunities for persons with all types of disabilities. Article 11 further provides that it is prohibited to deprive persons with disabilities of education at all stages or to refuse admission to educational institutions on the basis of an individual's disability. However, Article 10 of the Disability Rights Law

798 Equal Rights Trust Interview C43.

799 Equal Rights Trust Interview C31.

800 Equal Rights Trust Interview C31.

is stated to be subject to Article 76*bis* of the Child Law, which – as discussed above – allows schools to segregate students with disabilities into “special schools” in “exceptional cases”, thus undermining the Law’s commitment to the concept of inclusive education. Moreover, Article 13 commits the Ministry of Education to establish special education schools, thus entrenching the concept of “special education” within Egypt’s legal framework, in violation of Egypt’s obligations under Article 24 CRPD.

Healthcare

Under Article 25(a) CRPD, Egypt is required to provide persons with disabilities “the same range, quality and standard of free or affordable health care and programmes” as is provided to persons without disabilities. Article 81 of the Constitution provides that the state shall guarantee the health of all persons with disabilities. However, evidence suggests that healthcare for the disabled populations in Egypt is inadequate; they are not granted equal access to existing medical services to treat disabilities and there are also insufficient rehabilitation services to help them regain their functionality.⁸⁰¹ While government-sponsored physical rehabilitation services do exist, they are thought to reach less than 5% of the disabled population and just 2% of disabled children.⁸⁰² The World Bank gave several recommendations for the improvement of the needs of persons with disabilities in Egypt, including establishing a national action plan for persons with disabilities, and improving access to disability-friendly services and spaces.⁸⁰³

Political Participation

Under Article 87 of the Constitution, every citizen has the right to vote, stand in elections and express their opinion in referendums. Article 81 of the Constitution specifically guarantees political rights for persons with disabilities, providing that the state guarantees the right of disabled persons to exercise political rights. Article 180 of the Constitution provides that, as far as the election of local councils is concerned, there must be “proper representation” of persons with disabilities. Further, Article 244 of the Constitution provides

801 See above, note 720.

802 *Ibid.*, p. 41.

803 *Ibid.*, p. 59.

that the state grants persons with disabilities “appropriate representation in the first House of Representatives to be elected”.

As noted above, it is not clear what is meant by either “proper” or “appropriate” representation in this context. Nevertheless, the inadequacy of this representation is clear: in the most recent elections held in 2015, eight of the 596 seats (1.3%) in the House of Representatives were won by persons with disabilities.⁸⁰⁴ In light of estimates of the number of persons with disabilities discussed above (10.7%), this figure constitutes a significant underrepresentation of persons with disabilities in the House of Representatives.

Since the 2011 revolution, the community of persons with disabilities in Egypt has been increasingly vocal in its demands for improved political participation.⁸⁰⁵ However, despite calls to remove obstacles to the political empowerment of persons with disabilities, limited progress has been made; for instance, little accommodation was made to enable persons with disabilities to participate in the 2014 referendum on the new Constitution.⁸⁰⁶ In this context, CSOs have made efforts to ensure that persons with disabilities have the ability to engage in political life and have taken steps to provide them with assistance in accessing polling stations.⁸⁰⁷ To this end, reports suggest that the most recent elections in 2018 saw polling centres made more accessible for those with disabilities.⁸⁰⁸ The recently enacted Disability Rights Law guarantees the political rights of persons with disabilities under Article 37, providing that the state must ensure their participation with respect to voting in, and standing for, elections by making related procedures and facilities accessible to them.

804 Arab Republic of Egypt, *Egypt's New Parliament: The Most Empowered and Diverse in Our History*, 2015, p. 1, available at: <http://www.egyptembassy.net/media/12.16.15-Egypt-Parliamentary-Elections-Fact-Sheet1.pdf>.

805 Lord, J.E., Stein, M.A. and Fiala-Butora, J., “Facilitating an Equal Right to Vote for Persons with Disabilities”, *Journal of Human Rights Practice*, Vol. 6, No. 1, 2014, p. 122.

806 EIPR, “Rights experts and institutions demand political empowerment for the disabled”, *EIPR*, 18 March 2014, available at: <https://eipr.org/en/press/2014/03/rights-experts-and-institutions-demand-political-empowerment-disabled>.

807 See above, note 723, p. 183.

808 Ismail, R., “Remarkable participation of disabled Egyptians in election”, *Egypt Independent*, 18 March 2018, available at: <https://www.egypttoday.com/Article/2/45537/Remarkable-participation-of-disabled-Egyptians-in-election>.

Conclusion

Egypt's legal framework on disability discrimination is stronger than that governing other forms of discrimination. The Constitution guarantees citizens equality in rights without discrimination on the basis of disability and contains a number of provisions expressly targeted at guaranteeing the rights of persons with disabilities. The newly-enacted Disability Rights Law, replacing the earlier 1975 disability rights legislation, contains *inter alia* guarantees regarding equal access to employment and education, and provides for the establishment of the NCPD. However, the new Law falls short of the standards set in the CRPD, despite being enacted after its ratification.

Persons with disabilities face considerable societal stigma and are subject to a range of discriminatory rights violations. There is evidence that persons with disabilities have been subject to ill-treatment in detention, and reports of forced hysterectomies being performed on adolescent girls with intellectual disabilities. Persons with disabilities also face discrimination in employment, both during the recruitment process and whilst at the workplace. Egypt has failed to implement an effective system of inclusive education for children with disabilities, in violation of its obligations under the CRPD.

3.7 Discrimination and Inequality on the Basis of HIV/AIDs

Health status is a recognised ground of discrimination under international law. The CESCR has confirmed that health status, including human immunodeficiency virus (HIV) status, falls within the “other status” category for the purposes of Article 2(2) ICESCR.⁸⁰⁹ The CESCR's recognition reflects a growing consensus that discrimination on grounds of “health status” should be prohibited.⁸¹⁰ In accordance with the principle that human rights organs and specialised agencies should ensure “consistent and objective application of international human rights instruments”,⁸¹¹ Egypt is required to guarantee not only the rights contained in the ICESCR but also the rights in the ICCPR

809 See above, note 543, CESCR, Para 33.

810 See, for example: Commission on Human Rights, *Report on the Fifty-First Session*, UN Doc. E/CN.4/1995/176, 1995, Para 1.

811 UN General Assembly, *Vienna Declaration and Programme of Action*, UN Doc. A/CONF.157/23, 1993, Para 4.

without discrimination on the grounds of health status, and to ensure that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination”,⁸¹² including on the grounds of health status.

According to the Joint United Nations Programme on HIV/AIDS (UNAIDS), there are between 11,000 and 12,000 persons living with HIV/AIDS (human immunodeficiency virus/acquired immune deficiency syndrome) in Egypt⁸¹³ (approximately 0.01% of total population⁸¹⁴). This figure has been rising over the last 20 years:⁸¹⁵ on December 2017, it was reported that the number of new HIV cases was growing by up to 40% per year, with the Director of UNAIDS in the country stating that the situation was “alarming to us because of the growth of the epidemic and the discontinuation of interest from donors in funding”.⁸¹⁶ Men who have sex with men, women engaged in sex work, prisoners and injecting drug users are the most-at-risk-populations in regards to contracting HIV in Egypt.⁸¹⁷

Cultural Attitudes

Social stigma against persons with HIV/AIDS is prevalent in Egypt, with stigma often stemming from misconceptions associated with the condition – the most common of which is that HIV is “related to immoral behaviours”.⁸¹⁸

812 ICCPR, Articles 2(1) and Article 26.

813 UNAids, *Country Report Egypt: Data*, 2016, available at: <http://www.unaids.org/en/regionscountries/countries/egypt>.

814 Based on World Bank population estimates for 2017: World Bank, *Data: Population*, 2017, available at: <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=EG>.

815 See above, note 813.

816 Ibrahim, A., “A wake-up call’: UN sends warning over loss of HIV funds for Egypt”, *Middle East Eye*, 12 December 2017, available at: <http://www.middleeasteye.net/news/should-be-wake-call-un-voices-alarm-shrivelling-hiv-prevention-funds-egypt-640715052>.

817 UNAids, *Standing Up Speaking Out: Women and HIV in the Middle East and North Africa*, 2012, p. 8, available at: http://files.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2012/20120713_MENA_Women_and_AIDS_2012_en.pdf; Egyptian Society for Population Studies and Reproductive Health (ESPSRH), “Stigma experienced by people living with HIV in Egypt: A research based on PLHIV Stigma Index methodology”, 2013, p. 8, available at: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=1014&file=Annexe1>.

818 Primo, V., “Living with HIV in Egypt”, *Cairo Scene*, 4 October 2015, available at: <http://www.cairoscene.com/In-Depth/Living-with-HIV-in-Egypt>.

