

15 Years After the Uprisings: The Legendary Story of the Egyptian's Capital Punishment

Mohamed 'Arafa ©

'Arafa is a Cornell Law School Adjunct Professor of Law and the Clarke Initiative Visiting Scholar, an Assistant Professor of Law at the Prince Sultan University College of Law and holds a tenure-track professorship appointment at Alexandria University Faculty of Law. 'Arafa's research focuses include human rights law, Islamic law, comparative Middle Eastern law and transitional justice.*

Abstract

In 2021, Egypt ranked third in the world behind China and Iran for carrying out at least 83 executions. Under 'Abdelfattah alSisi's regime, the number of judicial executions has increased dramatically; the death penalty is not just a crime control strategy but used as a political tool to silence dissent. However, considering Sharie'a its main source of legislation, the death penalty has long been recognized as a form of criminal punishment in Egypt. The key problematic features of the death penalty in Egypt existed long before the 2011 revolution or Sisi's regime coming to power. They include the role that the Grand Mufti – Egypt's highest Islamic religious authority – plays in death penalty sentencing; the use of mass trials that clearly do not meet basic requirements of fair trial guarantees; sentencing of children to death; and the application of the death penalty for non-lethal offences.

Keywords: Egypt; execution; 'Abdelfattah alSisi; mass trial; juvenile; terrorism; juvenile law; penal code.

The death penalty in Egypt is no longer used just as a legal sanction, but it has become an instrument of suppression and tyranny of the Egyptian governments (mostly security authorities) used against all citizens, not just political adversaries, but all groups of Egyptian society (men, women, old people, and youth).² Thousands of Egyptians have had frightening experiences, as Egypt endures to use mass trials to sentence individuals to death.³ Some of those sentenced to death are children, and numerous of those sentenced in mass trials are ultimately executed, as the rate of executions skyrocketed.⁴ In fact, it is a shocking crisis, which makes the scale of this disaster undeniable. Continued attention on Egypt's trial and execution practices is indispensable so that no one else is exposed to the same injustices, by drawing attention to the urgency of the status quo in Egypt.⁵ Recently in most Middle Eastern countries, especially Egypt, the number of capital punishment (death penalty) decisions by the Egyptian courts has been expressively intensifying in a way that has not happened before in modern legal history.⁶ But notwithstanding the Egyptian judiciary's current fad of supporting executions, there is no understandable legal elucidation for the augmented pace in the issuing of death verdicts in extremely problematic and provocative cases, with judges handing out the capital punishment left and right to appease the public opinion.⁷ Additionally, civilians are tried and executed – in the absence of law and humanity – before an extraordinary (exceptional security) judicial system (military courts, terrorism circuits, emergency Supreme State Security tribunals), which has been shaped in violation to the Constitution and international law(s).⁸ These courts lack the minimum standards of a fair trial, due process guarantees and hand down collective death sentences against political rivals and abuses to their rights do not only end at indiscriminately breaching their right to life, but it continues after their death.⁹ It should be noted that the UN General Assembly has called on all states that continue to apply the capital punishment to:

make available relevant information, disaggregated by sex, age, nationality and race, as applicable, and other applicable criteria, with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, the number of death sentences reversed or commuted on appeal and information on any scheduled execution, which can contribute to possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty.¹⁰

Unfortunately, the vast majority of executing states, including Egypt, have failed to make any such information available.¹¹ Though the Middle East and North Africa (MENA) is considered a retentionist region, Tunisia, Algeria, and Morocco are abolitionist practically.¹² The only nations to continue to carry out execution on a systematic basis from the seven target countries are Egypt and Yemen.¹³ All seven countries still continue to hand down death sentences.¹⁴ While none of the seven nations have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at abolition of the death penalty, all seven target countries have ratified three of the basic international human rights treaties: the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC).¹⁵ It should be noted that the criminal offenses punishable by death in the MENA region go far beyond the 'most serious/heinous crimes' standard under Article 6(2) of the ICCPR, and even beyond what has been provided for under Islamic Sharie'a law.¹⁶ It should be noted that the vast majority of cases of execution in all Arab/Muslim countries are related to intentional (mens rea) criminal acts with lethal or other extremely severe consequences, such as premeditated murder.¹⁷ However, other crimes which would not be considered the 'most serious crimes' as required under international law are still ensuing in executions, including acts of political oppression, terrorism or espionage, or drug-related offences, as well as armed robbery, kidnapping, rape or arson, and various military offences that do not result in casualties (and with "lethal or extremely grave consequences").¹⁸

* 'Mohamed Arafa', Cornell Law School (Web Page) <<https://www.lawschool.cornell.edu/faculty-research/faculty-directory/mohamed-arafa-2/>>.

In this regard, all seven countries forbid capital punishment for those who were under the age of 18 years at the time of the offence being committed.¹⁹ Pregnant women are not exempt from execution across the region; execution is only delayed until after the pregnant woman has delivered her child.²⁰ Across the region, the seven countries provide some sort of exclusion from the death penalty for those who were mentally ill or retarded (absolute insanity) at the time of committing the crime.²¹ However these laws (internal regulations) are broad and vague and lack clarity, as in some situations, do not exempt those from execution who have become psychologically disabled after the crime was committed.²² Although legal scholars and policymakers have not been able to decisively assess the exact number of prisoners on death row, as no official statistics are published by the governments of these seven nations.²³ While Egypt have made no moves towards reducing or limiting the application of the capital punishment in law or in practice, and there have been no political will (or statements) signifying that they are in any way considering abolishing it, other nations (e.g., Algeria, Jordan, Lebanon, Morocco and Tunisia) have taken prominent steps towards elimination of it, and have shaped space for debate/discourse on the question of the legitimacy of death penalty.²⁴ A severe and biased prison management for the death row underpins its punitive nature in the region, and raises severe alarms regarding cruel and inhuman/humiliating punishment.²⁵ However, following the uprisings, a measure was put in place to acknowledge the right of those on death row to receive visits from their relatives.²⁶

The current political changes within the region have provided a golden chance to debate human rights and criminal justice reforms, through constitutional and legislative reform processes. The outcome of the Arab spring has brought numerous new faces and generations to the political arena, and there is no plain position about the death penalty for these new decision and policymakers.²⁷ If this reform occurs, it will allow Egypt to form a government that embraces new democratic principles and takes steps to reform both the criminal justice and penal system(s).²⁸ Both international and domestic political pressure for reform and the lessons learned might inspire the current administration to open the door for partnership with human rights organisations, and penal reform to take steps towards maintaining human rights in the criminal justice system (reviving arguments/defenses for death penalty's retention).²⁹

In this context, this political turmoil raises the concern that the implementation of the capital punishment will be widened under the name of Islamic law (a fear that executions for political crimes increase). The process of abolishing this penalty in the MENA region is going through a problematic transitory period, it entails a review of the strategies, tactics and means employed to achieve this goal. For decades, abolitionist efforts were engrossed in the role of the political will and its ability to abolish this penalty through modifying national legislation.³⁰ Now, a new focus aims to address comprehensive questions of democracy, good governance and respect for human rights, mainly in the field of the administration of justice, and a focus on persuading the general public, who have revealed outstanding aptitude to change their political systems.³¹ It is significant to accomplish that on various political, legal and practical levels in the MENA region regarding the abolition of the death penalty and humane alternative sanctions to it. It is hoped that this approach will assist governments within the region in applying a more holistic perspective to penal reform which focuses on therapeutic jurisprudence via rehabilitation and the respect for human dignity, rather than a punitive approach to punishment.³²

Egypt remains fifth in global rankings for executions.³³ There are extensive fears that Egypt's criminal justice system cannot afford defendants the fundamental guarantees of due process and fair trial rights.³⁴ Mass trials endure to proceed despite prevalent international criticism and condemnation that they are merely unfit to meet the basic requirements of international fair trial (law to truncate the appeals process) protections along with ongoing sentencing of children to death in contravention of both domestic and international law.³⁵ Also, civilians are being tried in military courts at an unprecedented rate and there are concerns that proceedings in these courts are even less likely to adhere to international fair trial obligations.³⁶ The intensifying use of the death penalty is even more concerning in the context of the systemic use of torture by the security and intelligence authorities, often to obtain a "confession."³⁷ The destruction of fair trial procedures has affected both those who have been targeted for contribution to real or alleged political dissent, as well as for non-political criminal charges.³⁸ It is obvious that Egypt is using the death penalty as a means of suppression and a decisive abuse of state power. In Egypt, it is being exercised by a regime which makes use of systemic torture, stifles political dissent, the rights to free assembly and expression, and condemns those who exercise these internationally-protected rights – including children – as terrorists.³⁹

Since 2019, Egyptian authorities have moved to further shrink and limit civil society activity through the enactment of draconian laws, and have waged a campaign of arrests of human rights defenders, reporters, attorneys and scholars. The international community can no longer stand silent and must call on Egypt to confine its use of this penalty, comply with its international commitments, and guarantee that any justice sector collaboration is contingent on Egyptian authorities: (a) ending the use of the death penalty in cases including children, and (b) ending the use of mass trials and torture.⁴⁰

Against this succinct backdrop, and based on the findings of this article, it is now clearer that Egypt is using the death penalty as a means of tyranny, as the eventual abuse of state power. In Egypt, it is being wielded by a regime which makes use of systemic torture,

stifles the political dissent (rights to free assembly/expression), and condemns those who exercise these internationally-protected rights. The international community can no longer stand silent and must call on Egypt to restrict its use of this penalty, comply with its international commitments, and ensure that any justice sector cooperation is contingent on Egyptian authorities. This chapter addresses the application of death penalty (theoretical study done in light of the principles of the Egyptian law and provisions concerning international human rights law). Comparing it to the concepts of human rights, justice, and maslahaa(h) (protected interests), which establish the basis of the criminal justice reform. It concludes that the manifest view of the Egyptian criminal justice system is shaped by religious philosophies, laws, and divine practices. Thus, it is more than proper to create an inclusive reform of the death penalty to be fully compatible with the constitutional/universal norms, but national laws must meet its superior norms and lofty values.

II. The Realm of the Criminal Justice System After the Uprisings

The criminal justice system boarded on what has been labelled a ‘steep slope of decline’, corroding its legitimacy at home and abroad.⁴¹ What inspired this move toward judicial exceptionalism? The Egyptian judiciary – courts interpreting and applying the law – is essential among legal institutions and these institutions have become significant political players in a number of countries (dynamics of judicial politics in authoritarian regimes).⁴² It should be noted that judicial institutions do not advance the benefits of the autocratic leaders in an upfront way, and courts rarely serve as mere counters/pawns of their administrations.⁴³ The judiciary may be used to advance the interests of authoritarian regimes, and may be changed into sites where political battles are fought.⁴⁴ Courts may serve as dual-use institutions, enabling some State functions while also opening new paths for activists to challenge the State. In other words, courts may be vigorous nodes in which authority is delegated, disputed, and subverted.⁴⁵

Severe Violation of International Law and A Stab to the International Criminal Justice: In this regard, it should be noted that the U.S. Supreme Court Justice William J. Brennan argued that it is a moral principle that “the State, even as it punishes, must treat its citizens in a manner consistent with their intrinsic worth as human beings—a punishment must not be so severe as to be degrading to human dignity.”⁴⁶ Numerous mechanisms of execution have been expressly believed abuses of the prohibition of torture and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CIDT) by universal or domestic judicial bodies and have been proscribed by a number of States retaining the death penalty.⁴⁷ It should be noted that the conflict between the application of the capital punishment and the proscription of torture and CIDT is most evident in the growing number of regional and domestic views and decisions that have held this penalty in all situations to constitute CIDT or even torture, irrespective of the methods or implementation settings, or the specific individuals upon which it is executed.⁴⁸ As capital punishment constitutes a per se breach of the prohibition of torture and CIDT, specific methods of execution along with the circumstances of its implementation, including the “death row phenomenon,” often establish abuses in and of themselves.⁴⁹ Evolving state – domestic – practice (e.g., Egypt) and global opinion, including responses to new changes in forensic science, underscore the extreme difficulty of implementing the capital punishment without violating the prohibition of torture and CIDT.⁵⁰

Numerous execution mechanisms have been obviously considered violations of the proscription of torture and CIDT by universal or domestic judicial bodies and have been prohibited.⁵¹ However, the United Nations Committee abstained from deciding what other specific executing mechanisms (that includes severe pain and suffering) might constitute torture or CIDT, deciding instead that the death penalty, in all cases, “must be carried out in such a way as to cause the least possible physical and mental suffering.”⁵² Also, it has been argued that various other methods (e.g. hanging) constitute torture, although there has not been a clear consensus on the international stage and practice.⁵³ Moreover, in 1994, the Committee decided that lethal injection did not amount to torture or CIDT and has yet to review its decision despite the emergence of new forensic evidence that indicates otherwise. Also, international norms hold that executions of individuals belonging to certain groups, such as juveniles (a jus cogens norm, an imperative rule that binds all States), persons with mental disabilities, pregnant women, elderly persons, and persons sentenced after unfair trials, are considered principally cruel and inhuman, regardless of the execution modes.⁵⁴ Although international law does not feature a different value to the right to life of these groups, it holds that the imposition of the capital punishment in such cases (inherently cruel) constitutes global violation.⁵⁵ Further, an increasing number of regional and domestic courts, including the InterAmerican Court of Human Rights and the United States Supreme Court, have ruled that the mandatory death penalty, where judges have no discretion to consider aggravating or mitigating circumstances regarding the crime or the offender, violates due process and amounts to CIDT.⁵⁶ International standards holding the death penalty in certain situations constitute a severe violation of international norms, as well as the regulation of specific execution modes, expounds the struggle with which nations may implement it without violating the prohibition of torture.⁵⁷ Simultaneously, these values and practices exemplify a developing global movement to reconsider capital punishment in all cases as a violation per se of the prohibition of torture.⁵⁸

Under the current government of President Abdel Fattah al-Sisi, the issuance and execution of death sentences, coupled with the systematic violation of due process guarantees, has soared at a rate unwitnessed for decades under previous governments.⁵⁹ In other words, given the systematic decline of the justice system in Egypt, a free and fair trial is unlikely and unfeasible. This is a breach of the fundamental

rights upheld by international conventions – in which Egypt committed to – require defendants in capital cases to enjoy all due process guarantees of an independent and fair trial.⁶⁰ Several Egyptians (political activists and human rights defendants) are presently at imminent risk of execution – an unprecedentedly high number that is possibly to become higher as penal statutes (criminal laws) carrying the death penalty have increased at a rate unseen in Egypt's modern history.⁶¹ As the decisive irrevocable (irreversible) penalty, it requires a rigorous, stable judicial system that sustains absolute standards of justice and operates within a functional and transparent national and institutional framework.⁶²

Currently, Egypt is not even remotely close to meeting any of these norms, as its politicized judicial system is common with intensifying misapplications, political reprisals, and security threats; and convictions are basically reliant upon the routine use of torture – by security forces – to coerce confessions.⁶³ Many of those executed or currently facing execution were sentenced for offenses to which they confessed only under extreme physical and psychological duress.⁶⁴ With the lives of many Egyptian citizens on the line, we announce the launch of the Stop the Death Penalty campaign. This campaign has arisen from our urgent humanitarian duty to unite for real change, and to take positive action aiding the victims and their families. We call on all individuals, organizations, movements, and media outlets who believe in fundamental human rights to unite with us against the death penalty in Egypt. The campaign will consist of urgent action to achieve an immediate moratorium on the death penalty, and to provide legal and humanitarian solidarity with death row inmates and their families, specifically in regards to protecting their rights. The campaign further intends to break the silence surrounding this issue by initiating a societal dialogue about the abolishment of capital punishment in Egypt.

a. The Egyptian Criminal Justice System⁶⁵

The criminal judiciary comprising the court of misdemeanours occupies the lowest level of the system of criminal courts.⁶⁶ The Court of Cassation is governing the verdicts of the appellate courts concerning errors of law.⁶⁷ The Penal Code lists tripartite classification of crime: (i) felonies (offences punishable by death, life imprisonment); (ii) misdemeanours (acts punishable by imprisonment or fines); and (iii) infractions (minor acts punishable by fines).⁶⁸ Criminal acts that can result in death sentences include murder, manslaughter occurring in the commission of a felony, the use of explosives causing death, rape, treason, terrorism and endangering state security.⁶⁹ It should be noted that the Grand Mufti (religious leader) and the President review each death sentence.⁷⁰

b. New Statutes and 'Out Laws'

New and amended laws enacted in 2015 till now involve further death penalties for endorsing disorder, destabilising national security, and engaging in acts of terror.⁷¹ The Protest Law (2013) bars unapproved assemblies of ten or more individuals, and those who confront it face high fines and maybe death penalty.⁷² Further, President al-Sisi prolonged the jurisdiction of military courts in 2014 to include crimes against public facilities, utilities, and properties.⁷³ The 2015 Anti-Terrorism law extends the basis for criminal prosecutions of terrorist acts and has a vague description of 'terrorist act', and enacts capital punishment for endorsing the perpetration of terrorist offences, and heavy fines for publishing 'false news/statements' about terrorist acts, or issuing reports that contradict official accounts.⁷⁴

Accordingly, the Egyptian criminal (Penal) Code and related laws identify dozens of crimes that are eligible for the death penalty (at least 33 articles prescribe applicable offences). These crimes include aggravated murder, premeditated killing by substances (poisons), and homicide with the intention to commit any felony or misdemeanour, as well as arson leading to death, perjury leading to death of a convicted person because of false testimony, and kidnapping a female accompanied with a felony of having sex without her consent.⁷⁵

Further, the capital punishment is an available sanction for numerous gang-related offenses, including forming or leading a gang that anticipates to overthrow the government, attacking a community, or that purposely uses force to occupy any part of a public building.⁷⁶ Also, many terrorism-related crimes that result in death are subject to death penalty, including deliberately resorting to terrorism to disturb public order, hijacking, resisting a law-enforcement officer, taking hostages, using or attempting to use explosives, wounding or beating a person, and deliberately killing a person without premeditation.⁷⁷ Even if no death results, an individual may be sentenced to death for intentionally using explosives to commit criminal activities as damage to public buildings/installations, or for other acts of terror not resulting in death, as damage the environment, cause detriments to communications; transportation; property, or averting public authorities from working, or interrupting order(s) protected by laws/statutes.⁷⁸

Additionally, the Military Rules Law No.25 of 1966 (amended by Law No.136 of 2014), permits the death penalty for several wrongdoings, such as sedition/disobedience, destruction of property, disobedience, abuse of power, and not reporting a crime listed in the first chapter of the military code.⁷⁹ Moreover, Law No.122 of 1989 recognizes numerous drug-related crimes that are entitled to capital punishment, even if they do not result in death.⁸⁰ These offenses include exporting, importing, or producing any narcotic substances with

the intent to trade or without legal authorization, forming/managing a gang to trade drugs, owning, delivering, buying, or selling any drug with the intention of trading without legal permit, and managing any premises for the use of drugs.⁸¹ These criminal acts are death-eligible if aggravated by: using any individual under the age of 21 or any relative under the accused's care, or any person over whom the accused has authority; the offender has the duty to combat narcotic drugs; uses the force of law to facilitate the crime; commits the act in a worship place, educational institution, or a public park; offers or sells drugs to anyone under the age of 21 or persuades such an individual to use drugs by force or deceit; the narcotic substance is cocaine or heroin; or the accused is a recidivist criminal of a drug related crime.⁸² A variety of treason-related (national security) crimes are eligible for the death penalty even if not resulting in death.⁸³ An amendment to the Firearms Control Legislation of 1954 makes the capital punishment mandatory for any person who attains or possesses non-permitted weapons or related ammunition in a public place intentionally to use the arms/ammunition in any act against public order (security) or to destabilize the governmental system, the constitution, national unity and social harmony.⁸⁴

Under Law No.122, the capital punishment is required for assault "against any of the public officials or personnel charged with the enforcement" if the assault leads to death.⁸⁵ Besides, the Confronting Terrorism Law No.95 of 2015 introduced many new criminal acts that are entitled to the death penalty.⁸⁶ The statute vaguely defines terrorism as "any use of force or violence or threat or terrorizing that aims to disrupt general order or endanger the safety, interests or security of society; harm individual liberties or rights; harm national unity, peace, security, the environment or buildings or property; prevent or hinder public authorities, judicial bodies, government facilities, and others from carrying out all or part of their work and activity."⁸⁷ The law allows the death penalty for founding, regulating, managing, or being a leader of a terrorist group; financing terrorist groups; and collecting counterintelligence with the purpose of committing terrorist attacks, among others.⁸⁸ The law mandates the same sanction for funding a terrorist group or terrorist act.⁸⁹ Even where the law specifies that the death penalty is required, a judge may enforce a different punishment (discretionary power) if leniency is warranted.⁹⁰ For juvenile offenders, Egyptian law forbids the death penalty for any individual under the age of 18.⁹¹

In capital cases, three different courts have jurisdiction: civilian appellate courts, state security courts, and military courts.⁹² In all capital cases, judges must reach a unanimous ruling to sentence an individual to death and must be ratified by the President.⁹³ Death sentences issued by civilian courts are subject to a mandatory appeal to the Court of Cassation, but that court may consider only issues of law, including whether the lower court violated, misapplied, or misinterpreted the law, whether the verdict is legally invalid, and whether procedural irregularities had an effect on the verdict.⁹⁴ Military Courts have jurisdiction over civilians accused of terrorism, national security acts, crimes committed in border areas and crimes against military production facilities.⁹⁵ Law No. 136 of 2014 for the Securing and Protection of Public and Vital Facilities expanded the military jurisdiction by placing all public property under military jurisdiction.⁹⁶ It should be noted that hanging (civilians) and shooting by firing squad (military) are the most common methods of execution in Egypt.⁹⁷ Sadly, the moratorium on executions in Egypt is based on political willpower, rather than legal amendments, and there is now no legal foundation that supports moving towards abolition (nor are there any legal guarantees to prevent a return to executions).

It should be noted that the Egyptian Penal Code provides that 'if the conditions of the crime...requires the judge's leniency, the punishment may be changed...from death penalty to imprisonment.'⁹⁸ However, there are some crimes that are excluded from the scope of application of the leniency justification (exclude the application of Article 17), and thus forbid the court from sentencing to a lesser punishment, (a) aggravated murder; (b) trafficking in narcotics, and (c) using explosives leading to the death of one person or more.⁹⁹

c. Administering Death Penalty

The Egyptian Constitution does not make any explicit reference to the death penalty. However, Article 2 of the Constitution makes abolition of the capital punishment for offenses applicable under Islamic jurisprudence more problematic.¹⁰⁰ In 1980, the Supreme Constitutional Court ruled that '[...] no legislative text may be issued under it [the Constitution] which contradicts the Islamic rulings that are both absolutely authentic and definitive in their import.'¹⁰¹ The Criminal Procedural Law No.150/1950 comprises some substantial procedural rules for administering the capital punishment. The keystone is the sitting justices' ijma'a (unanimous consensus by the majority) including the military judges.¹⁰² In a milestone ruling of the highest court in the land, mahkamat al-Naqd (Court of Cassation) decided:

Article 381 requires the court members' unanimous consensus, indicates that the legislature made an obligation upon the court to decide the death penalty within the agreement of all sitting judges, to maintain the legal guarantees of [...] surrounding its nature, [and that is] contrary to other punishments which require only the majority opinion of the justices.¹⁰³

Furthermore, all cases involving the death penalty must be presented to Egypt's grand mufti (religious leader) before the issuance of the verdict. The Code stipulates:

The court is obliged to send the decision of death penalty to the Egyptian mufti (religious clerk) before the final decision. If the clerk does not respond within ten days, the court has the right to decide the final verdict.¹⁰⁴

In terms of the due process guarantees, the Court of Cassation ruled:

the legislature aims, through this condition, to confirm the orthodoxy of the court ruling to the Islamic law rules [...]. The role of the mufti is to decide its compatibility with the Sharie'a norms. Furthermore, the opinion of the mufti gives the criminal the tranquillity feeling of the divine aspect of this punishment considering the public opinion.¹⁰⁵

It should be noted that Mufti's opinion is counselling and not mandatory, as his only duty is entirely to determine whether or not the penalty is compatible with the main principles of Islamic law.¹⁰⁶ In the Egyptian criminal justice system, execution may be suspended by a request for retrial, as the right to request a retrial belongs to the prosecution or the defendant.¹⁰⁷ Even if the mufti responds with an opinion conflicting with the court's ruling, the court is not obliged to follow his/her decision, and this view is due in ten (10) days, and if not received within the deadline, the court has the right to decide its final judgement.¹⁰⁸ Nevertheless, if the criminal court decides the final ruling to execute the capital punishment without consulting the mufti's consultancy opinion, its decision shall be annulled.¹⁰⁹ However, the appeals are very restricted, the Attorney General must submit a memorandum to the Cassation Court justifying the application of this punishment.¹¹⁰ "The irrevocable decision of death penalty shall be sent, through the Justice Department [Ministry], to be ratified by the President [...] in which he/she has the right either to ratify the ruling, or to use his right of clemency; and if the President does not respond within 14 days, the penalty shall be executed."¹¹¹

Law No.71 of 2009, amends Egyptian penal law provisions by adding new guidelines on psychogenic disorder. The 2009 amendment reads,

In case of the absence of free will [criminal intent] during the commission of the criminal act, because of insanity, mental disorder, unconsciousness [intoxication] voluntarily or involuntarily [...] the culprit shall be accountable if the psychological or mental disorder affects his free will by diminishing it, and the court must consider all circumstances regarding the mental influence on the personal will If the accused is incapable of defending himself due to a mental illness occurred after committing the crime, the trial shall be suspended until he is capable. If a mental disorder happens after the investigation has been concluded and before the adjournment of the case, the next procedures shall not be taken¹¹²