As a result, individuals with HIV/AIDS are reportedly afraid to reveal their HIV status to others, even to family members and partners.⁸¹⁹ A 2013 study of stigma against persons living with HIV conducted by the Egyptian Society for Population Studies and Reproductive Health (ESPSRH) revealed that 20% of the 529 men and women participating in the study did not reveal their HIV status to adults in their family, 78% did not inform their friends or neighbours, 84% did not inform their employer, 40% did not inform health-care providers and 93% did not inform teachers.⁸²⁰ Individuals participating in the study reported being the subject of gossip, verbal insults and threats on account of their HIV status.⁸²¹ One individual interviewed by a journalist for Cairo Scene, an online media site, explained that he would never tell his mother that he is HIV-positive, stating “she would kick me out of the house because people think it comes through immoral acts”.⁸²² In December 2017, the media reported that a 24-year-old mother of two who had contracted HIV from her husband committed suicide after her neighbours discovered her HIV status and demanded that she leave the neighbourhood.⁸²³ A lawyer interviewed for this report stated that stigma surrounding HIV/AIDS means that HIV-positive persons who are subjected to discrimination or harassment are often unwilling to take legal action, as this would involve publicly disclosing their HIV status.⁸²⁴

The stigma surrounding HIV/AIDS is reportedly contributing to the spread of the virus: according to the director of Roaya, an Egyptian NGO that works to raise awareness about HIV, “[p]eople who may have contracted the disease are afraid to get diagnosed and treated because they worry that their reputation will be tainted”.⁸²⁵ Public education and awareness-raising initiatives which tackle the stigma surrounding HIV/AIDS are therefore crucial to tackling the epidemic. The National AIDS Program (NAP), which is an

819 *Ibid.*

820 See above, note 817, ESPSRH, p. 15.

821 See above, note 817, ESPSRH, p. 15.

822 See above, note 818.

823 Al-Youm, A.M., “Mother diagnosed with AIDS commits suicide after neighbours demand she leaves”, *Egypt Independent*, 13 December 2017, available at: <https://www.egyptindependent.com/mother-diagnosed-with-aids-commits-suicides-after-neighbours-demand-she-leaves>.

824 Information provided to the Equal Rights Trust by an Egyptian lawyer, 4 September 2018.

825 See above, note 816.

initiative of the Egyptian Ministry of Health, has a number of programmes in place to raise awareness of HIV prevention and treatment; however, concerns have been raised regarding the fact that the NAP suffers from a lack of funding, meaning that while the government has pledged to provide free treatment for people living with HIV, there are insufficient resources to invest in prevention and outreach programmes, which are essential to stopping the spread of the disease.⁸²⁶ The state has put in place a strategy for 2015–2020 which adopts global targets for the prevention and treatment of HIV/AIDS.⁸²⁷

Legal and Policy Framework

The guarantee of non-discrimination under Article 53 of the Constitution does not explicitly include “health status” as a prohibited ground of discrimination. However, read in accordance with international standards, the prohibition on discrimination “for any other reason” under the Article should be read as including health status. While the courts have not yet interpreted Article 53 in this fashion,⁸²⁸ as discussed below, a 2016 judgment found that the prohibition on discrimination in the Labour Law extends to health status.

There is no Egyptian law specifically protecting individuals from discrimination on grounds of health status. However, the Egyptian courts have held that employees are protected from dismissal on the grounds of health status under the Labour Law. The Labour Law does not explicitly prohibit discrimination on the grounds of an individual’s health status, or indeed provide an open-ended list of characteristics like that in Article 53 of the Constitution – the list of prohibited grounds under Article 120 of the Labour Law is limited to “colour, sex, social status, family obligations, pregnancy, religion, political view, affiliation to a union, or participation in union activity” – a landmark court judgment in 2016 held that it is unlawful for Egyptians with HIV/AIDS to be dismissed from work

826 El Habachi, M., “Stigma helps HIV spread in silence in Egypt”, *Al-Monitor*, 23 March 2018, available at: <https://www.al-monitor.com/pulse/originals/2018/03/egypt-hiv-patients-epidemic-stigma-rise-awareness-society.html>.

827 UNAIDS, *HIV Situation in Egypt*, 2017, available at: <http://www.wac-egypt.org/resources/hiv-situation-in-egypt.pdf>.

828 Information provided to the Equal Rights Trust by an Egyptian lawyer, 4 September 2018.

because of their health status.⁸²⁹ The claimant in the case was asked to leave his job as a plumber after his employer discovered that he was HIV-positive; the court held that employment is a basic human right for all citizens, regardless of their health status, unless a particular health condition prevents them from working.⁸³⁰ The decision was upheld on appeal in 2017.⁸³¹

Discriminatory Laws

According to Decree No. 700 of 2006 “on the Rules and Implementing Measures Surrounding Work Permits for Foreigners”, foreigners seeking the right to work in Egypt must take an HIV/AIDS test. Those who test positive for HIV/AIDS are systematically denied employment, and those who test negative for HIV/AIDS must submit their medical certificate the first time they apply for a work permit.⁸³² The negative medical certificate must be renewed each time the individual exits Egypt.⁸³³ Furthermore, Egypt deports non-citizens who are discovered to be HIV positive.⁸³⁴

Under Article 21 of the Law on Infectious Disease, persons with HIV/AIDS are not permitted to work in various professions, namely the food industry, the army, the police or the judiciary.⁸³⁵

829 UNAIDS, “Landmark court ruling in Egypt prohibits HIV discrimination in the workplace”, *UNAIDS*, 1 July 2016, available at: http://www.unaids.org/en/resources/presscentre/featurestories/2016/july/20160713_Egypt.

830 *Ibid.*

831 International Development Law Organization, *Equal Rights, Equal Treatment, Ending AIDS: Strengthening and Expanding HIV-Related Legal Services and Rights*, 2017, p. 14, available at: <https://www.idlo.int/sites/default/files/pdfs/publications/IDLO%20Equal%20rights%2C%20equal%20treatment%2C%20ending%20AIDS.pdf>.

832 EIPR and International Federation for Human Rights, *Egypt: Protection of the Rights of All Migrant Workers and Members of Their Families*, 2007, p. 2, available at: http://www2.ohchr.org/english/bodies/cmw/docs/eipr_fidh.pdf.

833 *Ibid.*

834 The Global Database on HIV-Specific Travel & Residence Restrictions, *Yemen – Regulations on Entry, Stay and Residence for PLHIV*, updated 19 July 2008, available at: <http://www.hivtravel.org/Default.aspx?PagelD=143&CountryId=197>; International Task Team on HIV-related Travel Restrictions, “*apping of restrictions on the entry, stay and residence of people living with HIV*”, 2009, p. 8, available at: http://www.unaids.org/sites/default/files/media_asset/jc1727_mapping_en_0.pdf.

835 Population Council, *Understanding HIV-Related Vulnerabilities and Stigma Among Egyptian Youth*, 2016, p. 21, available at: https://www.popcouncil.org/uploads/pdfs/2016PGY_HIV-VulnerabilitiesEgypt.pdf.

Access to Healthcare

Whilst guidelines issued by the NAP stipulate that persons with HIV/AIDS should be treated with dignity, and their data should be kept confidential, the Cairo Population Council reported in 2016 that “many healthcare providers (...) are not aware of those guidelines and thus treat [persons with HIV] with disrespect and deny them services”.⁸³⁶ This discriminatory treatment of persons with HIV/AIDS largely stems from societal stigma, which means that there is “a huge lack of knowledge on how to deal with the disease” and healthcare providers “[fear] dealing with patients”.⁸³⁷

In the 2013 ESPSRH study of stigma against persons living with HIV, 40% of participants did not reveal their HIV status to healthcare providers due to the social stigma surrounding HIV/AIDS.⁸³⁸ However, more than 50% of the individuals who *did* reveal their HIV status while seeking healthcare reported having been denied healthcare services.⁸³⁹ There have been a number of reports of HIV-positive individuals being denied medical treatment in the media. One HIV-positive individual interviewed by a journalist for Cairo Scene explained that HIV-positive individuals may be treated aggressively by hospitals, and sometimes rejected for treatment “because of all the associations [between being HIV-positive and] sex workers and same sex relations”.⁸⁴⁰ In 2011, the media outlet IRIN reported that a pregnant HIV-positive woman “was denied permission to give birth in many of the country’s main hospitals” before being offered a room specifically for persons with HIV in a Cairo hospital.⁸⁴¹ More recently, in January 2018, the Egyptian AIDS Society reported that a patient who needed surgery in order to avoid his leg having to be amputated was “turned away by the surgeon when it was revealed he was HIV-positive”, whilst another individual was refused treatment by a dental surgeon after

836 *Ibid.*, pp. 20–21.

837 See above, note 818.

838 See above, note 817, ESPSRH, p. 8 and 15.

839 *Ibid.*, p. 15.

840 See above, note 818.

841 IRIN, “HIV-positive people battle health service discrimination”, *IRIN*, 31 August 2011, available at: <http://www.irinnews.org/news/2011/08/31/hiv-positive-people-battle-health-service-discrimination>.

disclosing her HIV status.⁸⁴² Refusing to treat persons with HIV/AIDS, or subjecting them to inadequate treatment, amounts to a violation of the right to non-discrimination on grounds of health status and the right to health.⁸⁴³

Research also indicates that individuals with HIV/AIDS are subjected to other discriminatory treatment when seeking to access healthcare services, including breaches of confidentiality, and harassment. Interviewees participating in the 2013 ESPSRH study complained about the lack of privacy when receiving healthcare treatment, including doctors informing their partner without their consent: “there is no confidentiality; they informed my wife before telling me”.⁸⁴⁴ One HIV-positive woman who took part in a 2016 study by the Cairo Population Council explained that when her doctor and nurse found out that she was pregnant, they “reprimanded” her, telling her: “you are a problem and your husband is a problem. Why do you bring another problem; you should go and kill yourself”.⁸⁴⁵

Access to healthcare services, including antiretroviral drugs (ART), is crucial to enabling persons living with HIV/AIDS to live healthy lives. Yet in 2013, the WHO reported that Egypt was struggling to achieve high ART coverage and categorised it as a country which was “[b]ehind schedule: major support needed to reach the universal access goal”.⁸⁴⁶ Where ART treatment is available, some individuals have reported that they are treated without dignity and have been refused treatment by hospitals after having revealed their HIV status.⁸⁴⁷ In one case, a woman explained to UNAIDS that the Ministry of Health had conducted a test and was aware that she had HIV, but did not contact her to offer her treatment; as a result, her daughter contracted HIV and died before she was two-years-old.⁸⁴⁸

842 Megahid, A., “Stigma exacerbates Egypt’s HIV incidence increase”, *The Arab Weekly*, 7 January 2018, available at: <https://the arabweekly.com/stigma-exacerbates-egypts-hiv-incidence-increase>.