Pregnant women are exempt from execution until two months after the child is delivered.¹¹³ Although the law does not stipulate a maximum limit for life imprisonment, the minimum sentence that must be served is 15 years' custody if parole is approved, or 20 years if the prisoner is eligible for conditional release.¹¹⁴ The perspective has been articulated in some quarters that the courts should be given the authority to avert individuals convicted of heinous crimes from being bailed or from being granted a conditional release, as this would inspire them to hand down less death penalties, given that deprivation of liberty would serve its actual purpose of acting as a public deterrent.¹¹⁵ The Juvenile Law No.12 of 1996 provides that children who are under the age of twelve at the time of the commission of the offense may not be held criminally liable; and should be subject to a juvenile tribunal.¹¹⁶ This law completely bans capital punishment and life imprisonment for children, and instead replaces them with preventive therapeutic actions.¹¹⁷ Egyptian law provides two cases – in which the state has no right to execute the criminal – for extenuating the death penalty, either by statute of limitations or by presidential pardon (clemency).¹¹⁸ The Procedural Code states "the statute of limitations for death penalty is 30 years and shall start once the verdict becomes final and irrevocable."¹¹⁹ On the other hand, clemency means the non-execution or mitigation of the capital punishment, to be replaced by another sanction (e.g., life imprisonment).¹²⁰ For rehabilitation purposes and social reintegration programmes, Article 71 of Law No.396 provides that those sentenced to death may receive visits from representatives of their religion.¹²¹

d. Application of Death Penalty and Fair Trial Procedures: Status Quo

The Constitution guarantees that "the rule of law is the basis of governance in the state. The state is subject to the law, while the independence, immunity and impartiality of the judiciary are essential guarantees for the protection of rights and freedoms."¹²² ("The judiciary ultimately sought to protect itself as a deep state institution, guarding its material interests in the status quo, even if this meant betraying the rule of law").¹²³ Further, judges are independent and, in their administration of justice, are subject to no authority other than the law, no interference being permitted in judicial affairs.¹²⁴ Furthermore, Egyptian law designates that an individual accused of a crime can be detained for 15 days pending investigation.¹²⁵ Pre-trial detention shall not exceed two years if the act is punishable by death.¹²⁶ An exceptional amendment to the Procedural law in 2013, authorising criminal courts and the Cassation Court to prescribe provisional detention of 45-day increments without a maximum time limit for persons facing a death sentence.¹²⁷ Also, the Constitution assures every accused the right to be presumed innocent until proven guilty along with the right to legal assistance.¹²⁸ The Criminal Procedural Code requires that

a lawyer must be present with the accused during investigations and makes it illegal for the detective of an offence punished by death to interrogate the accused without his lawyer's presence.¹²⁹ "This "state of nobody" with an understanding that it is simultaneously the "state of everybody." That is, at least in the realm of the death penalty, the fact that no one is to be found responsible has to do with the fact that everybody is to a certain extent. And there are too many state actors – "an excess of statehood practices" – that certainly ensures a diffusion of the responsibility to kill."¹³⁰

Some Malpractices: Case Law

In terms of using torture, detained activist 'Alaa 'Abdel Fattah – who was sentenced to five years in prison – claimed during a pretrial detention hearing that he had been exposed to incidents of intimidation (reprisals) after he reported hearing fellow prisoners being subjected to torture with electric shocks.¹³¹ Also, it has been reported that prisoners detained on politically motivated and fabricated charges (e.g., allegations of joining an unspecified banned group and spreading false news) were held in prolonged and indefinite solitary confinement (in most cases without bail or conditional release).¹³² For example, political critics (e.g., Ahmed Amasha), had been denied family and lawyer visits, exercise, and access to health care for more than a year.¹³³ Legally speaking, impunity and lack of accountability of the security apparatuses (law enforcement officers/police) is a substantial dilemma and the Attorney General's along with the Justice Department and the Military Prosecution – either for interior or army acts – should be responsible for pursuing prosecutions and investigating whether security force actions were justifiable (within their duty scope).¹³⁴ For instance, in 2015, Egypt criminal court ordered retrial sentenced in a mass trial to death and life imprisonment for many Muslim Brotherhood supporters.¹³⁵ Recently, an Egyptian Criminal Court ordered a retrial for some of the Muslim Brotherhood's followers convicted in a mass trial in 2014.¹³⁶ "Some of them were sentenced to the death penalty, and others were punished to life imprisonment for their criminal roles in the violent criminal activities against Coptic Christians and their houses of worship along with murder, attempted murder, threatening public order and scorching some police stations."¹³⁷ "An Egyptian criminal court in El-Minya confirmed interim death verdicts imposed after a speedy trial that cruelly breached the defendants' due process guarantees rights. In this regard, it was significant for the Egyptian's judiciary to assure that all of the defendants have a quick retrial in accordance with international law principles, especially regarding the fair and just trial standards."¹³⁸

A recent capital punishment case that sparked widespread controversy was that of Isaiah al-Makary – a Coptic monk who was convicted of murder and executed in May 2021, just 10 months after his sentence was upheld – marking the first state execution of an Egyptian Christian clergy in Egypt's modern history.¹³⁹ International experts (e.g., United Nations specialists, human rights groups, legal scholars) have all pointed to flaws in the trial proceedings, case evidence, abusive treatment in custody, and other aspects of the case that raise serious doubts about the verdict.¹⁴⁰ It should be noted that after alSisi took office, the judiciary intensely expanded the use of this punishment, handing down death sentences en masse and carrying out far more executions.¹⁴¹ Egypt's use of this penalty as indicative of a shift from a deterrence doctrine and prevention to one of political vengeance.¹⁴² Egyptian legal scholars cited that "Within Egyptian law, the philosophy behind the death penalty is for it to serve as a punitive measure and a supposed tool of deterrence that aims to deter and prevent [crime]," however, have repeatedly found that the death penalty has no deterrent effect, but now more revenge or retaliation and being used as an example of how authorities politically exploit it (e.g., prisoners on death row are promptly executed in response to militant attacks).¹⁴³

Accordingly – and as the number of executions has swiftly amplified recently – the Egyptian government has come under heavy criticism from domestic and global human rights organizations, Western allies, the United Nations and the European Parliament, as it claims that right to "retribution" may justify executing those convicted in terrorism or political cases, however failed to explain the massive spike in executions of defendants convicted of regular criminal acts.

III. Egypt's Legitimacy in the Global Order: Compliance to the International Law

International law to which Egypt is committed, requires the states to limit the use of the capital punishment to the most serious crimes, towards abolition.¹⁴⁴ Concerning mass trials, international norms prohibit the imposition of the death penalty where a defendant has a restricted degree of contribution or complicity in the commission of even the most serious crimes.¹⁴⁵ By trying culprits in large groups, Egypt has made punishing political dissent an easy task for the administration, and in so doing, embowelled procedural precautions and defendant's due process rights.¹⁴⁶ Statements produced by an accused or a witness under duress or threat of duress should not be relied on.¹⁴⁷ Egypt's mass trials are undeniably inadequate to protect these rights. Enormously short trials make it unbearable for courts to consider each defendant separately, limit defendants' capacity to access counsel along with trying in absentia, that breach the global norm requires that the defendant is normally eligible to be present at trial, to offer a defence.¹⁴⁸ Egypt endures to use random arrests and mass trials to apply the death penalty for political dissent, following popular efforts to exercise rights to assembly/free expression.¹⁴⁹

Criminal Procedural Code requires that verdicts must include the reasons upon which it has been drawn and any conviction must

state the punishable act, the circumstances under which it occurred, and must designate the legal text upon which the ruling was based.¹⁵⁰ Egyptian jurisprudence asserts the individual nature of criminal liability:

[...] a person can be held responsible only if that person, either as principal or as accomplice, committed the alleged acts [...]. Whether an act is wilful or by simple omission, it must be personally attributable in order for the individual's responsibility to be engaged. Egyptian jurisprudence continuously refers to this principle¹⁵¹

Also, it allows a retrial in some cases. If the individual has been legally notified of the committal order/summons, the court may issue a "default judgment" and may adjourn the case or order to re-summon the accused.¹⁵² The Public Prosecution and defendant are to present their statements and pleadings, and the court hears any witnesses if deemed necessary, after which a judgment is issued.¹⁵³ A judgment in absentia may be executed if not objected to by the person convicted within the given time limit.¹⁵⁴ In 2017, the Egyptian Parliament limited petitions in the Cassation Court. Prior to the amendments, the Court was able to overrule a conviction and send the case back for a second trial, for the defendants sentenced to death a retrial and two appellate rounds, acting "as a relatively strong check on flawed convictions."¹⁵⁵ The Court can evaluate both legal and factual issues in the first appeal and issue a final verdict, as a nail in the coffin of fair trial ideals.¹⁵⁶ Now, defendants sentenced to death typically do not have the prospect for a retrial, where most exonerations and commutations used to happen (uphold more convictions on appeal).¹⁵⁷ Military trials are less likely to follow international due process/fair trial values and military judges are subject to the Commander-in-Chief, and hence inadequately autonomous from the executive.¹⁵⁸ The European Union is committed to use all its diplomatic measures and financial assistance to encounter the maintenance of capital punishment globally. In 1998, it accepted strategies for third countries on capital punishment as a part of its human rights policy.¹⁵⁹ These rules set out the crucial principles for the EU monitoring action towards the use of the capital punishment – principally – aim at urging retentionist third countries to abolish death penalty, via general or specific demarches (periodical dialogues).¹⁶⁰ The European Parliament powerfully opposes this punishment – never justified – in all circumstances, even for redress or deterrence. The international community emphasized the demonstrated futility of capital punishment as a preventive 'deterrent' for violent offences and its disproportionately substantial effect on society.¹⁶¹ It called on all states that still resort to capital punishment to give up this inhumane/cruel punishment and adopt the abolitionist movement.

Crisis of Governance and Justice

There is no judicial unity on the query whether capital punishment is constitutional or not. It looks that much depends on the design of the appropriate constitutional provision in the nation concerned and the judicial creativity or non-creativity of the justices interpreting the related constitutional provisions. Verdicts affirming the death penalty unconstitutional are not based on the fact that the punishment has been forbidden but on the perceptive that executing a condemned individual amounts to cruel, inhuman and degrading penalty, or that there has been an excessive delay in carrying out the death sentence. Other rulings are based on the reasoning that the binding capital punishment creates an unjustified restraint on judicial sentencing discretion. Courts do not make a ruling on what has not specifically or incidentally been demanded. Hence, what is stated unconstitutional is not the death penalty per se but the death sanction under certain circumstances. That would clarify why in the judgements declaring the death penalty unconstitutional under specific conditions, the court(s) did not go further to make an order of mandamus demanding the government to remove this penalty from its laws.

Since 2013, Egypt has used the criminal justice system, particularly the death penalty, to stifle dissent. Egypt continues to impose numerous death sentences in mass trials, and is accelerating executions at an extraordinarily alarming rate. Changes to criminal procedure have detached what few guards' defendants had prior to 2014. When it is intolerable to consider each defendant independently, children are inescapably caught up in this machinery. The diluting of due process guarantees and the systemic torture has similarly impacted those who have nothing to do with real or alleged political dissent. Even when defendants are exonerated/resentenced, they spend years on death row (behind bars) waiting for their sentences to be reviewed/commuted or thrown out. Without legal and political reform, the machinery of death will only move faster in years to come.

Following recent universal periodic reviews, the international community along with the UN Human Rights Council highly recommended the Egyptian government to involve toward the eradication of the death penalty by adopting a moratorium; commuting all rulings already declared; eliminating the number of death penalty applicable crimes; fully and impartially investigate any allegations of torture, ill treatment (including enforced disappearances by enacting a legislation criminalize it in line with international conventions); immediately release all children subject to death sentences and stop sentencing them to death in contravention to both domestic and international law(s) providing victims with remedy/redress, that in all cases, the execution of the capital punishment should be compatible with Articles 6 and 14 of ICCPR; and to entirely abolish the death penalty. Also, to thoroughly investigate all cases of the persecution of attorneys, judges, human rights defenders, and reporters, for legal actions in the defence of human rights.¹⁶² Moreover, to respect the minimum standards relating to the death penalty (implementing it in very strictest narrow judicial conditions, ensuring that all means of justice "due process" are

guaranteed). The Egyptian authorities (legislative, executive, judicial) must comply with the constitutional and legal (criminal procedures) provisions concerning the defendant's rights, particularly the defence right and the right to a public and fair trial in a reasonable time period. Adopt effective precautionary measures (no escape/cause any damage to the evidence) and narrow the scope of pre-trial detention timing – as a punitive means – as this contradicts the presumption of innocence norm. Also, finding legislative keys that guarantee the financial and technical judicial independence (no subordination to the executive), that result in fair and impartial trial procedures. The 1998 Rome Diplomatic Conference centred its focus on the international use of capital punishment. Egypt's representative referred to principles of Sharie'a law when urging for capital punishment to be retained as optional for cases in which there are aggravating circumstances.¹⁶³

The abolition of the death penalty altogether in Egypt would greatly help to reduce the human rights and judicial injustices that have plagued the country in recent years. The global trend toward abolition has proven its viability and potential for success. While there is not much that can be done to remedy the excessive executions in the past, the knowledge and growth that can be gained from them can be used to work for a better future. The Egyptian developments in the aftermath of July 2013 correspond thoroughly to a situation of quasi-judicial repression: there is a legal foundation in vaguely worded laws and the prosecutions take place in courtrooms, where defence rights and other due process guarantees are strictly curtailed. It is essential to look beyond the letter of the law, however, to explicate the developments in the Egyptian judiciary.¹⁶⁴ The use of narrative in the practice of law has been a feature in other transitional contexts. Law is a way to preserve endurance over time. Legal conflict rises when a state of affairs is confronted, calling for the judiciary to set matters right. When abrupt or substantial change occurs, the use of narrative may require framing legal matters as a fight for state's survival (and its institutions), thereby justifying tyrannical tools.¹⁶⁵ Parts of the criminal justice system depicted the stakes for Egypt as though its very existence hinged on it. Individuals may be guilty/convicted in a fair trial, whereas the statute may be draconian. The hand of justice is shackled by law "judging with vengeance"?¹⁶⁶ Judges take more drastic measures when they truly believe that the government is in danger. In other words, the power exercised by the judiciary is in part definitional and portions of it involved in defining the State against its adversaries, producing a narrative that at times reads like a political manifesto stating their philosophy (ideology) and benefits (interests).

IV. Conclusion

Capital punishment is not practiced by a majority of the world's states. Anticapital punishment local strategies have led to an international law of human rights that definitely forbids cruel and inhuman punishment. Global concern for the abolition of capital punishment has provoked Muslim nations that still endorse and practice the death penalty to respond with equally persuasive concerns based on the tenets of Islamic law. It should be noted that Muslim countries view capital punishment according to the principles embodied in the Qur'an. Islamic law functions on the belief that all individuals have a right to life unless the administration of Islamic law determines otherwise. Capital punishment exists in the domestic law of all Muslim nations, including Egypt, but the ways by which these countries employ it are varied and inconsistent. Although Islamic states correctly argue that capital punishment is an element of Islamic law, they do not recognize the more limited role of the death penalty articulated by the Islamic religion.

Conservative Islamic nations fighting to retain capital punishment use religious opinions in order to force the debate into one of cultural or religious values, where it appears that one set of ethical ideals is being imposed upon another in a form of philosophical or cultural imperialism. The argument is disarming for many who oppose death penalty in the "North," and seductively inflammatory for those who reject it in the "South." Throughout the development of Islam and Islamic law, there have been times when theory and practice did not match. While it has been argued that Islamic law governs the social order of Muslim societies, this has not prevented the Sharie'a from being amended or disregarded when the environment uttered, and this has been referred to as daroura (necessity doctrine). This notion bestows. Muslims from observing sacred laws when the situation or environment dictates otherwise. All Islamic nations have demonstrated some degree of flexibility in the interpretation of Islamic law in these or other areas. Yet, they obstinately refuse to acknowledge that the same perspective may be undertaken regarding the capital punishment. It seems that religion is little more than a pretext to justify a resort to punitive penalties that is driven by backward and suppressive attitudes in the criminal law field.

The current disastrous application of the capital punishment in the Egyptian criminal justice system completely contradicts and misuses both the origins of the codified legal system, the modern evolution of the Constitution, and Islamic law in sentencing. Capital punishment is irreversible, irrevocable, errors occur, execution is the worst, and the risk of executing an innocent person can never be eradicated. Since 1973, for example, more than 160 prisoners sent to death row in America have shortly been exonerated or freed from death row on innocence grounds. Others have been executed despite grave suspicions about their guilt.

It does not deter crime. Nations – with twisted justice systems – who implement it recurrently cite that capital punishment deter persons from committing criminal performances. This argument has been repetitively disputed, and there is no evidence that this penalty is any more effective in reducing criminality than life imprisonment. In several situations, individuals were executed after being convicted

in extremely unfair trials, based on torture-tainted evidence and with indecorous legal representation. In some nations, death penalties are inflicted as the mandatory punishment for certain criminal acts, meaning that judges are not able to consider the crime's circumstances or the defendant before sentencing. Death penalty is discriminatory. Its weight is disproportionately carried by those with less advantaged socio-economic backgrounds or belonging to a racial, ethnic, or religious minority. This involves, for example, having limited access to legal representation, or being at more disadvantage in their familiarity with the criminal justice system. It is used as a political tool by some nations (e.g., Egypt) to punish political adversaries (critics).

Based on the findings of this article, it is now obvious that Egypt is using the capital punishment as a means of oppression, as the ultimate abuse of state power. In Egypt, it is being exercised by a regime which makes use of systemic torture, stifles the political dissent (rights to free assembly/expression), and sentences those who exercise these internationally-protected rights. The international community can no longer stand silent and must call on the Egyptian government to restrict its use of this penalty, comply with its transnational obligations, and guarantee that any justice sector cooperation is contingent on Egyptian authorities. This article underscores the application of death penalty (theoretical study done in light of the principles of the Egyptian law and provisions regarding international human rights law). Comparing it to the ideas of human rights, justice, and *maslahaa(h)* (protected interests), which establish the basis of the criminal justice reform. It concludes that the apparent view of the Egyptian criminal justice system is shaped by spiritual attitudes, laws, and divine practices. Thus, it is more than proper to create a comprehensive reform of the death penalty to be fully compatible with the constitutional/universal rules, but domestic laws must meet its superior rules and lofty values.

The evolution of international and criminal law(s) is moving toward abolishing it, as global movements lately have envisioned to limit or suspend its use and decline the number of crimes punishable by it. UN Security Council Resolutions along with the Rome Statute of the International Criminal Court (ICC) that created international criminal tribunals did not cite the capital punishment in sentencing, despite the gravity of the crimes in many cases (e.g., Former Yugoslavia or Rwanda). In June 1998, a European Union policy – along with universal and regional protocols – has been adopted in conformity with the E.U.'s desires to abolish it worldwide and require that nations in which it is still applied gradually decline its cruel use, as it disrupts the right to life as a fundamental right. Equivocal legal provisions on death penalty are profoundly concerning and represent a serious threat for reform. History has proven this often does not last very long. The extreme use of this punishment inspires more violence, and hence, it is highly endorsed that governments policy and lawmakers should inspect other legal and jurisprudential replacements that would allow for its very narrow use, perhaps leading to its full abolition, as well as preserving the criminal's human dignity, giving him a chance to prove innocence or to change their manners and become a productive community member.

Due to the position of certain Muslims' governments on capital punishment, the international campaign claims that *Sharie'a* law is an impediment to reform death penalty. Indeed, using death penalty inadequately in these nations – with the alleged religious claims – led many to believe that Islamic law is the key hurdle to reform this penalty. The global call for the abolition or restriction of death penalty in Muslim countries is neither an easy call to be tolerated, nor welcomed, due to cultural, historical, and sacred aspects associated with these societies. Yet, if the call for reform is based on precise divine messages and moderate interpretations, it will be more successful. *Sharie'a* law neither calls for absolute abolition nor absolute retention, it takes a middle ground between both. In other words, before urging the victim's family to pardon, forgive, and waive the death penalty, Islamic law considers first the victim's right to life that deprived by the convict, and then offer him (or his family) either to keep it or approve (waive) it. Blocking individuals from the right to decide whether to forgive or not would result in reform failure. Thus, this attitude seems to be consistent with both the Egyptian Constitution and the clemency milieu, thus, enough to support the reform movement.

Human rights organizations must consider that moderate Muslim jurists must take the first step in the transformation process, so they should engage with Islamic law scholars and sacred institutions, because they have the power to persuade the Egyptian – legal – community, with the necessity for reshuffling the capital punishment. It is a great shared responsibility among legal professionals (scholars, activists, judges, practitioners, law professors); however, the Egyptian legislature bears the biggest share of that obligation; to raise both social and legal cognizance about this penalty. Middle Eastern governments – and societies – need to recognize that the existing status quo of the death penalty is in contradiction with the general principles of Islamic law, especially of the due process in sentencing, and its reform is a devout duty. Eastern and Western communities should understand that Islamic *Sharie'a* law plays no role within the abusive use of the capital punishment, but by those in power, as they must be aware of “And whoever saves one – it is as if he had saved mankind entirely.” Qur'an [5:32].

END NOTES

¹ Assistant Professor of Law at Prince Sultan University College of Law (Saudi Arabia) & Alexandria University Faculty of Law (Egypt); Adjunct Professor of Law & the Clarke Initiative Visiting Scholar at Cornell Law School.

² Taha Sakr, 'The Persistence of the Death Penalty in Egypt: Why Courts Insist on 'An Eye for an Eye'', *Egypt Independent*, July 7, 2017, <https://www.egyptindependent.com/death-penalty-egypt/> ("[it]... a deterrent for criminals who threaten people's lives and state national security. Egyptian courts have executed...death sentences...of which were issued by criminal courts for murder crimes, while... verdicts were issued for political crimes such as espionage, assassination and establishing outlawed secret organizations. ["G]iven that the death penalty comes from Sharia law and Qur'anic verses, there is no one – no matter their position in the state – has the power to suspend it. Hence grants the victim's family the right to pardon the killer or receive financial compensation...that sentencing murderers to death is only "fair," claiming that, "Islam dictates that anyone who kills an innocent person should also be killed.").

³ See, e.g., 'Egypt: 49 Executions In 10 Days, Mass Executions Follow Suspicious Prison Killings,' Human Rights Watch, <https://www.hrw.org/news/2020/10/22/egypt-49-executions-10-days> ("that authorities ignored basic fair trial guarantees, including access to legal counsel and the need to establish individual criminal responsibility. [...] of "revenge" rather than law enforcement to justify executions . . ."). See E. Ike Udog, (2020) 'Egypt' in *Human Rights in Islamic North Africa: Clashes Between Constitutional Laws and Penal Codes*, at 53 ("2015-16 Amnesty report...courts handed down hundreds of death sentences and lengthy prison sentences after grossly unfair mass trials. There was a critical lack of accountability; most human rights violations were committed with impunity.").

⁴ Nasser Al-Kholaiyf, *Mitigating and Aggravating Circumstances for Penalty of Ta'azir in Islamic Jurisprudence* (1992).

⁵ *Ibid.* It should be noted that amnesty and partner organizations in Egypt gather information about the use of capital punishment from official court documents, certified reports from English and Arabic sources from Egypt and the around the Arab world, and Egypt-based human rights reports.

⁶ Robert Weisberg, 'The Death Penalty Meets Social Science: Deterrence and Jury Behavior under New Scrutiny' (2005) *Annual Review of Law and Social Sciences* 151(1).

⁷ See generally Muhammad Abu Zahra, *Crime and Punishment in Islamic Jurisprudence* (1974). If judges find it so relaxed to dole out death sentences en masse, therefore, the death penalty must be scrutinized from both humanitarian and legal perceptions so that the public can be better well-informed about where the rest of the world stands on this sort of criminal punishment.

⁸ Corinna B. Lain, 'Deciding Death' (2007) 57(1) *Duke Law Journal*. *Baze v. Rees*, 128 S Ct 34 (Mem) (2007).

⁹ For instance, the corpses of those executed are not given straight away to their families for funeral or burial.

¹⁰ See United Nations General Assembly Resolution adopted by the General Assembly, 17 Dec. 2018 [on the report of the 3rd Committee (A/73/589/Add.2) 73/175 (Moratorium on the Use of the Death Penalty)], <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/449/69/PDF/N1844969.pdf?OpenElement>. See also, United Nations, *Treaty Series*, vol. 596, No. 8638; Resolution 217 A (III); Resolution 2200 A (XXI), annex, & Official Records of the General Assembly, Seventy-second Session, Supplement No. 53A (A/72/53/Add.1), chap. III.

¹¹ *Ibid.* See, e.g., Thomas C. Castellano, 'Limits of the Criminal Sanction in Controlling Crime: A Plea for Balanced Punishments' (1999) 23 *Southern Illinois Law Journal* 427, 433.

¹² Meaning that they have not carried out executions recently, and Jordan and Lebanon have not carried out executions since 2007 and 2004, respectively. It should be noted that Djibouti is the only country in the MENA region to have abolished the death penalty in their criminal (penal) law.

¹³ See Amnesty International, 'Death Penalty 2021: Facts and Figures Global Figures', 24 May, 2022, <https://www.amnesty.org/en/latest/news/2022/05/death-penalty-2021-facts-and-figures/> ("Most known executions took place in China, Iran, Egypt, Saudi Arabia and Syria – in that order. Amnesty International recorded 24 women among the 579 people known to have been executed in 2021 (4%), in the following countries: Egypt (8), Iran (14), Saudi Arabia (1) and USA (1) . . . Death sentences were known to have been imposed after proceedings that did not meet international fair trial standards in countries including Algeria, Bangladesh, Cameroon, Egypt, Iran, Myanmar, Nigeria, Pakistan, Saudi Arabia, Somalia, Singapore and Yemen.").

¹⁴ *Ibid.* In 2011 – and after the Arab Spring – Egypt imposed more death sentences than five of the countries combined. Tunisia was the only country to not impose/execute any death sentences in 2011; however, they have resumed it in 2012.