843 World Bank, *Legal Aspects of HIV/AIDS: A Guide for Policy and Law Reform*, 2007, pp. 63–68, available at: <http://siteresources.worldbank.org/INTHIVAIDS/Resources/375798-1103037153392/LegalAspectsOfHIVAIDS.pdf>.

844 *Ibid.*, p. 34.

845 See above, note 835, p. 20.

846 WHO, *Global Update on HIV Treatment 2013: Results, Impact and Opportunities*, 2013, p. 39, available at: http://apps.who.int/iris/bitstream/10665/85326/1/9789241505734_eng.pdf?ua=1.

847 See above, note 818.

848 See above, note 817, UNAIDS, p. 38.

Employment

Research indicates that discrimination and discriminatory attitudes within the workplace are prevalent. In a 2012 UNAIDS study, half of those interviewed stated that they would not feel comfortable working with someone who had HIV/AIDS.⁸⁴⁹ The 2013 ESPSRH study found that 12% of men and 25% of women participating in the study believed that they had been refused employment or work opportunities as a result of discrimination by their employer or co-workers on the basis of their HIV status.⁸⁵⁰ One individual interviewed revealed having to quit their job when their HIV status was revealed, whilst another reported that he had been sent away from his job and dismissed from work after revealing his HIV status.⁸⁵¹

Given that an individual who is dismissed on account of their HIV status would have to file a lawsuit declaring their HIV status in order to challenge the dismissal, this type of conduct often occurs with impunity.⁸⁵² As discussed above, in a 2016 lawsuit, the judge held that an employee's dismissal due to his HIV status was wrongful as it was based on an unlawful ground for dismissal; whilst the decision was upheld on appeal, the employer refused to re-employ the claimant.⁸⁵³

Housing

The 2013 ESPSRH study found that 20% of the men participating in the study and 21% of the women had been forced to change their place of residence or were unable to rent accommodation, and perceived the main reason for this was the fact that they had disclosed their HIV status.⁸⁵⁴ One woman participating in the study reported that problems arose with her living situation after her HIV status was discovered, with her family members doing little to hide their fear of infection; ultimately, she was forced to move out of her family home with her children due to the stigma attached to HIV/AIDS.⁸⁵⁵

849 *Ibid.*, p. 20.

850 See above, note 817, ESPSRH, p. 24.

851 *Ibid.*, p. 34.

852 See above, note 835, p. 21.

853 See above, note 831, p. 14.

854 See above, note 817, ESPSRH, p. 9.

855 Zaki, M., "Egyptian Women With HIV Hide From Social Stigma in Silence", *AllAfrica*, 27 January 2017, available at: <https://allafrica.com/stories/201701270695.html>.

Conclusion

There are approximately 11,000–12,000 persons living with HIV/AIDS in Egypt, with this number having risen steadily over the last 20 years. There are high levels of stigma against HIV/AIDS in Egypt, meaning that individuals are afraid to reveal their HIV status to others and face exclusion when they do so, including when accessing healthcare, employment and housing. Egypt's legal framework does not adequately protect individuals from discrimination on the grounds of health status, including HIV status, although the courts have recently recognised that it is unlawful for an individual to be dismissed from work on the grounds of their health status.

3.8 Discrimination and Inequality on the Basis of Sexual Orientation and Gender Identity

Under Article 2(1) ICCPR Egypt is required to “ensure to all individuals (...) the rights recognised in the (...) Covenant, without distinction of any kind”, on grounds including “other status”.⁸⁵⁶ The same obligation to ensure enjoyment of the Covenant rights without discrimination arises under Article 2(2) ICESCR.⁸⁵⁷ In addition, under Article 26 ICCPR, Egypt is required to ensure that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground”.⁸⁵⁸

The CESCR has stated that sexual orientation and gender identity fall within the category of “other status” within the meaning of Article 2(2).⁸⁵⁹ The HRC in its jurisprudence has held that the prohibition of discrimination under Articles 2(1) and 26 extends to discrimination on the grounds of sexual orientation.⁸⁶⁰ The HRC has also held that laws criminalising homosexual conduct breach Article 17 ICCPR, under which no person “shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation”.⁸⁶¹

⁸⁵⁶ ICCPR, Article 2(1).

⁸⁵⁷ ICESCR, Article 2(2).

⁸⁵⁸ ICCPR, Article 26.

⁸⁵⁹ See above, note 543, CESCR, Para 32.

⁸⁶⁰ HRC, *Young v Australia*, Communication No. 941/2000, UN Doc. CCPR/C/78/D/941/2000, 2003, Para 10.4.

⁸⁶¹ *Ibid.*, Para 8.6.

There is no official data available on the size of the LGBT community. International organisations such as the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) do not include Egypt in their mapping operations, citing scarcity of “information” as the principal reason for this.⁸⁶² Evidence suggests that this scarcity of information is partly due to the fact that members of the LGBT community do not feel able to disclose their sexual orientation or gender identity, concealing this even from their families: as noted by one individual, “[m]ost of the gay people in Egypt are not even out to their families – they are living in fear, not living their lives”.⁸⁶³

Cultural Attitudes

Evidence from national and international NGOs, media sources and academic research indicates that there are high levels of stigma and discrimination against LGBT persons in Egypt. A 2013 study by the Pew Research Center found that 95% of respondents believed that society should not accept homosexuality.⁸⁶⁴ ILGA has described Egypt as “one of the most hostile States to LGBTI people on the planet”.⁸⁶⁵ This stigma is closely associated with traditional social conceptions of gender and masculinity, which legitimise the punishment and ostracisation of men who transgress such traditional norms through engaging in sexual relations with other men or changing their gender identity.⁸⁶⁶ Whilst the Equal Rights Trust was not able to obtain any first-hand testimony regarding the experiences of the LGBT community in Egypt, in part due to the high levels of stigma faced by sexual and gender minorities, one woman interviewed by the Trust’s researchers explained that her cousin, who was 22-years-old, was beaten by her parents after they discovered that she was a lesbian.⁸⁶⁷

862 International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), *Trans Legal Mapping Report 2017: Recognition before the law*, 2017, p. 18, available at: https://www.ilga.org/downloads/ILGA_Trans_Legal_Mapping_Report_2017_ENG.pdf.

863 Wirtschafter, J., “In much of the Middle East, it’s getting more dangerous to be gay”, *Public Radio International*, 30 August 2016, available at: <https://www.pri.org/stories/2016-08-30/much-middle-east-its-getting-more-dangerous-be-gay>.

864 Pew Research Center, *The Global Divide on Homosexuality*, 2013, p. 3, available at: <http://www.pewglobal.org/2013/06/04/the-global-divide-on-homosexuality>.

865 ILGA, *State-Sponsored Homophobia: A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*, 2017, p. 8, available at: https://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf.

866 Information provided to the Equal Rights Trust by an Egyptian human rights defender, 9 July 2018.

867 Equal Rights Trust Interview D40.

According to ILGA, there has been a crackdown against the LGBT community in Egypt since 2013 “as part of a larger government effort to arrest and harass political opponents, human rights defenders and journalists”.⁸⁶⁸ The media plays a significant role in fuelling stigma and prejudice against the LGBT community, using highly stigmatising language when discussing the arrest of LGBT persons, referring to gay men as “sexual deviants” and using terms such as “shemale” to describe transgender women.⁸⁶⁹

Homophobic and transphobic rhetoric increased following an incident in September 2017, when 65 people were arrested in connection with the display of rainbow flags during a performance of the Lebanese band Mashrou' Leila (referred to hereafter as the “rainbow flag incident”).⁸⁷⁰ According to the LA Times, shortly after the concert, Hamed Sinno, the lead singer of the band, was refused re-entry into the country because of his sexual orientation.⁸⁷¹ Following the rainbow flag incident, the media, politicians and religious leaders embarked on “a hate campaign against homosexuality and LGBT people in Egypt”, with the media reportedly calling on the authorities to “put an end to the “sexual perversion in Egypt””.⁸⁷² On 25 September 2017, the Deputy of Al-Azhar Mosque allegedly described the rainbow flag incident as “a crime of moral terrorism” which had been “an attack on the heavenly laws and norms of humanity”.⁸⁷³ This was followed shortly afterwards by a statement from a member of the National Human Rights Council on 27 September 2017, who allegedly stated that “homosexuality is against Islam and Christianity”.⁸⁷⁴

868 See above, note 865, p. 86.

869 EIPR, *The Trap: Punishing sexual difference in Egypt*, 2017, pp. 44 and 47, available at: https://eipr.org/sites/default/files/reports/pdf/the_trap-en.pdf.

870 See above, note 239, Human Rights Council; Los Angeles Times, “Brutal crackdown has gay and transgender people asking: Is it time to leave?”, 19 October 2017, *Los Angeles Times*, available at: <http://www.latimes.com/world/middleeast/la-fg-egypt-gay-crackdown-20171019-story.html>; Eltahawy, M., “Why is Egypt so afraid of a rainbow flag?”, *New York Times*, 26 October 2017, available at: <https://www.nytimes.com/2017/10/26/opinion/egypt-gay-lgbt-rights.html>; See also, note 239, Amnesty International.