¹⁵ See UN General Assembly, Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 15 Dec. 1989, A/RES/44/128; UN General Assembly, International Covenant on Civil and Political Rights, 16 Dec. 1966, United Nations, *Treaty Series*, vol. 999, p. 171; UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 Dec. 1984, United Nations, *Treaty Series*, vol. 1465, p. 85; UN General Assembly, Convention on the Rights of the Child, 20 Nov. 1989, United Nations, *Treaty Series*, vol. 1577, p. 3. In terms of foreign policy, the MENA region stands out against positive tendencies towards abolition on the international level. In December 2010, only Algeria voted in favour of the UN General Assembly resolution calling for a moratorium on the death penalty, which was adopted in December 2010 (overall, 109 countries out of the then 192 UN Member States voted in favour of the resolution). See United Nations General Assembly Resolution, *supra* note 9. See, e.g., League of Arab States, Arab Charter on Human Rights, 15 Sep. 1994, <https://www.refworld.org/docid/3a66b38540.htm> & Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990), <https://www.refworld.org/docid/3a66b38c18.htm>.

¹⁶ Mohamed 'Arafa, 'Transitional Justice, The Seeds of Change: Secular Law or Divine (Islamic) Law, Quo Vadis?' (2018) 9 *Creighton Int'l. & Comp. L. J.* 2. For example, Algeria has at least 34 death penalty crimes, Egypt has 33 criminal acts, Jordan has 27 crimes, Lebanon has 16 offences, Morocco at least 365 offences, Tunisia at least 35, and Yemen at least 315 death penalty applicable crimes.

- ¹⁷ Ibid. See Tom Ginsburg and Tamir Moustafa, 'Introduction: The Functions of Courts in Authoritarian Politics' in *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge Univ. Press 2008) 3.
- ¹⁸ Egypt ratified in 1982. Also, Yemen maintains the capital punishment for apostasy and adultery. Egypt, Jordan and Yemen retain mandatory death sentences.
- ¹⁹ Nevertheless, as some countries lack a national system of birth registration and certification (e.g. Yemen), it is discretionary to the judge to recognize the age of the accused, leading to circumstances where those requesting to be under the age of 18 are sentenced to death/executed.
- ²⁰ Which is not less than ten weeks (Lebanon) or three months (Egypt and Jordan), or more than two years (Morocco and Yemen). The Algerian and Tunisian laws do not include a definite period of stay of execution for a pregnant woman after delivery.
- ²¹ See Egypt: QANUN AL-'UQUBAT [Penal Code] [Egypt] (Criminal Code No.58 of 1937, reformed in 1952), Al-Jarida Al-Rasmiyya (Official Gazette) August 1937 (as amended by Laws No. 95/2003 & 50/2014).
- ²² 'Arafa, supra note 15.
- ²³ Ramsis Bahnam, alNathariya Al'Aama lil Qanun AlJinae'i [The General Theory of Criminal Law] (Cairo 1997). ("Appointing a specific justice to consider cases in which death sentences are imposed; violates the Judicial Authority Act that forbids assigning a certain judge/tribunal to consider particular cases. Capital punishment imposed based on national security investigations; violates the consensual norms of not using it without providing robust clear evidence, as verdicts can't be based on police investigations "Fabricated (Distorted) Evidence," as the Cassation Court underscored.").
- ²⁴ See Mada Masr, 'Execution Country: How the Death Penalty Became Rampant in Egypt', 9 Jan. 2022, <https://www.madamasr.com/en/2022/01/09/feature/politics/execution-country-how-the-death-penalty-became-rampant-in-egypt/> ("Over the 30-year reign of President Hosni Mubarak, the number of death sentences and executions in Egypt were lower by orders of magnitude compared to the current period. Executions had slowed down to such an extent under Mubarak that it could be described as a "practical suspension" of the use of the death penalty [...] After President Abdel Fattah al-Sisi took office in 2014, the judiciary dramatically expanded the use of the death penalty, handing down death sentences en masse and carrying out far more executions.").
- ²⁵ Ibid. It should be noted that serious difficulties comprise overcrowding, insufficient living conditions, unhygienic facilities, lack of suitable medical facilities (including mental health facilities), and insufficient nutrition or clean water, which all create a failure to meet international minimum norms. Visitation amenities are also often preventive, and other out-of-cell activities, such as employment or education, are strictly restricted.
- ²⁶ Ibid. ("Authorities do not release any official data on executions, yet according to the limited data available, the number of executions carried out over the past decade amount to nearly half the total final death sentences issued by the Egyptian judiciary... The total number of executions carried out is not available, though we do know that criminal offenses accounted for the vast majority of the sentences [...] were for political crimes including assassination, espionage, communication with foreign countries, founding, joining and leading illegal secret organizations, and terrorism.").
- ²⁷ See Middle East Monitor, 'Egypt Imposes Temporary Pause on Executions', 16 May, 2022, <https://www.middleeastmonitor.com/20220516-egypt-imposes-temporary-pause-on-executions/> ("the UN High Commissioner for Human Rights...said... "deeply concerned" by reports that [...] people were executed in Egypt after trials that did not meet due process standards. The UN called on Egypt to introduce a moratorium on the use of the death penalty, echoing calls made by human rights advocates for years.").
- ²⁸ Ibid.
- ²⁹ Morocco, for instance, amended its Constitution in July 2011 and affirmed its commitment to human rights.
- ³⁰ Marcus, P. (2007) "Capital Punishment in the United States and Beyond," *Melbourne University Law Review*, 31(837–872).
- ³¹ Hood, R. and Carolyn, H. (2009) "Abolishing the Death Penalty Worldwide: The Impact of a 'New Dynamic,'" *Crime & Justice*, 38(1), pp. 1–63.
- ³² Marcus, supra note 29.
- ³³ Between 2018 and the end of 2021, Egypt carried out at more than 241 executions (risk of imminent execution). See Carlson Anyangwe (2015) 'Emerging African Jurisprudence Suggesting the Desirability of the Abolition of Capital Punishment' *African Journal of International and Comparative Law*, 23(1), 12 ("The [...] that alleged a violation of articles 4, 5, 7 and 26 of ACHPR: breach of the right to life; torture; failure to meet fair trial standards (incommunicado detention, denial of access to counsel and to medical treatment, denial of right of appeal); and lack of independence of the courts. A further allegation was that the complainants were convicted on the basis of confessions extorted under torture and sentenced to death with no right of appeal...a violation of the right to freedom from torture and a violation of fair trial rights such as the right to counsel and to medical treatment, the right to be tried before an independent court and the right not to be convicted on illegally obtained evidence"). See, e.g., Egyptian Initiative for Personal Rights (EIPR) & Interights (on behalf of Sabbah and Others) v. Arab Republic of Egypt No. 334/06.
- ³⁴ See generally James Q. Whitman, 'Harsh Justice: Criminal Punishment and the Widening Divide Between America and Europe' (Oxford University Press 2003).
- ³⁵ See, e.g., Amnesty International, 'Egypt Must Not Sentence to Death a Young Man Forcibly Disappeared and Tortured at 17', <https://www.amnesty.org/en/latest/press-release/2019/06/egypt-must-not-sentence-to-death-a-young-man-forcibly-disappeared-and-tortured-at-17/> ("The Egyptian authorities must not resort to the use of the death penalty to punish a young man who was arrested while under the age of 18...").
- ³⁶ See, e.g., Middle East Watch, 'Egypt: Trials of Civilians in Military Courts Violate International Law: Executions Continue, No Appeal of Death Sentences to Higher Court' (1993), Vol. (5), Iss. (3).
- ³⁷ Ibid.
- ³⁸ Mohamed A. 'Arafa, 'Death Penalty: Is That the Case for Justice Under the Egyptian Criminal Justice System? A New Understanding', (2022) 12 *Creighton Int'l. & Comp. L. J.* 4.
- ³⁹ See, e.g., Behrmann, C. and Yorke, J. (2013) "The European Union and the Abolition of the Death Penalty," *Pace International Law Review Online Companion*, 4(1), pp. 1–79.
- ⁴⁰ David Garland (2010) 'Peculiar Institution: America's Death Penalty in an Age of Abolition' (Oxford Univ. Press).
- ⁴¹ El-Ansary, M. (2010), *The Role of the Public Prosecution in Egypt's Repression*, Oxford University Press. Project on Middle East Democracy, <https://pomed.org/wp-content/uploads/2016/11/POMEDAnsaryEgyptReport.pdf> ("The Egyptian criminal justice system has been on a steep slope of decline in recent years. Essentially nothing remains of the judicial independence of which Egyptians were justifiably proud in previous decades. The judiciary, including the Office of the Public Prosecution, has destroyed its own credibility and independence by consistently inserting itself into political disputes in order to defend the regime and target its critics [...] the Public Prosecution's many strategies for attacking opponents or critics of the government, through politicized verdicts in accordance with the wishes of the current regime. By being complicit in gross injustice, and by conspiring against the rights of Egypt's citizens, the judiciary is steadily eroding its own legitimacy and losing the confidence of the citizenry.").
- ⁴² Nathan J. Brown, 'The Rule of Law in the Arab World: Courts in Egypt and the Gulf' (Cambridge Univ. Press 1997) 1.
- ⁴³ Tamir Moustafa, 'The Struggle for Constitutional Power: Law, Politics, and Economic Development in Egypt' (Cambridge Univ. Press 2007) 20.
- ⁴⁴ Hans Petter Graver, 'Judges against Justice: On Judges When the Rule of Law Is under Attack' (Springer 2015) 91. See also Sahar F. Aziz, 'Independence Without Accountability: The Judicial Paradox of Egypt's Failed Transition to Democracy' (2016) 120(3) *Penn. State Law Review* 101, 113.
- ⁴⁵ Moustfa, supra note 43, at 21.
- ⁴⁶ Ronald J. Tabak, *Justice Brennan and the Death Penalty*, 11 *PACE L. REV.* 473 (1991) ("Justice Brennan pointed out that the framers of the Bill of Rights, in merely mentioning the death penalty, did not necessarily intend to sanction its use. In the fifth amendment, the framers merely provided that if we do have the death penalty, which "was then a common punishment," then "a person charged with that crime is entitled" to due process of law.").
- ⁴⁷ Ibid. See also UN General Assembly, CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, Dec. 10, 1984, United Nations, Treaty Series, vol. 1465, 85, <https://www.refworld.org/docid/3ac6b3a94.html>.
- ⁴⁸ Tabak, supra note 46, at 474. ("Justice Brennan has concluded that those who seek to justify the death penalty's constitutionality by reference to the framers' intent are exhibiting "arrogance cloaked as humility.").
- ⁴⁹ Ibid.
- ⁵⁰ Ibid. at 475 ("As Justice Brennan explained, there is no reason to believe that the death penalty – as opposed to long-term imprisonment – deters crime by people who have yet to commit a crime, or is likely to prevent people who have committed murder from committing another murder while they are in prison.").
- ⁵¹ See, e.g., SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, sec. 3 The Death Penalty in the Light of the Prohibition of Cruel, Inhuman and Degrading Punishment, U.N. Doc. A/HRC/10/44 (Jan. 14, 2009).
- ⁵² Additionally, the European Court of Human Rights has ruled that death by stoning constitutes torture, and the United Nations Commission on Human Rights described it as a mainly cruel and inhuman means of execution. Similarly, the Human Rights Committee has held that execution by gas asphyxiation constitutes CIDT, pointing to the length of time that this mechanism takes to kill a person and the availability of other, less cruel modes.
- ⁵³ See, e.g., 98 Eur. Ct. H.R. at 8 (2001). Human Rights Council Res. 2003/67, 2004/67, 2005/59 Question of the Death Penalty, E/CN.4/RES/2003/67 at ¶ 4(i) (Apr. 24, 2003); E/CN.4/RES/2004/67 at ¶ 4(i) (Apr. 21 2004); E/CN.4/RES/2005/59 at ¶ 7(i), 4(h) (Apr. 20 2005). H.R. Comm., Chitat Ng v. Canada, Comm. No. 469/1991, 49th Sess., U.N. Doc. CCRP/C/49/D/469/1991 at ¶ 16.4 (Nov. 5 1993). Id. at ¶ 16.2.
- ⁵⁴ See Rep. Inter-Am. Ct. H.R. no. 55/02, Merits, Case 11.765, Paul Lallion, Grenada, Oct. 21, 2002 paras. 86-90; Rep. No. 58/02, Case 12.275, Merits, Denton Aitken, Jamaica, Oct. 21, 2002, paras. 133-134; Hilaire v. Trinidad and Tobago, Inter-Am. Ct. H.R. Series C, No. 94, paras.167,168 (Jun. 21 2002). On juvenile cases; see Domingues v. United States, Rep. Inter-Am. Ct. H.R., No. 62/02, paras. 84-87 (2002) and Roper v. Simmons, 543 U.S. 551 (2005). See also UN Comm. H.R., E/CN.4/RES/2003/67; Atkins v. Virginia, 536 U.S. 304 (2002).
- ⁵⁵ Woodson v. North Carolina 428 U.S. 280 (1976); Hilaire v. Trinidad and Tobago, Inter-Am. Ct. H.R. Series C, No. 94, paras.167,168 (2002). See also Report of the Secretary-General, Questions of the Death Penalty, Human Rights Council 21st Session, A/HRC/21/29 July 2, 2012, para.60. Id. at paras. 6-16. 27 U.N. G.A. Res. A/RES/65/206 Mar 28, 2011 para.3.d. See, e.g., U.N. Secretary-General, Moratorium on the Use of the Death Penalty, A/67/226, paras. 6-10 (2012).