871 *Ibid.*, Los Angeles Times.

872 See above, note 239, Human Rights Council, p. 3.

873 *Ibid.*

874 *Ibid.*

Legal and Policy Framework

The guarantee of non-discrimination under Article 53 of the Constitution does not explicitly include “sexual orientation” or “gender identity” as prohibited grounds of discrimination. However, if the prohibition of discrimination “for any other reason” under Article 53 is read in accordance with international legal standards, these characteristics enjoy protection.

There is no Egyptian law specifically protecting individuals from discrimination on grounds of sexual orientation or gender identity.

Discriminatory Laws

Same-sex sexual activity between adults is not explicitly criminalised in Egypt. However, ILGA has noted that same-sex sexual relations are *de facto* outlawed “because such activity, and related expression, is outlawed under debauchery, indecency and other laws”.⁸⁷⁵ As has been noted by a number of UN special procedures mandate holders, provisions of such laws have been used to target persons based on their perceived sexual orientation and gender identity, as well as human rights defenders who have been engaged in the promotion and defence of LGBT rights.⁸⁷⁶

The Penal Code contains a number of provisions which have been interpreted as prohibiting same-sex sexual relations and “used liberally to imprison gay men in recent years”.⁸⁷⁷ These provisions include Article 269*bis*, which punishes incitement to commit “indecency” with imprisonment of up to one month, and Article 278, which provides that “[w]hoever commits in public a scandalous act against shame shall be punished with detention for a period not exceeding one year or a fine not exceeding three hundred pounds”.

Provisions of Law No. 10 of 1961 on the Combating of Prostitution (the “Law on Combating Prostitution”) have also been used to criminalise persons engaging in same-sex sexual conduct. Article 9 imposes a maximum sentence of three years’ imprisonment for the crimes of incitement to debauchery and

875 See above, note 865, p. 27.

876 See above, note 239, Human Rights Council, p. 5.

877 *Ibid.*, p. 85.

“habitual” debauchery. The term “debauchery” under Article 9 has been interpreted by the judiciary and law enforcement to mean same-sex relations: according to the EIPR, between December 2013 and March 2017, 232 people were arrested on charges of debauchery on the basis of their private sexual practices or sexual orientation pursuant to the Law on Combating Prostitution.⁸⁷⁸ Article 178 of the Law imposes a maximum sentence of two years’ imprisonment for the production or procurement of articles or images “which offend against public decency”.

Thus, while these provisions do not explicitly criminalise same-sex sexual conduct, evidence indicates that they have been consistently applied to do so. Applying any law to criminalise acts only when these acts are undertaken by a particular group who share a protected characteristic – as is the case when “debauchery” or “indecentry” provisions are interpreted to criminalise consenting same-sex sex between adults – is direct discrimination. As noted above, the HRC in *Toonen v Australia* held that laws criminalising homosexual conduct breach state’s international obligations under the ICCPR⁸⁷⁹ and this has been the consistent position of the UN human rights mechanisms since 1994.⁸⁸⁰ The HRC has consistently called on states to repeal laws which criminalise homosexual conduct in its concluding observations.⁸⁸¹

Recent Developments and Draft Laws

Following the rainbow flag incident at the Mashrou’ Leila concert in September 2017, the Supreme Media Council issued a ban on the appearance of homosexuality in any visual, audio or readable media outlets, as well as banning rainbow flags or any “signs” that promote homosexuality.⁸⁸² Furthermore, MP Riad Abdel Sattar presented a draft law to criminalise homosexuality to the

⁸⁷⁸ See above, note 869, p. 8.

⁸⁷⁹ HRC, *Toonen v Australia*, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992, 1994, Para 8.6.

⁸⁸⁰ OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, 2012, p. 30, available at: <https://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>.

⁸⁸¹ See, for example: HRC, *Concluding Observations: Gambia*, UN Doc. CCPR/C/GMB/CO/2, 30 August 2018, Paras 11–12; HRC, *Concluding Observations: Algeria*, UN Doc. CCPR/C/DZA/CO/4, 17 August 2018, Paras 19–20.

⁸⁸² See above, note 239, Human Rights Council, p. 4.

Speaker of the Council of Representatives of the Egyptian Parliament, after collecting the signatures of 67 members of parliament.⁸⁸³ Mr Sattar was reported to have stated that the legislature needed to intervene to put an end to moral deviation, and that homosexuality in Egypt is “even more dangerous to society than violence and terrorism”.⁸⁸⁴ The proposed bill would explicitly criminalise same-sex sexual activity in Egypt for the first time,⁸⁸⁵ stating that “in the necessity of upholding the family and school and religion”:

1. *Homosexuality is defined as a sexual relationship between persons of the same sex (men or women).*
2. *Any person/s who engages in sexual relationships with persons of the same sex in a public or private place will be sentenced to spend between 3 and 5 years in prison.*

(...)

5. *Bearing symbols or signs of homosexuality is to be forbidden, just as the production, sale, marketing or promotion of such signs.*

(...)

7. *The punishment in the former articles is to be accompanied by publication (of details) in two widely circulated newspapers.*⁸⁸⁶

As noted above, the criminalisation of same-sex sexual acts is a matter of grave concern and is a clear breach of Egypt’s obligations under international human rights law.⁸⁸⁷ The proposal under draft Article 7 to disclose the identity of indi-

883 *Ibid.*; pp. 4–5; See also, above, note 239, Amnesty International.

884 Arab Youm, “We publish the draft bill criminalising “homosexuality” to imprisonment between 3 and 5 years in prison”, *Arab Youm*, 25 October 2017, available (in Arabic) at: <https://www.arabyoum.com/egypt/1290947/%D9%86%D9%86%D8%B4%D8%B1-%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%AA%D8%AC%D8%B1%D9%8A%D9%85-%D8%A7%D9%84%D9%85%D8%AB%D9%84%D9%8A%D8%A9-%D8%A7%D9%84%D8%AC%D9%86%D8%B3%D9%8A%D8%A9-%D8%A7%D9%84%D8%B3%D8%AC%D9%86-%D9%85%D9%86-3-%D9%84%D9%805-%D8%B3%D9%86%D9%88%D8%A7%D8%AA>.

885 See above, note 239, Amnesty International.

886 See above, note 884.

887 See, for example, above note 879, Para 8.2.

viduals charged under the law in the media is of further concern, given that the risk of violence by both state and non-state actors, as discussed below.

Furthermore, a bill to amend the Law on Combating Prostitution was submitted to the Egyptian Parliament by a number of parliamentarians in October 2017. The bill includes amendments aimed at increasing the penalty and fines for the offences of debauchery, habitual debauchery and incitement of debauchery.⁸⁸⁸ According to an explanatory memorandum to the proposed bill, the minimum term of imprisonment would be raised from one to two years, whilst the maximum period of imprisonment would be raised from three to five years.⁸⁸⁹ The explanatory memorandum also includes the following statement:

*While people call for respecting personal freedoms, we find such calls as irrelevant to our society. For us, an individual is not absolutely free in terms of how he fulfils his sexual needs, as there must be religious and legal boundaries that would limit such freedom. Such boundaries should serve to affirm that personal freedoms do not violate the rules of nature or human dignity.*⁸⁹⁰

A number of UN special procedures mandate holders – including the UN Working Group on Arbitrary Detention, the Special Rapporteur on freedom of opinion and expression and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity – expressed “serious concern” regarding these bills, emphasising that sexual orientation and gender identity are recognised grounds of discrimination under international law.⁸⁹¹

Discriminatory Violence

There have been a number of media reports of discriminatory violence against LGBT persons in Egypt, including a number of murders of gay men.⁸⁹²

888 See above, note 239, Human Rights Council, p. 4.

889 *Ibid.*

890 *Ibid.*

891 See above, note 239, Human Rights Council, p. 6.

892 See above, note 869, p. 50.

In 2014, an Italian citizen was murdered by an Egyptian in Nasr City, with the media describing the victim as a “sexual deviant” who “used to lure young men to practice debauchery”.⁸⁹³ Four murders with similar facts were reported in 2016.⁸⁹⁴

There have also been reports of violence against transgender persons. One transgender woman reported having been surrounded by a dozen men and beaten because of her appearance in 2009 and again by state security forces two years later.⁸⁹⁵ Other reports in recent years have highlighted cases of transgender women being taken to police stations and beaten by police.⁸⁹⁶

Discriminatory Detention, Torture and Ill-Treatment

There have been consistent reports of the discriminatory arrest, detention and ill-treatment of gay men over the past decade. In 2010, the CAT Committee requested that Egypt provide information to the Committee regarding the situation of a group of men who were arrested between October 2007 and January 2008 on charges of debauchery under Article 9 of the Law on Combating Prostitution, some of whom were subjected to forced anal examination, HIV tests without their consent, and chained to their hospital beds.⁸⁹⁷ In 2011, the UN Working Group on Arbitrary Detention communicated details of another case involving 10 men who were arrested on 2 January 2009 at a flat in Agouza, Cairo, on public indecency charges;⁸⁹⁸ after the men confessed, they were held for 15 days in the Morality Police Department in Mogamma’a al-Tahrir in central Cairo, during which time they were subjected to forced anal examinations by the Forensic Medical Authority.⁸⁹⁹

893 *Ibid.*

894 *Ibid.*, p. 51.

895 Nader, A., “The Suffering of Egypt’s Transgender Community”, *Foreign Affairs*, 30 May 2017, available at: <https://www.foreignaffairs.com/articles/egypt/2017-05-30/suffering-egypts-transgender-community>.

896 Magid, P., “Beatings, abuse and blame: being transgender in Egypt”, *The Guardian*, 9 June 2015, available at: <https://www.theguardian.com/world/2015/jun/09/egypt-transgender-community>.

897 See above, note 97, CAT Committee, 2010, Para 51.

898 Human Rights Council, *Report of the Working Group on Arbitrary Detention: Opinion no. 25/2009 (Egypt)*, UN Doc. A/HRC/16/47/Add.1, 2 March 2011, Para 6.

899 *Ibid.*, Para 10.

On one occasion in 2014, known as the *Bab-al-Bahr bathhouse* case, 26 men were reportedly arrested in Cairo and then verbally and physically abused before being subjected to forced anal examinations at the Al-Azbakiyyah police station.⁹⁰⁰ The EIPR interviewed some of the men who were charged in this case, one of whom explained how he was treated in detention:

*They were insulting us day and night, telling us we were faggots not men. They told us that we would be in jail for 10 years. They would wake us up at 6 am, we were locked in a separate room, and they made us take off our clothes in the cold, turn on the air conditioning and beat us. Four days later, we were referred to the prosecution. The prosecutor was very sympathetic and treated us well, but the media got in and filmed us without our knowledge. There were rights lawyers attending with us, and later our families got us other lawyers. The prosecution renewed our detention for another four days and requested that we be inspected by the Forensic Medicine Authority. When we went back to the police station, there was a second round of beating and insults.*⁹⁰¹

As noted above, a number of individuals were arrested following the raising of rainbow flags amongst the audience members of the Mashrou' Leila concert on 22 September 2017. According to a communication submitted to the Egyptian Government by a number of UN special procedure mandate holders, including the UN Working Group on Arbitrary Detention and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, 70 individuals were reported to have been arrested and detained between 22 September and 25 October 2017 after the Public Prosecutor ordered the Supreme National Security Prosecution to investigate the incident.⁹⁰² The communication noted that a significant number

900 EIPR, "EIPR Asks the Gov. To Stop Pursuing Individuals For Personal Practices and To Make Amends To The Suspects In The Case of "Al-Bahr" Bathhouse", *EIPR*, 14 January 2015, available at: <https://eipr.org/en/press/2015/01/eipr-asks-gov-stop-pursuing-individuals-personal-practices-and-make-amends-suspects>; See also, above note 869, p. 30.

901 *Ibid.*, EIPR, p. 20.

902 See above, note 239, Human Rights Council, p. 2.

of the defendants were not afforded legal representation during the investigation phase, and some were denied a lawyer during the first hearings of their case; furthermore, there were reports that the police had withheld the details of where certain individuals were detained from their lawyers and families, and that some arrestees had been subject to forced anal examinations.⁹⁰³

Various UN mechanisms have commented on the discriminatory nature of acts of detention, torture and ill-treatment of LGBT persons. The OHCHR, for example, has noted that the arrest and detention of individuals on charges relating to sexual orientation and gender identity is discriminatory and arbitrary.⁹⁰⁴ The practice of forced anal examinations violates the prohibition of torture and ill-treatment under the ICCPR and the CAT: in 2016, the UN Special Rapporteur on torture stated that “non-consensual anal examinations intended to obtain physical evidence of homosexuality [is] a practice that is medically worthless and amounts to torture or ill treatment”.⁹⁰⁵ This has been reemphasised recently by the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, who noted in his May 2018 report to the UN Human Rights Council that forced anal examinations “amount to torture or ill-treatment” and called for the practice to be banned by states.⁹⁰⁶ In 2011, the UN Working Group on Arbitrary Detention stated that “forced anal examinations contravene the prohibition against torture and other cruel, inhuman or degrading treatment”, and that they “further discrimination” in Egypt.⁹⁰⁷

Entrapment by State Agents

The EIPR has highlighted the “entrapment practices” of the General Directorate for Protecting Public Morality, a branch of the Interior Ministry: of the 232 persons arrested under the “debauchery” provisions of the Law on Combat-

903 *Ibid.*

904 Human Rights Council, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, UN Doc. A/HRC/29/23, 2015, Para 43.

905 Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57, 2016, Para 10; See also: *ibid.*

906 Human Rights Council, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, UN Doc. A/HRC/38/43, 2018, Paras 29 and 100.

907 See above, note 898, Para 28.

ing Prostitution between 2013 and 2017, 129 were subject to entrapment by police officers using fake accounts on dating websites and applications,⁹⁰⁸ with transgender women being targeted in particular.⁹⁰⁹ The EIPR report provides legal analysis of 25 cases of individuals detained in this manner, including interviews with the defendants, their parents and lawyers specialising in such cases.⁹¹⁰ According to the interviewees, after the police had gathered sufficient information using social media and online chat sites, they would arrange to meet and then arrest the men.⁹¹¹ The report found that the practice of entrapment also targets transgender women, who are often asked to bring women's clothes and condoms to meetings with undercover police which are taken away as evidence.⁹¹² Egypt has not yet responded to these claims. When asked to respond to similar claims in the past, the government has asserted that the arrests were lawful and conducted "in order to preserve public order".⁹¹³

This use of undercover policing to entrap members of the LGBT community in Egypt is a directly discriminatory violation of numerous rights protected by the ICCPR. The HRC has stated that arrest or detention on discriminatory grounds in violation of Article 2(1), 3 or 26 ICCPR, is in principle arbitrary,⁹¹⁴ and is therefore a breach of Article 9 ICCPR which provides a prohibition on arbitrary arrest and detention. Moreover, the use of entrapment is a discriminatory violation of Article 17 ICCPR, which protects persons "from arbitrary or unlawful interference with their privacy, home or correspondence"; the HRC has found that adult consensual sexual activity is covered under this provision.⁹¹⁵

Gender Recognition and Reassignment

The Yogyakarta Principles, an authoritative declaration of states' international human rights obligations as they relate to sexual orientation and gender iden-

908 See above, note 869, p. 12.

909 *Ibid.*, p. 11.

910 *Ibid.*, p. 10.

911 *Ibid.*, p. 12.

912 *Ibid.*, p. 13.

913 See above, note 898, Para 17.

914 HRC, *General Comment No. 35: Article 9 (Liberty and security of person)*, UN Doc. CCPR/C/GC/35, 2014, Para 17.

915 See above, note 879, Paras 2.2–2.3.

tity, assert that everyone has the right to legal recognition as a person before the law and that states must take all steps to legally recognise each person's self-defined gender identity.⁹¹⁶ The Principles further state that everyone has the right to the highest attainable standard of physical and mental health without discrimination, and that states are obliged to facilitate access to treatment for those seeking body modifications relating to gender reassignment.⁹¹⁷

In 2013, the Egyptian Medical Syndicate released a new Code of Ethics, Article 43 of which prohibits physicians from carrying out “gender change operations” but permits “gender correction operations” where permission is obtained from the “competent committee” of the medical syndicate.⁹¹⁸ Article 43 further provides that “correction operations” shall be carried out only after two years of psychiatric and hormonal treatment.⁹¹⁹ Official permits must be issued by the competent committee before an individual can receive surgery, something which is particularly challenging due to the fact that one of the committee’s members is a representative of Al-Azhar, an “independent scientific institution” established under the Constitution, responsible for “preaching Islam and disseminating the religious sciences and the Arabic language in Egypt and the world.”⁹²⁰ According to a report by Foreign Affairs in May 2017, the committee had not met in almost five years because the member from Al-Azhar was never present.⁹²¹ One transgender woman reported that Al-Azhar University hospital “denies patients a [gender reassignment surgery] permit, telling them that suffering is the will of God, and that they will have to deal with it for the rest of their lives”.⁹²²

916 Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2008, Principle 3(b); This standard of international best practice is reflected in the jurisprudence of the European Court of Human Rights. See: European Court of Human Rights, *Goodwin v the United Kingdom* [GC], Application No. 28957/95, ECHR 2002VI; European Court of Human Rights, *Van Kück v Germany*, Application No. 35968/97, ECHR 2003-VII.

917 *Ibid.*, Yogyakarta Principles, Principle 17(g).

918 Egyptian Medical Syndicate, *Professional Ethics Regulation: Issued By the Resolution of the Minister of Health & Population No. 238/2003*, visited 7 November 2018, available at: <https://srhr.org/abortion-policies/documents/countries/04-Egypt-Code-of-Medical-Ethics-Ministry-of-Health-and-Population-2003.pdf>.

919 *Ibid.*

920 See above, note 93, Article 7.

921 See above, note 895.

922 *Ibid.*

Individuals who undergo gender reassignment surgery are reportedly subject to considerable stigma. A transgender woman interviewed by Foreign Affairs who successfully underwent gender reassignment surgery explained that her parents continue to refer to her using male pronouns: “to my father, I was the perfect son, the reliable man. Now I am a failure in his eyes”.⁹²³

Whilst it is possible for a transgender individual to change their national identity documents, some reports state that it is “incredibly difficult” to do so,⁹²⁴ while others state that it is “almost impossible” to change your gender identity.⁹²⁵ The Egypt Independent interviewed a number of transgender people who have tried to obtain official documents reflecting their gender identity, including Mohamed (Guevara) Allam, who is reportedly the only transgender person who has been able to officially procure a national ID reflecting their gender identity.⁹²⁶

Employment

Transgender persons reportedly face considerable discrimination in employment, with Foreign Affairs claiming that “it is almost impossible for trans women to find a job”.⁹²⁷ One transgender woman speaking to Foreign Affairs explained that she was forced to leave her job, as some of her colleagues “did not approve of the way she was beginning to look”.⁹²⁸ Both a British BBC documentary and a 2014 Egyptian documentary have highlighted the difficulties faced by transgender persons who have not been able to secure work because of the social stigma associated with their gender identity.⁹²⁹ One transgender woman interviewed by the BBC explained that she was not able to work in her identified gender because of the difficulties in changing her ID:

923 *Ibid.*

924 *Ibid.*

925 See above, note 896.

926 Mahmoud, E., “Transgender in Egypt: the forbidden life”, *Egypt Independent*, 5 January 2018, available at: <https://www.egyptindependent.com/transgender-egypt-forbidden-life>.