- ⁵⁶ See generally Nigel S. Rodley, *Integrity of the Person*, in *INTERNATIONAL HUMAN RIGHTS LAW* (Oxford Univ. Press 2000).
- ⁵⁷ See, e.g., *Gregg v. Georgia*, 428 U.S. 53, 229 (1976) (dissenting); *State v. Makwanyane*, 1995 SA no. CCT/3/94 (1995); *United States v. Burns*, [2001] S.C.R. 283, 289 (Can.).
- ⁵⁸ See Manfred Nowak, *Is the Death Penalty an Inhuman Punishment?* in *JURISPRUDENCE OF HUMAN RIGHTS LAW – A COMPARATIVE AND INTERPRETIVE APPROACH*, (eds. Turku, Finland: Institute for Human Rights, 2000).
- ⁵⁹ It has been reported by international organizations that 39 individuals have been executed since December 26, 2017, most of them were civilians convicted by military tribunals in trials marred by severe abuses. All defendants were initially disappeared, tortured, and denied access to their families and lawyers before and after interrogation.
- ⁶⁰ See generally, Mohamed Arafa, *Justice Is Sparse in the Middle East Where the Rule of Law Is Vague: Due Process Alarms*, in *DUE PROCESS OF LAW IN BRASILIAN AND COMPARATIVE PERSPECTIVES* (d'PLÁCIDO 2022).
- ⁶¹ *Ibid.* See generally Philip L. Reichel, *Death Penalty and Capital Punishment in Comparative Perspective*, *OXFORD RES. ENCYCLOPEDIA OF CRIMINOLOGY*. (“More than 70% of the world’s countries are considered to have abolished the death penalty. The nearly 30% of countries retaining the death penalty and carrying out executions are found primarily in the Middle East, North Africa, Asia-Pacific, and some states in the United States. Where the death penalty continues to be authorized, legislators must determine the crimes for which the penalty may be applied and the method by which the execution will occur.”).
- ⁶² *Ibid.* (“International law stipulates that a death sentence should be imposed for only the most serious crimes, but the term “serious” is not defined. As a result, the death penalty is not only applied for the crime of murder (generally considered an example of “most serious”), but also for other crimes against the person (e.g., rape, kidnapping), crimes against the state (e.g., treason, espionage, terrorism), offenses against the community (e.g., drug-trafficking), offenses against property (e.g., robbery, arson, and burglary), and crimes against religion (e.g., blasphemy or apostasy, and offenses against sexual morality). After conviction, the method of executing those convicted may be by hanging (currently the most widely authorized and frequently used method), shooting, beheading, stoning, lethal injection, or electrocution.”).
- ⁶³ Arafa, *supra* note 61. Based on an urgent humanitarian duty for real change, and to take positive action aiding the victims and their families, it is highly recommended that all individuals, organizations, movements, and media outlets who believe in fundamental human rights to speak up against the death penalty in Egypt. That may happen via the urgent action to achieve an immediate moratorium on the death penalty, and to provide legal and humanitarian solidarity with death row inmates and their families (protecting their rights). Further actions are needed to break the silence on this issue (societal dialogue) on the abolishment of capital punishment in Egypt.
- ⁶⁴ *Ibid.* See also Reichel, *supra* note 62. (“Where the death penalty is retained, arguments favoring its use are likely to focus on issues of deterrence, retribution, and religious doctrine. Where it has been abolished, the arguments have highlighted concerns of questionable fairness in its application, the possibility of executing an innocent person, public opinion, and how capital punishment violates human rights. This last point that the death penalty violates human rights is the predominate view under international law and provides the primary theme explaining the world trend toward abolition.”).
- ⁶⁵ The ordinary judiciary in Egypt is divided into three branches: the constitutional judiciary, represented by the Supreme Constitutional Court (highest court in the land) and responsible for reviewing the constitutionality of laws and regulations; the administrative judiciary (State Council), headed by the Supreme Administrative Court, which considers cases based on decisions made by the executive; and, finally, the general judiciary, headed by the Court of Cassation, competent in civil, criminal, family, commercial and labour cases.
- ⁶⁶ The next level is the criminal appellate court, which handles appeals from the misdemeanours court. The criminal appellate court also rules in the first instance in felony cases and can hear complete retrials of the facts of a case and review the application of the law.
- ⁶⁷ One of the two chambers deals with criminal cases. Bernard-Maugiron, N. (2015) *Judges and Political Reform in Egypt*. Reprint. The American University in Cairo Press, Nathalie Bernard-Maugiron, ‘Introduction’ in Nathalie Bernard-Maugiron (ed), ‘Judges and Political Reform in Egypt’ (American Univ. Cairo Press 2015) 1, 6-9.
- ⁶⁸ THE ARAB REPUBLIC OF EGYPT, PENAL CODE, Law No. 58 of 1937, arts. 9, 10, 11, & 12. <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/57560/111585/F1337119832/EGY57560.pdf>.
- ⁶⁹ *Ibid.*, at art. 77 (felonies and misdemeanours from a source abroad that are harmful to national security). Egypt: QANUN MUKAFAHT AL-IRHAB [Anti-Terrorism] Law No.94/2015, arts. 2, 7, 8, 11, & 12. Egypt Penal Code, art. 86. Egypt applied its first antiterrorism bill in 1992, and it starts with the concept of terrorism as follows: “Terrorism in the application of the provisions of this law [Article 86 of the Penal Code] means any use of force, violence, threat, or intimidation, to which an offender resorts, pursuant to an individual or collective criminal enterprise, with the intent to disrupt public order or endanger the safety and security of society, if doing so would: (a) harm people, frighten them, or expose their lives, freedoms or security to danger; (b) damage, occupy, or seize the environment, communications, transportation, al-*amwāl* (assets), or public or private property; (c) prevent or obstruct the work of public authorities, houses of worship, or educational institutions; or (d) thwart the application of the Constitution, laws, or regulations.”
- ⁷⁰ The Criminal Procedure Code provides the regulatory framework for conducting investigations/criminal trials.
- ⁷¹ Moustafa, *supra* note 43.
- ⁷² Egypt’s Protest Law No. 107 of 2013 (organizing the right to peaceful public meetings, processions and protest), https://constitutionnet.org/sites/default/files/protest_law_issued_nov_24.pdf (invoked against peaceful assemblies despite judicial and legislative attempts to liberalize its Art. 10, which delineates the government’s power to prevent protests. Arrests due to vague charges under it represent around 12 % of protesters referred to Egyptian courts. The state employs a panoply of vague charges, including belonging to a banned group and disturbing public order, to punish anyone publicly (and at times privately) assembling). See Amr Hamzawy, ‘Egypt’s Anti Protest Law: Legalising Authoritarianism’, Carnegie Endowment for International Peace, 24 Nov. 2016. <https://carnegieendowment.org/2016/11/24/egypt-s-anti-protest-law-legalising-authoritarianism-pub-66274> (“Egypt’s generals have constantly employed repressive tools to instil fear among the population in order to stifle free expression and peaceful opposition. The military clique’s goal here is to evacuate citizens from the public space, to eliminate the autonomy of civil society organisations and to marginalise political parties that are not controlled by the security and intelligence services . . .”). They have also adapted measures to fight opposition such as the law “organizing the right to public meeting, processions and peaceful demonstrations.
- ⁷³ Egypt: QANUN ALAHKAM AL’ASKARIYA [Military Law] No.25, 1966, arts. 132, 138, 139, 140, 141, 148, 151,72, 69 & 154. All rulings that were decided by a military court were irrevocable. Law No.16 of 2007 added an amendment that created a new Supreme Military Court for appeals of military verdicts. Article 43 reads “The Military Appellate Supreme Court [...] has the competence of hearing the military appeals of the Military courts for all crimes either committed by the military personnel or civilians.” Yussef Auf, ‘A Legal Analysis of Egypt’s Military Judiciary,’ *The Atlantic Council*, Apr.6, 2015, <https://www.atlanticcouncil.org/blogs/menasource/a-legal-analysis-of-egypt-s-military-judiciary/> (“As for the system of litigation, a second degree of litigation before military courts was added.”).
- ⁷⁴ This act launches numerous substantial criminal penalties comprising death sentences for organizers (founders) and heads of terrorist organizations, along with a crime of spreading “ideas and beliefs calling for the use of violence” or inciting terrorism through social media, and heavy fines for broadcasting “false news” about terrorist acts or counter-terror acts. See *ibid.*, Egypt: Anti-Terrorism Law No.94/2015. See Mohamed Arafa, ‘Middle East Legislative Insight: Egyptian Antiterrorism Laws, Egypt Law No.22/2018, Egypt Law No.8/2015, Egypt Law No.94/2015’ (2019) *LexisNexis Middle East Commentary*. See, e.g., Egypt Law No. 22/2018 on Terrorist Funds. *Ibid.*, at 6 (“Egypt Law No. 22/2018 designs a legal model that authorizes the government - for the first time - to not only seize the assets of those considered to be terrorists or terrorist entities, but also to manage and use the assets by depositing them into the state public budget. As several due process worries about the terrorist description process exist, this statute may permit the seizure and management of the individual’s assets who may not actually be terrorists in the first place. While Egypt Law No. 22 /2018 does not specify which court verdicts it will rely on when determining who is a terrorist or a terrorist entity . . .”).
- ⁷⁵ Egypt Penal Code, arts. 230; 231, 232; 233, & 234 (aggravated murder). Also see *id.*, arts. 257, 290, & 295 (the law on crimes and offences against individuals).
- ⁷⁶ *Ibid.*, arts. 86, 87, 89, & 90.
- ⁷⁷ *Ibid.*, arts. 68, 88, 102, 168, 240-241, & 234. In this regard, crimes of hijacking of air, land or sea transport that lead to the death of one person or more. The law does not distinguish between hijacked means of transport as to whether they are owned by the state, individuals or private corporations. Also, anyone who arrests, detains or holds as hostage anyone, other than in the cases stated in laws and regulations, in order to bring pressure to bear on the authorities in the conduct of their work or to obtain any benefit or gain, if such action leads to the death of a person.
- ⁷⁸ *Ibid.*, arts. 86 & 102(c).
- ⁷⁹ Law No.25, 1966, arts. 132, 138, 139, 140, 141, 148, 151,72, 69 & 154. It should be noted that all verdicts that were decided by a military court are irrevocable and cannot be appealed after being signed by the President. But Law No.16 of 2007 added an amendment that created a new Supreme Military Court for appeals of military judgements. Article 43 reads “The Military Appellate Supreme Court [...] has the competence of hearing the military appeals of the Military courts for all crimes either committed by the military personnel or civilians.” Also, it comprises violating the military service duties, looting, robbery, disobedience of commands, and abandonment of military service. In 2014, this act has been modified to extend the military jurisdiction to “crimes perpetrated against public facilities, utilities, and properties, referred to in Article 1 of this decree by law.” *Id.*
- ⁸⁰ Egypt: QANUN MUKAFHET AL-MUKDERAT [Anti-Drug] Law No.122/1989 (amending Decree Law No.182/ 1960), art. 33(a)(b)(c) & 34(c).
- ⁸¹ *Ibid.*
- ⁸² *Ibid.*
- ⁸³ Egypt Penal Code, arts. 77, 78, 80, 1, 83, & 91. “Any person who commits premeditatedly a deed that leads to affecting the country’s independence, unity and the integrity of its territories shall be punished with a sentence of death. Any Egyptian who joins an ally form the armed forces of a country in a state of war with Egypt shall be punished with death. Whoever seeks or communicates with a foreign country, or with one of those working in its interest, to carry out hostile deeds against Egypt shall be punished with the death penalty. Whoever seeks or communicates with a hostile foreign country or one of those working in its interest, to assist it in its warlike operations or cause harm to the military operations of the Egyptian state, shall be punished with death.”
- ⁸⁴ Law No.6/2012, 2 AlJaridat AlRasmiyah 2012, Jan. 12, 2012, 5–8, https://www.loc.gov/law/help/firearms-control/egypt.php#_ftn13; see also Firearms Control Legislation No.394/1954 (amend. 1981), art.2.
- ⁸⁵ *Ibid.*, Law No.122/1989, art. 40.
- ⁸⁶ Anti-Terrorism Law No.94/2015, arts. 2, 7, 8, 11, & 12.

⁸⁷ Ibid., art.2.

⁸⁸ Ibid. arts.12, 13, & 14.