927 See above, note 895.

928 *Ibid.*

929 BBC News, “Life as a transgender person in Egypt”, 15 August 2015, available at: <https://www.youtube.com/watch?v=EomYQwkbRjk>; On Ent, “First Glimpse: The Case of Gender Identity Disorder in Egypt”, visited 7 November 2018, available (in Arabic) at: <https://www.youtube.com/watch?v=rmT3QKECglw>.

I can't work as a girl because our society only acknowledges official IDs. People find it weird when they see my ID. How can I be a boy if I look this way? I suffer at work because of that (...) I have to [dress as a boy] so I can get a job and earn my living.⁹³⁰

Conclusion

There is no reliable data on the size of the LGBT community in Egypt, and high levels of stigma and discrimination against LGBT persons mean that many individuals do not feel able to disclose their sexual orientation or gender identity. Whilst same-sex sexual activity between adults is not criminalised, provisions of the Penal Code and the Law on the Combating of Prostitution which prohibit incitement to indecency and debauchery have been used to target members of the LGBT community. Following an incident involving the raising of rainbow flags at a concert in September 2017, a draft law to criminalise homosexuality was presented to the Speaker of the Council of Representatives of the Egyptian Parliament, garnering widespread international condemnation.

LGBT persons are reportedly vulnerable to arbitrary arrest, with detainees being subject to torture and ill-treatment including in the form of forced anal examinations. Many arrests have occurred following entrapment by police officers, who have used fake accounts on dating websites and applications to target members of the LGBT community in violation of the right to privacy under the ICCPR. Transgender individuals face many obstacles in obtaining gender reassignment surgery, and it is challenging for individuals to change their gender on their identity documents after having done so.

3.9 Conclusion

The 2014 Constitution proclaims that it is a document which “embodies the dream of generations of a prosperous united society” and which “achieves equality (...) in rights and duties with no discrimination”.⁹³¹ However, research for this report has found evidence of discrimination and disadvantage on the

⁹³⁰ *Ibid.*, BBC News.

⁹³¹ Constitution of the Republic of Egypt 2014, Preamble.

basis of political opinion, religion or belief, gender, ethnicity or race, nationality and citizenship, disability, health status, sexual orientation and gender identity. Patterns of discrimination arising on these grounds vary widely, from the experiences of religious minorities who are unable to state their religious affiliation on their identity card, to persons with HIV/AIDS who face considerable stigma and discrimination in the workplace. Nevertheless, there appears to be a common theme linking many of the patterns of discrimination which prevail in Egypt: individuals who are perceived to challenge or transgress the dominant political, social, cultural and religious norms are particularly vulnerable to discrimination by both state and non-state actors.

In the area of **political opinion**, the most prominent pattern of discrimination is the state's repression of those who are, or are perceived to be, in opposition to the government. Egypt has joined a growing set of countries who have sought to restrict legitimate political and civil society expression by introducing regressive laws that shrink civil society space and facilitate the repression of free speech, association and assembly. This use of discriminatory laws to suppress political dissent has been coupled with the use of state-sanctioned discriminatory violence, torture and ill-treatment against dissenters, in particular protestors, and the arbitrary detention of perceived political opponents.

As regards discrimination on the grounds of **religious belief**, Islam is afforded primacy as the state religion, and members of religious minorities are vulnerable to various forms of discrimination, including discriminatory violence, discriminatory limitations on the freedom to establish places of worship, and discrimination in employment and education. Furthermore, atheists are coming under increasing threat from the state authorities; of particular concern are the recent reports that proposals are being developed in the Egyptian Parliament to criminalise atheism.

This report has also shown that **gender** inequality in Egypt is pervasive. Discriminatory gender stereotypes are entrenched through discriminatory legal provisions, ranging from the Labour Law to the Penal Code. Women are vulnerable to various forms of gender-based violence, and are subject to less favourable treatment in many areas of life, from education to participation in political and public life. Women have been shown to be particularly vulnerable to discriminatory rights violations where they have spoken out against

the regime: women taking part in political protests have been subject to sexual violence, and female human rights defenders who have spoken out against discriminatory practices such as sexual harassment have been detained.

In terms of **ethnic and racial minorities**, the Nubians have been displaced from their lands without adequate compensation, and individuals who have protested against such treatment have been subject to arbitrary detention. The Bedouin have also seen their homes demolished as the government has sought to crack down on terrorism in the Sinai Peninsula, and they face discrimination in accessing services such as healthcare and education. **Non-nationals** in Egypt – which includes approximately 300,000 refugees and asylum seekers – face unequal treatment as a matter of law, as non-citizens are excluded from enjoying many constitutional rights, and they are also vulnerable to discriminatory violence and discrimination in employment and education.

Persons with disabilities face considerable societal stigma in Egypt, and are subject to discrimination in a range of areas of life, in particular in employment and in education. Legal protection from disability discrimination has historically been weak due to the narrow and under inclusive definition of discrimination in legislation; whilst the newly enacted Disability Rights Law aims to rectify this and improve protection of the rights of persons with disabilities, the definitions contained therein still fall short of international best practice under the CRPD, and it remains to be seen whether this new law will gain the political and practical support to be implemented effectively. As regards discrimination on the grounds of **health status**, the state has failed to legislate to protect the rights of persons with HIV/AIDS. There are high levels of societal stigma surrounding HIV stemming from misconceptions surrounding the disease, meaning that many individuals are afraid to reveal their HIV status to others; when they do so, they face prejudice and discrimination, in particular in employment and when accessing healthcare.

Finally, whilst the extent of the discriminatory experiences of **sexual and gender minorities** in Egypt is unclear due to the paucity of available information, what is clear is that there are high levels of intolerance towards LGBT persons. Criminal law provisions which prohibit indecency and debauchery have been used to target members of the LGBT community, and there has recently been a proposal to explicitly criminalise homosexuality; the explana-

tory memorandum to the draft law makes clear that freedom to “fulfil [one’s] sexual needs” is subject to “religious and legal boundaries”, with homosexuality being perceived to “violate the rules of nature”.

Thus, this report finds that Egypt is far from being a “united society”, as promised by the Constitution; rather, it is a country in which inequalities and discrimination are rife, and where individuals and groups of individuals are targeted and stigmatised by state and non-state actors where they are perceived to be a threat to established social and political norms. If Egypt is to achieve its vision of a fair and united society, it is imperative that it takes steps to meet its obligations to respect, protect and fulfil the rights to equality and non-discrimination of all those within its territory and subject to its jurisdiction.

4. RECOMMENDATIONS

In light of the foregoing analysis, a series of recommendations are offered to the government of Egypt. These recommendations are offered in order to enable Egypt to meet its obligations under international law to respect, protect and fulfil the rights to non-discrimination and equality both by improving the legal and policy framework with respect to equality and through other means.

All recommendations are based on international law related to equality and on the Declaration of Principles on Equality, a document of international best practice which consolidates the most essential elements of international law related to equality. Recommendations are also based on the conclusions reached at the end of Parts 2 and 3 of this report. The recommendations are presented below:

1. Strengthen International Commitments Related to Equality

Egypt should withdraw any reservation or declaration which seeks to limit the scope or application of the international human rights instruments to which it is party, including but not limited to:

- The broad interpretive declarations which the country has made in respect of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which subject the application of the Covenants to Islamic Law as interpreted by domestic courts;
- The reservations which the state has made to Articles 2 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women;
- The reservation which has been made to Article 12(2) of the Convention on the Elimination of All Forms of Discrimination against Women;
- The reservations which the state has made to Articles 4 and 18(6) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Egypt should further ratify the following UN human rights instruments which are relevant to the rights of equality and non-discrimination:

- The Optional Protocol to the International Covenant on Civil and Political Rights;
- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Optional Protocol to the Convention on the Rights of Persons with Disabilities;
- The International Convention for the Protection of All Persons from Enforced Disappearances;
- The Convention relating to the Status of Stateless Persons;
- The Convention on the Reduction of Statelessness; and
- The Rome Statute of the International Criminal Court.

2. Reform Discriminatory Legal Provisions

Egypt should undertake a review of legislation in order to (i) assess its compatibility with the rights to equality and non-discrimination as defined under the international instruments to which Egypt is a party, and (ii) amend, and where necessary, repeal existing laws, regulations and policies that conflict with the right to equality. The following provisions in particular have been highlighted in this report as being either discriminatory in and of themselves or applied in a discriminatory manner, and so should be reviewed as a priority:

Constitution of the Republic of Egypt

- Articles 2, 3, and 64, which together establish a separate legal regime concerning personal status for different religious groups, and only guarantee the freedom to practice religious rituals and establish places of worship to the “divine religions”, namely Islam, Christianity and Judaism;
- Article 9, which limits the guarantee of equal opportunity and non-discrimination to Egyptian citizens;
- Article 11, which entrenches discriminatory stereotypes and attitudes concerning the role of women within Egyptian society by making reference to the “duties of a woman toward her family”; and

- Article 91, which limits the right to asylum to persecution on political grounds.

Penal Code (Law No. 58 of 1937)

- Articles 98(f), 161 and 176, which criminalise blasphemy and incitement to hate in broad terms, and which have been used to restrict the lawful exercise of the right to freedom of expression of individuals and groups in Egypt;
- Articles 17 and 60, which allow judges to reduce sentences for crimes where the conditions of the crime “necessitate leniency” or where the crime was “committed in good faith pursuant to a right determined by virtue of Shari’a”, and which have been used to reduce sentences for perpetrators of domestic violence and rape;
- Article 78, which contains a broad prohibition on receiving or requesting foreign funding and so is open to discriminatory application on the basis of political opinion;
- Article 237, which provides for reduced sentences for so-called “honour” crimes;
- Article 267, which criminalises sexual intercourse with a woman without her consent, but fails to encompass male rape, and has been interpreted by the courts as requiring (i) full penal penetration; and (ii) forensic proof that the woman resisted the rape in order to establish a lack of consent;
- Article 274, which subjects men and women to different treatment in relation to the crime of adultery; and
- Articles 269*bis* and 278, which prohibit incitement to commit indecency and the commission of a “scandalous act” in public, and which have been interpreted as prohibiting same-sex sexual relations.

Labour Law (Law No. 12 of 2003)

- Article 4, which excludes domestic workers from benefitting from the provisions of the law;
- Article 89, which mandates the government minister in charge of labour relations to issue decrees prohibiting or limiting the right of women to work between 7pm and 7am; and
- Article 90, which gives the government minister in charge of labour relations the power to determine the types of employment that “are

unwholesome and morally harmful to women”, and to prohibit women from working in certain professions.

Personal Status and Family Laws

- Article 20 of the Procedural Personal Status Law (Law No. 1 of 2000), under which women are only able to initiate divorce proceedings after the expiry of a mandatory period of reconciliation and must forfeit their dowry and other financial rights; and
- Article 19(3) of the Inheritance Law (Law No. 77 of 1943), which treats women less favourably than men in respect of their inheritance rights.

Law on Nationality (Law No. 26 of 1975)

- Article 1, which provides that “Zionists” shall not benefit from the provisions of the Law;
- Article 7, which allows foreign women married to Egyptian men to acquire Egyptian citizenship, but does not permit foreign men married to Egyptian women to do so; and
- Article 16(7), which provides that an individual may be stripped of Egyptian nationality “if at any time he has been qualified as Zionist”.

Child Law (Law No. 12 of 1996)

- Article 76*bis*, which enables the exclusion of students with disabilities from mainstream schools by permitting the segregation of children with disabilities into special schools in “exceptional cases”.

Law on Education (Law No. 139 of 1981)

- Article 3, which guarantees the right to free pre-university education for Egyptian citizens only.

Protest Law (Law No. 107 of 2013)

- Article 4, which contains an overly broad definition of a protest and which has resulted in the sentencing of peaceful protesters;

- Article 5, which prohibits public meetings for political purposes in places of worship;
- Article 10, which enables the Minister of Interior to suspend, relocate or alter the route of a demonstration, subject to judicial approval; and
- Article 11 which affords the authorities broad powers to disperse and arrest protestors.

Anti-Terrorism Law (Law No. 95 of 2015)

- Article 2, which contains an overly broad definition of a “terrorist act” and has been applied in a discriminatory manner to prosecute journalists, activists and critics of the government.

Law on Associations and other Foundations (Law No. 70 of 2017)

- Article 13, which imposes broad restrictions on the nature of the work that can be undertaken by associations and other entities, precluding them from *inter alia* undertaking “any work of political nature”; and
- Article 14, which prohibits associations and other entities from conducting field research or opinion polls and may be applied in ways which discriminate against individuals on the basis of their political opinion.

Law on the Construction and Renovation of Churches (Law No. 80 of 2016)

- Article 2, which imposes a differential standard on the construction of churches for Christians when compared to Muslims; and
- Article 5, which confers broad discretion to regional governors to reject applications without a duty to give reasons or right of appeal.

3. Introduce Comprehensive Equality Legislation

Consistent with Article 53 of the Constitution, which requires the state to “take all necessary measures to eliminate all forms of discrimination”, Egypt should adopt comprehensive equality legislation appropriate for the implementation of the right to equality. Such legislation should build on Article 53 and should, *inter alia*:

- Prohibit direct and indirect discrimination, harassment and failure to make reasonable accommodation, in all areas of life regulated by law;
- Prohibit discrimination on all grounds listed in Principle 5 of the Declaration of Principles on Equality, and permit the inclusion of new grounds by the courts;
- Prohibit discrimination on the basis of association and perception and multiple discrimination;
- Mandate positive action measures in accordance with Principle 3 of the Declaration of Principles on Equality;
- Establish the procedural framework necessary for the effective functioning of the rights to equality and non-discrimination, including, *inter alia*, through: providing for the transfer of the burden of proof, providing protection from victimisation and permitting standing by interested parties;
- Ensure that discrimination is treated as a civil law matter, rather than a criminal law matter;
- Ensure effective access to remedies and sanctions for violations of the rights to equality and non-discrimination; and
- Attribute obligations to public and private actors, including in relation to the promotion of substantive equality and the collection of data relevant to equality.

Members of groups who may be distinguished by one or more of the prohibited grounds should be given the opportunity to participate in the decision-making processes which lead to the adoption of such legislative measures.

The adoption of comprehensive equality legislation should entail a process of harmonization. To this end, the government of Egypt should undertake a comprehensive review of all legislation and ensure that any equality and non-discrimination provisions are consistent with the new equality law. This should entail a review including, but not limited to, the following provisions:

Penal Code

- Article 161*bis*, which criminalises any person that commits or omits an action that discriminates on the basis of a number of grounds, contrary to international best practice;

Labour Law

- Article 120, which states that dismissal on the basis of a person's characteristics is prohibited, but which omits a number of recognised grounds of discrimination, and fails to explicitly prohibit indirect discrimination; and
- Article 35, which prohibits discrimination with respect to wages but only on the basis of a small closed list of grounds.

Child Law

- Article 3(1)(b), which requires the state to ensure the right of children to be free from all forms of discrimination but does not define discrimination and includes only a limited list of prohibited grounds of discrimination.

Law on the Rights of Persons with Disabilities

- Article 3, which defines disability discrimination without clarifying that this includes all forms of discrimination, including direct discrimination, indirect discrimination, harassment and denial of reasonable accommodation.

4. Improve Interpretation and Enforcement of Existing Equality Provisions

Egypt should take action to ensure that non-discrimination and equality provisions in the Constitution and other laws are interpreted in line with international law and best practice standards, and that such provisions are properly enforced.

This should include, in particular, taking measures to ensure that Article 53 of the Constitution is interpreted as giving rise to a right to non-discrimination on all grounds recognised in international law, by virtue of the words "or for any other reason", and as prohibiting all forms of discrimination (direct and indirect discrimination, harassment and failure to make reasonable accommodation).

Egypt should consider the following specific measures to improve interpretation and enforcement of Article 53 and other non-discrimination provisions in national laws:

- Publishing guidance on the interpretation of the right to non-discrimination in the form of “Explanatory Notes”, accessible for judges, lawyers, businesses, non-governmental organisations and victims (or potential victims) of discrimination.
- Providing financial and technical support to the judiciary and judicial personnel to increase judges’ knowledge of domestic legislation with a bearing on the rights to equality and non-discrimination, as well as international legal standards.
- Taking steps to ensure the implementation of the right to legal aid under the Constitution and relevant legislation, including through ensuring that sufficient funding is available for court-appointed lawyers.
- Taking action to ensure the independence of the judiciary, including through reviewing and amending the procedures for selecting judges and for initiating disciplinary proceedings against them.

5. Ensure the Independence and Effectiveness of Equality Bodies and Human Rights Institutions

- Egypt should take steps to establish an equality commission as required under Article 53 of the Constitution, the independence of which is guaranteed in accordance with the principles relating to the status of national institutions (the Paris Principles).
- In order to further ensure the effective implementation and enforcement of laws relating to equality and non-discrimination, the government should also ensure that the National Council for Human Rights (NCHR) is reformed to bring it in line with the Paris Principles, including through ensuring that the NCHR has the competence to make unannounced visits to prisons and places of detention, and through giving members of the NCHR functional immunity for actions undertaken in good faith in their official capacity.
- The independence of other human rights institutions, including the National Council for Women, should be guaranteed in accordance with the Paris Principles.