⁸⁹ 'Arafa, supra note 38. ("The new legislative changes covering anti-terrorism extended the definition of "terrorist entity" and imposing new measures against individuals, businesses, media platforms, and trade unions and provide life sentences and death punishment for funding terrorism. The vague concept of terrorism under domestic criminal law explains that any act that disturbs public order with force will be treated as terrorist activity and includes provisions to protect the security forces from accountability, establish death penalties, firmer prison sanctions for terror-related offenses, as well as heavy fines for those who publish "false/fake news" and a special judicial circuit for terrorism cases.")

⁹⁰ Ibid. Also, article 89 (brigandage) of the Penal Code reads "Anyone who forms or holds leadership or a position of leadership of a gang with the intention of taking land by force or plundering land or taking away things that are the property of the government or a group of people, or resists with arms the public authority engaged in law-enforcement."

⁹¹ See Human Rights Watch, 'Egypt: Counterterrorism Law Erodes Basic Rights,' 19 Aug. 2015, <https://www.hrw.org/news/2015/08/19/egypt-counterterrorism-law-erodes-basic-rights> ("Egypt's new counterterrorism law increases authorities' power to impose heavy sentences, including the death penalty, for crimes under a definition of terrorism that is so broadly worded it could encompass civil disobedience [...] The new law also gives prosecutors greater power to detain suspects without judicial review and order wide-ranging and potentially indefinite surveillance of terrorist suspects without a court order."). FIDH, 'The Death Penalty in Egypt' (April 2005), art. 12, <https://www.fidh.org/IMG/pdf/eg415a.pdf> (citing arts. 11 & 112 of Child Law No.12/1996). See also REPRIEVE, 'Stolen Youth: Juveniles, Mass Trials and the Death Penalty in Egypt' (Mar. 2018), at 15, <file:///C:/Users/mara0014/Downloads/Stolen-Youth-Juveniles-mass-trials-and-the-death-penalty-in-Egypt-.pdf>.

⁹² Ibid. ("The counterterrorism law punishes a dozen different acts with the death penalty, making it the mandatory punishment for anyone convicted of funding a terrorist group or terrorist act. Other crimes that can incur the death penalty if they result in death include manufacturing weapons; damaging a gas, water, or electricity network; or compelling another person to join or remain in a terrorist group. The law does not require that the death be intentional. Under international law, ... countries that maintain the death penalty have to restrict its application to the most serious crimes...opposes the use of the death penalty...as a uniquely final and inhumane punishment.")

⁹³ Mohamed alGhamry, 'Death Penalty in Egypt: Theoretical and Practical Study in the Light of Islamic Shariah and International Human Rights Law', p. 17 (Arab Penal Reform Organization 2008), https://view.officeapps.live.com/office/view.aspx?src=http%3A%2F%2Fwww.aproarab.org%2FDown%2FReports_Publications%2FE3damEn.doc&wdOrigin=BROWSELINK

⁹⁴ Egypt: QANUN AL'JRAAT AL-JINAIY'AH [Criminal Procedural] Law No.50 of 1950, art.381.

⁹⁵ Human Rights Watch, 'Egypt: 7,400 Civilians Tried in Military Courts', 13 Apr. 2016, <https://www.hrw.org/news/2016/04/13/egypt-7400-civilians-tried-military-courts> ("Military courts have tried... Egyptian civilians...a major...law that expanded military court jurisdiction...defendants were sentenced after mass trials that violate fundamental due process rights, and courts relied on confessions extracted under torture."). Military courts are not open to the public and its verdicts may be appealed to the Supreme Military Court.

⁹⁶ See U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, Country Reports on Human Rights Practices for 2018 (2019), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2018&dliid=289203>. It should be noted that the Supreme State Security Courts may be established by the President and composed of three judges (at least two are military justices). These courts have jurisdiction over offenses committed in violation of the president's orders, and the President may designate cases concerning wrongdoings punishable under Egyptian criminal law to be heard by these tribunals. Practically speaking, the firing squad operates in Egypt only in a state of war.

⁹⁷ Egypt Penal Code, art. 13. Yemen is the only country which retains execution by stoning and beheading. See, e.g., Jordanian Penal Code No.16/1960, art.17; Lebanese Penal Code (Legislative Decree No.340/1943), art. 43; Morocco Penal Code No.413/1962 (amended 2011 & 2019), art.19; & Tunisian Penal Code Law No. 68-23/1968, art.7 & Tunisia Code of Military Justice Law No. 57-9/1975 (amended 2011), art. 45.

⁹⁸ Egypt Penal Code, art.17.

⁹⁹ Ibid., arts.230-234, 102(e) & Anti-Drug Law No.122/1989, arts. 33, 34 & 38.

¹⁰⁰ Constitution of the Arab Republic of Egypt [Egypt], 18 Jan. 2014 (amended 22 April, 2019), art.2, https://www.constituteproject.org/constitution/Egypt_2019.pdf?lang=en. It reads "Islam is the religion of the state...The principles of Islamic Sharia'a are the principle source of legislation."

¹⁰¹ Lama Abu Odeh, 'The Supreme Constitutional Court of Egypt: The Limits of Liberal Political Science and CLS Analysis of Law Elsewhere', *The American Journal of Comparative Law* 59, no. 4 (2011): 985-1007.

¹⁰² Criminal Procedural Law No.50 of 1950, art.381 & Egypt Military Code, art.80.

¹⁰³ MAHKAMAT AL-NAQD MAJMUAT AL-AHKAM AL-SADIRAH MIN AL-HAYA' AL'AMMAH LIL-MAWAD AL-JINAIY'AH [Court of Cassation: Criminal Circuit, Egyptian Judicial Review] Appeal No.63, April 1, 1991, Year 42, 557 (commenting on the invalidity of soundproof glass cages blocking the defendant's vision and limiting their opportunity to communicate with counsel/present a defense).

¹⁰⁴ Crim. Pro. Code, art.381(2). See Amira M. Othman, 'States of Wait: The Death Penalty in Contemporary Egypt' (2016) 4(1) *Kohl J. for Body & Gender Res.*, 108-111 (defining both the lazy and paranoid state) ("The "extracted confession," along with the lazy legislation, give rise to a form of criminalization discourse that is utilized by the "paranoid" state to judge criminals, not crimes. The crimes, no matter how graphic, are gradually forgotten; the criminal, ..., is always present...the state uproots him/her from society, promising to make him/her disappear.")

¹⁰⁵ MAHKAMAT AL-NAQD MAJMUAT AL-AHKAM AL-SADIRAH MIN AL-HAYA' AL'AMMAH LIL-MAWAD AL-JINAIY'AH [Court of Cassation: Criminal Circuit, Egyptian Judicial Review] Appeal No.623, Oct.28, 1981, Year 32, 775 (Revocation Session Jan.26 1942, C5, 607).

¹⁰⁶ 'Arafa, supra note 16, at 63. ("The Appellate Court should be done: [I]n three months of its being lodged and the court must give its decision within a maximum of two months after the appeal has been heard...the appeal process postpones the execution. If the appeal is accepted, the court may decide to set aside the verdict appealed or submitted to it for its opinion by the prosecution and to send the case back to the court of first instance for a retrial and if the appeal is rejected, the ruling becomes final and the death penalty activated.")

¹⁰⁷ Ibid, 62. Crim. Pro. Code, arts.46, 154. The verdict in absentia is directly appealed by the presence of the convict (mere presence of the criminal) invalidates the judgment. The Cassation Court oversees resolving questions of law, not questions of fact; to confirm the validity and the compatibility of its ruling with the applicable law. The case must be terminated if the act is not punishable by law or if the investigative judge finds that there is no sufficient evidence.

¹⁰⁸ Ibid, 63. The Court of Cassation ruled "Article 381 enforces the court to get the clerk's opinion without obligation to follow his decision."

¹⁰⁹ Id. The military law does not require that military courts follow this norm.

¹¹⁰ Id. ("Moreover, the prosecution is obliged to appeal the criminal court's ruling to invoke the death penalty before the Court of Cassation, as it must be referred – on renvoi – to the Court of Cassation by the Office of the Attorney General, even if the condemned person refuses to appeal.") ("Death sentences can be appealed before the Appellate Court if the verdict is legally invalid (based on misapplication or misinterpretation of the law) or the procedural irregularities (technicalities) had an impact on the verdict."). See, e.g., Law No.57/1959 (amended by Law No.106/1962), arts. 47 & 30. See also Appeal 1/5/1961 (Appeal Rulings) S 12, No.95, p. 513.

¹¹¹ Crim. Pro. Code, art.30. Before execution – as stipulated by law – the accused enjoy the right to practice religious rituals; to be visited by his family; to hear the court's decision; not to have the execution in public (prison) along with the right to be represented by (defense council/attorney) appointed by the court if the convict does not have access to counsel. Id., arts. 470, 472, 59, 473, 274, 47, 366, 367, 395, 30, 12, & 475.

¹¹² Ibid., arts.46 & 399. The new amendment has differentiated between the full and partial absence of the mens rea element (intent or free will), in which the legal consequence(s) will be that the criminal will escape impunity and the investigation must be terminated, and the court shall rule the convict's acquittal/exoneration.

¹¹³ Ibid., art. 476.

¹¹⁴ It should be noted that life imprisonment is a mandatory offence in Egypt for aggravated killing; terrorism acts resulting in death or not; child abuse (pornography); rape; armed robbery; mugging (violent assault); drug trafficking resulting in death; high treason (spying) and optional in non-intentional killing; kidnapping; drug trafficking not resulting in death, and military offences not resulting in death. See generally Ramsis Bahnam, alNathariya Al'Aama lil Qanun AlJinae' i [The General Theory of Criminal Law] (Cairo 1997). Enid Hill, 'Mahkama': Studies in the Egyptian Legal System: Courts & Crimes, Law & Society' (Ithaca Press 1979) 11-28.

¹¹⁵ Bahnam (id.) If a person is given numerous penalties for various crimes (recidivism), they are served consecutively and not concurrently.

¹¹⁶ Egypt: QANUN ALTIFEL [Juvenile] Law No.12 of 1996, art.94. The law stipulates that the juvenile court is the only tribunal that has exclusive jurisdiction over children's criminal behavior. It regulates the procedural rules that must be followed with children who are between the ages of seven and twelve years old.

¹¹⁷ Ibid., arts. 101-111/112. One of the main values of the Egyptian criminal justice system is to accomplish social rehabilitation and discipline the accused and prescription (time lapse) negates that purpose.

¹¹⁸ A death sentence may only be pronounced by a criminal court (Article 10 of the Penal Code) following a fair trial in which the accused was afforded all means of a defence.

The Egyptian legal system does not provide for trial by jury. However, Article 381/2 of the Law of Criminal Procedures provides that the Criminal Court can only pronounce a sentence of death by a unanimous decision of its four members. Exact statistics on the number of prisoners on death row are inaccessible.

¹¹⁹ Crim. Pro. Code, arts.528, 529, 381(2), & 533. Once the ruling is appealed before the Cassation Court, it becomes irrevocable, and hence, the statute of limitations begins. See, e.g., Egypt Penal Code, art.62. It is not accurate regarding the basic living conditions of those on death row. The conditions often differ from one prison to another. In some prisons, those sentenced to death are kept separate from the rest of the other prisoners as they are placed on more restrictive rules, whereas in other prisons death row may mix with other inmates (individual or shared cells). Practically, prisons in Egypt have various problems, most notably overcrowding, a lack of appropriate health care, lack of ventilation, and inadequate nutrition and clean water.

¹²⁰ Egypt Constitution, art.155. It is a presidential decision either to cancel the sentence or to replace it even after the irrevocable.

¹²¹ Crim. Pro. Code, art.472. See, e.g., Sahar Aziz, 'Egypt's Judiciary, Coopted' (Carnegie Endowment for International Peace 2014), <http://carnegieendowment.org/sada/?fa=56426>.

¹²² Egypt Constitution, art.94. Also, "No person shall be tried except in front of his natural judge, and exceptional courts are prohibited." Id., art.97. Kristel M. Tonstad, 'Politics on Trial? Criminal Justice

and Egypt's Political Opposition in the Aftermath of July 2013' (2021) 8:1 Oslo L. Rev. 47. ("The independence of the judiciary has had times of setback, while at other times the courts have challenged the regime. The judiciary has at times fought significant battles for institutional independence, and verdicts have sometimes been 'deeply inconvenient or a security-conscious regime'. There have been areas in which the judiciary has been afforded less independence, as seen in the use of State Security Courts and when it comes to core regime interests. Authoritarian regimes frequently create exceptional and State Security courts to circumvent regular courts, resulting in a shadow judiciary that undermines the rule of law.").

¹²³ Ibid., at 63. Aziz, supra note 44, 163-169.

¹²⁴ Egypt Constitution, arts. 184, 186. "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 . . .

Interference in judicial affairs or in proceedings is a crime to which no statute of limitations may be applied" "Judges are independent, cannot be dismissed, are subject to no other authority but the law, and are equal in rights and duties [...] maintains the independence and impartiality of the judiciary and judges and prevents conflicts of interest."

¹²⁵ Egypt Penal Code, art. 142(1). However, a judge may extend this period following a hearing of both the Attorney General and the accused. The criminal procedural law silage that the period of Pretrial detention may not exceed three months . . . Or five months with the accused of a felony unless in such case a comment court orders an extension. However, in any case, the pretrial detention must not exceed one third of the maximum period of custodial penalty provided it is less than six months in misdemeanours, 18 months in felonies, or two years for life in prison or death. Crim. Pro. Code, art.143(iii)(iv)(v).

¹²⁶ Ibid. (explaining how Egyptian courts responded in an attempted transition from authoritarian rule).

¹²⁷ Ibid. (looking at rulings in cases involving political opposition and pro-democracy activists).

¹²⁸ Egypt Constitution, arts.53, 54, 55, 96, 97, & 98. The state is obliged to find appropriate means of assisting the poor with the means of legal defence. While the law does not explicitly assure the right to legal assistance at the pre-trial stage, including when the defendant is being interrogated, and the Appellate Court has ruled that statements made by the accused lack the presence of an attorney can still be admitted into court, the Supreme Court has ruled that the Constitutional safeguard should be extended to the pre-trial phases.

¹²⁹ Crim. Pro. Code, arts.124,125. It should be noted that this may be compromised in "case where the arrest was made at the time of the crime and there is need to speed up action for fear of the loss of evidence, as the investigator states on record(s)."

¹³⁰ Othman, supra note 85, at 115 (explaining the (Intentionally) Irresponsible Paper State). See also Begoña Aretxaga, (2003) "Maddening States", Annual Review of Anthropology, 32(1):396-410.

¹³¹ See Ruth Michaelson, Alaa Abd el-Fattah's Family Fear He May Be Being Force-fed in Egyptian Prison, THE GUARDIAN, Nov. 8, 2022, <https://www.theguardian.com/world/2022/nov/08/alaab-abd-el-fattah-family-fear-he-may-be-being-force-fed-in-egyptian-prison> ("The question is, is there a plan, [...] Are the consequences being spelled out if this case isn't resolved, if they don't get proof of life, if Alaa dies, if there is force-feeding which takes place, which is understood to be a form of torture." Abd el-Fattah, a writer and figurehead of Egypt's 2011 uprising, became a British citizen while incarcerated last year shortly before he was sentenced to a further five years in prison for sharing a social media post about torture."). It should be noted that International organizations has reported that Abdel Fattah among others were abused while in pretrial detention following their 2019 arrests. The abuse reportedly included beatings and torture.

¹³² See, e.g., Committee for Justice Periodic Report, EGYPT: Enforced Disappearance and Medical Negligence Lead the Violations Race in Egypt During September and October 2018, Nov. 28, 2018, <https://www.cfjustice.org/egypt-enforced-disappearance-and-medical-negligence-lead-the-violations-race-in-egypt-during-september-and-october-2018/> ("[...]inform national and international stakeholders of the ongoing conditions inside places of detention, enable families of victims and detainees to factually establish claims of illegal and inhumane circumstances that are endured, engage or demand engagement of authorities into a dialogue that can formulate coherent and consistent strategies and legislations that put an end to such violations, support prevention of impunity of human rights violations in places of detention, and to contribute to the transitional justice mechanisms that this country will or might employ at a later stage.").

¹³³ Ibid. He had been detained and arrested, because he joined a global campaign urging the government to close the maximum-security branch of Tora Prison and cofounded the League of Families of the disappeared folks.

¹³⁴ See, e.g., Mohamed 'Arafa, The Derek Chauvin Trial as a Landmark in the American History of Racial Bias, JURIST – ACADEMIC COMMENTARY, May 1, 2021, <https://www.jurist.org/commentary/2021/04/mohamed-arafa-derek-chauvin-verdict/> ("Thus, it is a judicially established concept that protects public officials from being held individually liable for constitutional violations – right to be free from excessive police force – for monetary compensations under federal law if the officials did not violate "clearly established" law. Both 42 U.S.C. § 1983 and the Supreme Court's decision in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* (1971) permit people to sue government officials for money damages when they infringe their constitutional rights. When public officials are sued, qualified immunity operates as an affirmative defense they can raise, preventing damages even if they committed illegal acts, however, it is not a defense to claims for injunctive relief. It protects police officers and other government executives from civil litigation in certain cases, granting lawsuits only when a person's "clearly established" statutory or constitutional rights have been breached.").

¹³⁵ See, e.g., Julie Deisher-Edwards, Egypt Court Orders Retrial for 152 Muslim Brotherhood Supporters, JURIST – News Jan. 24, 2015, <https://www.jurist.org/news/2015/01/egyptian-court-orders-retrial-for-152-muslim-brotherhood-supporters/>.

¹³⁶ Ibid.

¹³⁷ Mohamed 'Arafa, Egypt's Judiciary: Reform in the Criminal Justice System or Violation of International Human Rights Law?, JURIST – ACADEMIC COMMENTARY, Jan. 31, 2015, <https://www.jurist.org/commentary/2015/01/mohamed-arafa-egypt-judiciaryphp/>

¹³⁸ Ibid. ("Under the Egyptian criminal justice system, and according to Egyptian Criminal Procedural Code No. 150 of 1950, the country's attorney (prosecutor) general along with the defendants have the option to spontaneously appeals death penalties to the . . . Supreme Court (Court of Cassation), which can order a retrial and if the retrial results in the same ruling, the defense attorney may again ask the court to grant a retrial procedure.").

¹³⁹ See, e.g., Hadeer El-Mahdawy, Justice Served? The Speedy Conviction and Execution of a Monk for Murder, MADA MASR, Aug. 11, 2021, <https://www.madamasr.com/en/2021/08/11/feature/politics/justice-served-the-speedy-conviction-and-execution-of-a-monk-for-murder/> ("[...] Egypt's judicial system had raced through the investigation, prosecution, trial, appeal and execution of a monk, the first state execution of a Christian clergyman in Egypt's modern era [...] Human rights experts criticized the appeals process. "The Court [of Cassation] used the 2017 amendments to Egypt's Code of Criminal Procedure Law no. 57 of 1959, which limits the two-stage process of appeals before the Court of Cassation, abolishing key fair trial guarantees and expediting the implementation of the death sentence. The motivation of the Court to do this remains unclear, and is only presumed as a further example of the deeply unjust treatment.").

¹⁴⁰ 'Arafa, supra note 61.

¹⁴¹ Ibid. In the Egyptian penal code, death penalty can be imposed in the following criminal acts: assassination, espionage, communication with foreign countries, founding, joining and leading illegal secret organizations, and terrorism (and some scholars added political crimes – in a broad sense – without any reference to its definition).

¹⁴² Ibid. Also, authorities do not release any official data on executions (and the total executions is not available).

¹⁴³ See generally Mohammad Z. Abou' Amer, KANOUN AL-IJRA' AT AL-JINA'YAH [Criminal Procedural Law] (2008); Ahmad F. Sorour, AL-WASIT FI KANUN AL-'UQUBAT, AL-KSEEM AL'AM [Egyptian Penal Law: The General Theory] (1968) ("Thus, the timing of executions – under this administration – is used as a politicization tool of this punishment and the government have also actively publicized executions for political purposes.").

¹⁴⁴ Ibid. Mass trials destabilize the right to individual adjudication and restrict the right of access to lawyers.

¹⁴⁵ Ibid. Death sentences can only be executed where the defendant received the full due process guarantees and fair trial rights provided by domestic and international law.

¹⁴⁶ Many defendants (trying simultaneously interferes with the presumption of innocence, that is limited, as Egypt's law explicitly permits guilt by association) are subjected to a variety of violations during the investigation and before the trial; most notably: (i) investigating them while being handcuffed and blindfolded; (ii) their lawyers are not allowed to attend investigations, and (iii) they are severely tortured in order to extract confessions confess for crimes they did not commit. These acts violate Article 55 of the Egyptian Constitution, the first rule of the Standard Minimum Rules for the Treatment of Prisoners and Articles 2 and 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹⁴⁷ Crim. Pro. Code, art.302.

¹⁴⁸ Most of the cases requiring death sentences were imposed in confidential hearings, which violates the nature of trials stipulated in the Constitution, Article 187 of the Constitution reads "The court hearings are public unless the court decides its secrecy, in accordance with public order or morals, and in all cases the judgment shall be pronounced in public hearing." Also, "[a] trial must be held in public except in cases where confidentiality is mandatory, concerning public order/morals, and that the sentencing hearing should be public in all cases, even if the trial hearings or part of it are confidential." Crim. Pro. Code, arts.268, 303 (secret camera hearings).

¹⁴⁹ The crimes don't allege explicit activities, but, rather, proximity to an event or membership in a group.

¹⁵⁰ Crim. Pro. Code, art.310.

¹⁵¹ Murielle Parabelle, 'The Notion of "Person" between Law and Practice: A Study of the Principles of Personal Responsibility and of the Personal Nature of Punishment in Egyptian Criminal Law' in Baudouin Dupret (ed), Standing Trial: Law and the Person in the Modern Middle East (I B Tauris 2004) 233, 239-40.

¹⁵² Crim. Pro. Code, arts.384, 386 (explaining the approach to retain the death penalty in response to the rising incidence of violence in society, and its deterrent nature).

¹⁵³ Ibid., arts.388 & 467.

¹⁵⁴ Hafez Abu Seada, 'Exceptional Courts and the Natural Judge' in Nathalie Bernard-Maugiron (ed), Judges and Political Reform in Egypt (American Univ. in Cairo Press 2015) 167, 172.

¹⁵⁵ Law No.57 of 1959. The Court of Cassation no longer serves as this check. See, e.g., Court of Cassation, 'Revoking the Death Sentences in the Case on the Events of Matai Police Station in Minya', <https://manshurat.org/node/1255>.

¹⁵⁶ Bahnam, supra note 23, at 58. It has been argued that judges in Egypt "never put forward their discourse from a liberal perspective based on individual, citizens, or voters' rights." Sherif Younes, 'Judges and Elections: The Politicization of the Judges' Discourse' in Nathalie Bernard-Maugiron (ed), Judges and Political Reform in Egypt (American Univ. in Cairo Press 2015) 151, 159.

¹⁵⁷ Ibid., at 49-50. The judiciary may feel threatened by pro-democracy defenders in as much as their demands for political and socio-economic change entail judicial responsibility.

¹⁵⁸ Ibid. It should be noted that military court sessions can be locked to the public/media, and the court may ban dissemination of the sessional information. The defence has restricted rights to review the case file and documents considered "classified" can't be copied. Any appeal that goes to a higher military court suffers from the same deficits. Sahar F. Aziz, 'The Expanding Jurisdiction of Egypt's Military Courts' (Carnegie Endowment for International Peace 2016), <https://carnegieendowment.org/sada/64840>.

¹⁵⁹ Ibid.

¹⁶⁰ The financial contribution fixed for supporting actions towards the abolition of the death penalty (and enhancing human rights agenda) amounted to EUR 8 million, assigned to in MENA countries (Yemen, Jordan and Egypt).

¹⁶¹ Also, it articulated deep concerns about the application of the death penalty on minors and on mentally retarded or intellectual disability individuals, and called for this practice to be instantaneous and conclusively halted.

¹⁶² Further, to minimize the exceptional tribunals/terrorist circuits in criminal courts to curb political opposition. Also, to comply with all reporting obligations; to ratify the Second Optional Protocol to the ICCPR; the Rome Statute of the International Criminal Court; and the Optional Protocol to the Convention against Torture (to lift limits within national legislation or practice that limit NGOs tasks). Also, to conduct comprehensive investigations into the reports of arbitrary detentions and for detainees to be lawfully eligible to challenge the validity of detention and bring perpetrators to justice and taking measures to prevent their impunity.

¹⁶³ William Schabas (2000) 'Islam and the Death Penalty' *Wm. & Mary Bill Rts. J.*, 9, 229 – 234. A comparison is drawn between Islam and Christianity arguing that whilst the Holy Bible also considers the use of capital punishment for select offences such as adultery and rape, it is rare for this to be used as an argument in support of capital punishment by Christian scholars.

¹⁶⁴ Carlo Guarneri and Patrizia Pederzoli, 'The Power of Judges: A Comparative Study of Courts and Democracy' (Oxford Univ. Press 2002) 15.

¹⁶⁵ Anthony G. Amsterdam and Jerome S Bruner, 'Minding the Law' (Harvard Univ. Press 2000) 140 - 141.

¹⁶⁶ Nathan Brown, 'Tracking the "Arab Spring": Egypt's Failed Transition' (2013) 24(4) *Journal of Democracy* 51. See also Robert Postawko (2001) 'Towards an Islamic Critique of Capital Punishment' *UCLA J. Islamic & Near EL*, 1, 318-320 (contending that Muslim States deriving their law from traditional Islamic law, are two entirely different concepts. The application of Islam in the criminal justice system in relation to capital punishment is a manifestation of modern Muslim governments rather than an application of Sharie'a law). She argued that any interpretation of Sharie'a law that permits capital punishment is merely a modern interpretation that twists the idea of restitution into support for capital punishment when on the contrary the Qur'an emphasizes that, even when it comes to Qisas offences which are generally what constitutes the use of the death penalty, it is more important to offer forgiveness than to seek vengeance). 'Arafa, supra note 38.