6. Take Action to Address Discrimination against Specific Groups

Egypt should take specific actions to address the discrimination and disadvantage faced by different groups in Egypt, including all of those highlighted in Part 3 of this report. Such steps should be taken in addition to improving protection from discrimination in law by acting on Recommendations 2, 3 and 4. These steps should include, but not be limited to, the following:

Political Opinion

- Review the Protest Law, the Anti-Terrorism Law, the Law on Associations and other Foundations and the Cybercrime Law in order to ensure that they do not result in the discriminatory denial of freedom of expression, freedom of association and freedom of assembly;
- Review the cases of political opponents, human rights defenders and journalists detained on terrorism-related charges pursuant to the Anti-Terrorism Law and the Protest Law, and overturn their convictions where violations of the rights to freedom from arbitrary detention or non-discrimination are identified;
- End the use of military and emergency courts to try civilians accused of political offences;
- End the use of excessive force by the police against peaceful protesters and human rights defenders;
- Conduct a wide-ranging independent inquiry into the use of force by the security forces against protesters, including in connection with the Rabaa Massacre, and ensure the effective investigation and prosecution of those responsible;
- Take all necessary measures to prevent ill-treatment and torture in detention, and thoroughly investigate allegations of such practices, including through engaging with international agencies and ensuring redress for victims;
- Ensure that all individuals arrested on the basis of their actual or perceived political opinions are afforded basic procedural protections, including access to a lawyer, and that the use of evidence obtained by torture is prohibited;
- End the discriminatory denial of free movement for those who are, or are perceived to be, politically opposed to the government by lifting the travel restrictions imposed on human rights defenders and journalists; and

- Review national legislation to ensure that the rights to freedom of expression, association, assembly and movement are enjoyed equally.

Religion

- Review the implementation of Articles 98(f), 160 and 161 of the Penal Code in order to ensure that their application does not result in the discriminatory denial of freedom of expression, religion, or belief;
- Review the cases of individuals, including atheists, charged pursuant to Article 98(f) of the Penal Code, and overturn their convictions where violations of the rights to freedom from arbitrary detention or non-discrimination are identified;
- Cease all government-led campaigns against atheism and reject any proposals to criminalise atheism;
- Take all necessary measures to prevent discriminatory violence, torture and ill-treatment against members of religious minorities by both state and non-state actors;
- Ensure that members of religious minorities are able to participate in employment and education without discrimination; and
- Review national laws and policies concerning personal documentation and remove the requirement that individual's state their religious affiliation on their identity card.

Gender

- Take immediate steps to review and reform the Penal Code to ensure the comprehensive and effective prohibition of all forms of gender-based violence, and to bring national law into line with relevant international standards;
- Take all necessary measures to prevent all forms of gender-based violence, including through ensuring that child marriage, domestic violence and FGM are effectively criminalised;
- Conduct a wide-ranging independent inquiry into gender-based violence against women participating in protests and marches by both state and non-state actors, including ensuring that perpetrators are held accountable and redress is provided for victims;
- Improve the provision of shelters and other forms of support for women affected by gender-based violence;

- Conduct training and awareness-raising for police forces, prosecutors and judges who handle FGM cases;
- Take all necessary measures to ensure that Egyptian mothers are able to apply for citizenship for their children, including through making registration mechanisms more accessible;
- Adopt measures to ensure gender equality in education, including practical measures to reduce the rate at which girls drop out of school and university;
- Ensure that women are able to participate in the labour market on an equal basis with men, including through eliminating discriminatory recruitment and employment practices and adopting positive action measures aimed at increasing women's access to the labour market; and
- Eliminate discriminatory practices and adopt positive action measures aimed at increasing women's political participation and representation in public positions, including in the judiciary.

Ethnicity and Race

- Respect and fulfil the obligation under Article 236 of the Constitution regarding the "right to return" of the Nubian people;
- Ensure that members of minorities affected by evictions and forced relocation are properly consulted and have the right to adequate compensation for any personal and real property which is affected;
- Review the cases of members of ethnic minorities, in particular Bedouins, who have been detained under terrorism-related charges pursuant to the Anti-Terrorism Law, and overturn their convictions where violations of the rights to freedom from arbitrary detention or non-discrimination are identified;
- Take all necessary measures to ensure that members of ethnic minorities are able to register themselves and their children as citizens, including through making registration mechanisms more accessible;
- Adopt positive action measures to ensure equal representation of ethnic minorities in political life and decision-making; and
- Gather statistics on the economic and social situation of minorities disaggregated by ethnicity or race.

Nationality and Citizenship

- Take all necessary measures to prevent all forms of discriminatory violence against asylum seekers, refugees and migrants;
- Take all necessary steps to prevent and eliminate torture and ill-treatment of individuals in immigration detention facilities, and to ensure that individuals seeking asylum are only detained as a matter of last resort;
- Ensure that those detained in the course of migration proceedings are afforded basic procedural protections, including access to a lawyer and legal aid;
- Allow UNHCR to provide refugee status determination and other services to Palestinian refugees; and
- Ensure that non-national children are guaranteed the right to education on an equal basis, and that discriminatory barriers to education – such as documentation requirements – are removed.

Disability

- Review the Law on the Rights of Persons with Disabilities in order to ensure that all forms of discrimination are effectively prohibited;
- Take all necessary steps to prevent the discriminatory ill-treatment of persons with disabilities in detention;
- Adopt legislative and other measures aimed at prohibiting the forced sterilisation of women with mental disabilities;
- Take measures to ensure the accessibility of infrastructure, public transport and public buildings for persons with disabilities;
- Adopt all necessary measures – including reasonable accommodation measures – to secure equality of participation in employment and to eliminate workplace discrimination against persons with disabilities;
- Ensure access to inclusive education for children with disabilities;
- Adopt positive action measures to ensure equal representation of persons with disabilities in political life and decision-making;
- Gather disaggregated statistics on the situation of persons with disabilities in Egypt by ensuring that they are recognised as a distinct category of persons by the Ministry of Social Solidarity; and
- Conduct awareness-raising in order to reduce the societal stigma faced by persons with disabilities.

Health Status

- Clarify that the term “any other reason” under Article 53 of the Constitution which prohibits discrimination includes the ground of health status;
- Adopt comprehensive equality legislation ensuring *inter alia* that persons living with HIV/AIDS and other permanent health conditions are protected against discrimination;
- Educate healthcare workers on HIV/AIDS and the proper treatment of persons living with HIV/AIDS;
- Take measures to combat the stigmatisation of persons living with HIV/AIDS, including through conducting an awareness-raising campaign aiming to improve social understanding of HIV and remove misconceptions associated with the disease; and
- Collect statistics on the prevalence of HIV in Egypt.

Sexual orientation and Gender Identity

- Clarify that the term “any other reason” under Article 53 of the Constitution which prohibits discrimination includes the grounds of sexual orientation and gender identity;
- Adopt comprehensive equality legislation ensuring *inter alia* that LGBT persons are protected against discrimination;
- Review the implementation of Articles 269*bis* and 278 of the Penal Code and Articles 9 and 178 of Law No. 10 of 1961 and adopt statutory guidance to ensure that they are not applied in ways which prohibit same-sex sexual relations or otherwise criminalise LGBT persons;
- Reject all proposals to criminalise homosexuality and to increase the penalty for the charges of debauchery under Law No. 10 of 1961;
- Effectively investigate and prosecute all incidents of discriminatory violence, torture and ill-treatment against LGBT persons, including allegations of physical abuse and forced anal examinations of persons in detention;
- Cease and refrain from using police entrapment to target members of the LGBT community; and
- Review gender reassignment and gender recognition procedures to ensure that individuals do not face barriers in obtaining gender reassignment surgery and are able to change their gender on their national ID.

7. Data Collection

During the research for this report, it has been established that there is a lack of information, including statistics, in relation to key indicators of equality in Egypt. State bodies should collect and publicise information, including relevant statistical data, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures to promote equality. Wherever statistics are collected in relation to key indicators of equality, they should be disaggregated in order to demonstrate the different experiences of disadvantaged groups within society in Egypt. Egypt should further ensure that such information is not used in a manner that violates human rights.

8. Education on Equality

Egypt should take action to raise public awareness about equality and to ensure that all education establishments provide suitable education on equality as a fundamental right. Such action is particularly necessary in order to modify social and cultural patterns of conduct and to eliminate prejudices which are based on the idea of the superiority or inferiority of one group within society in relation to another.

9. Prohibition of Regressive Interpretation

In adopting and implementing laws and policies to promote equality, Egypt should not allow any regression from the level of protection against discrimination that has already been achieved.

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The Equal Rights Trust is the global centre for excellence in equality law. Our vision is an equal world and our mission is to eliminate discrimination and ensure everyone can participate in society on an equal basis. We work in partnership with equality defenders to secure the adoption and implementation of equality laws.

On 25 January 2011, revolution erupted in Egypt. After decades of political repression and economic decline, thousands of protesters gathered in public spaces calling for dignity, freedom and the fall of the regime. The revolution ousted President Hosni Mubarak, bringing an end to his 29 years in office. Yet this was not the end of the turmoil. President Muhammad Morsi of the Muslim Brotherhood, sworn in as President on 2 June 2012, was ousted by a military *coup d'état* just over a year later, and the leader of that coup, Abdel Fattah el-Sisi was elected as President.

In January 2014, the country adopted a new Constitution, the preamble to which notes that the 2011 revolution served as “a sign of a past that is still present and a good omen of a future to which all humanity aspires”, going on to state that it “achieves equality (...) in rights and duties with no discrimination”.

Yet this report finds that the state has not taken the action required to fulfil these aspirations. The government has failed to repeal myriad legal provisions which discriminate on the basis of religion, gender, sexual orientation and other characteristics, and has adopted new laws which discriminate on the basis of political opinion and other grounds. State actors have continued to discriminate against religious and ethnic minorities, persons with disabilities and others with relative impunity. The state has not – despite a constitutional requirement to do so – taken steps to establish a dedicated, independent equality body, or adopt a comprehensive equality law. The isolated legal provisions which prohibit discrimination and discriminatory violence are poorly implemented and enforced.

Thus, despite the promise of freedom, equality and social justice heralded by the 2011 revolution and the adoption of the 2014 Constitution, Egypt has not escaped its history. For groups and individuals long exposed to discrimination, the past is very much still present.



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