



Egypt

National Security Prosecution's ten deadly sins

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Most political theories that are related to regulating the relationship between the individual and the State are based on the conviction that believes that the individual's total existence gets completed only by being a part of a State that pushes him toward higher values, which makes any violation against him a violation against the idea on which the State itself was established, and just as a positive relationship between the individual and the state can only be achieved through law a negative one can also be achieved through law.

Individual freedom is considered to be a well-established principle and any restriction set on it should be established through a legal provision that justifies it clearly, and cases in contrary to that is what we call abuse of law or arbitrariness.

And perhaps a victim of an arbitrary detention appears to be a single individual but actually it is a societal punishment that affects the detainee's family who suffer from fear for their son's or daughter's fate.

As an example, Shady Abu Zeid's father died while his son was in detention, and his mother right now is fighting illness without even having an opportunity to see her son or visit him, Shady was detained for 21 months pending investigations in case No. 621, and he was released with precautionary measures but the Public prosecution rushed and included him in a new case under the No. 1956/2019, a legal case that was built while he was in detention.

Once one is arrested by State's forces, a series of procedures that are supposed to guarantee and strike a balance between the individual's rights and society's rights in peace and security starts, and the tool that enable striking this balance is the law, through applying its provisions on all equally, but the real problem starts when authorities do not respect law.

And it can be said that the law's attempt to estimate arbitrariness in the most accurate stages of its application reflects the seriousness of the equation as it reflects its association to the existence of society and the contract governing it. This will be presented through a set of rules and principles of international law, as explained by the group working on arbitrary detention at the United Nations.

But before illustrating details about the Egyptian law and the repetitive violations made to it and to human rights, we must mention the means of assessing arbitrariness and their effects on the indi-

vidual's freedom to think, express and move and all his other rights. The first approach to assessing arbitrariness is to look closely and consider the legal mechanisms of arbitrary detention in Egypt, and may be calling it a mechanism at all, as poor as it is feels ridiculous yet the aforementioned description applies if instruments of repression are brought about to reality through manipulating legal texts and provisions. And those facts made the group working on arbitrary detention at the United Nations include all provisions and norms associated with the justice system as a whole while assessing the subject of arbitrary detention.

According to this team, deprivation of liberty freedom becomes arbitrary in three cases which are as the following:

- When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (Category 1)
- When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights (Category 2)
- When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (Category 3)

As mentioned in the Committee for justice's Detention Watch project half-year report, Egypt has witnessed 638 cases of arbitrary detention during the first half of the year of 2019, out of 4,820 violations, and the numbers get even bigger when we follow the details of the violated legal principles which make every arrest becomes arbitrary and a blow to freedom.

And As Amnesty International reported State Security Prosecution became an "evil tool for repression" as it does not provide during legal proceedings fair trial guarantees imposed by international law, it examines issues arising from the legitimate exercise of legally guaranteed rights and freedoms, as several activists were referred to trials because of their political stances and opposition to existing governance policies which makes the whole course of litigation from arrest to the handing down verdict falls within arbitrariness in the first place.

For example, detention decisions presumably should have justifications to deprive individuals' freedom, i.e. legal evidence that makes detention legitimate. Security forces in Egypt intentionally detain human rights activists and defenders on fabricated charges, and that what exactly happened to Esraa Abd El-Fatah who was subjected to investigation and torture without any evidence or proof for the charges, Esraa is still detained in prison since 12 October 2019.

And 2014th report of the group on working on arbitrary detention at the United Nations included cases of Mohamed Mohamed Morsi Issa Al-Ayyat, Ahmed Abd El-Aaty, Essam El-Haddad, Khaled El-Kazzaz, Abdul Majeed Mashali, Asaad Al-Sheikha and Ayman Aly as 3rd category arbitrary detention where fair trial conditions did not exist as provided by the law especially with the political usage of trials inside and outside courts where authorities justify their behavior.

Arbitrary detention is usually accompanied by a violation of the internationally guaranteed presumption of innocence doctrine, as security forces allow themselves to commit all kinds of violence and insults against detainees.

The security forces issues their own verdict on the detainees from the beginning, they consider them accused until otherwise, especially since several arrests are made without permission from the prosecution, and later, the detainees get systematically subjected to torture to extract statements and confessions from them, and then they are referred to trial. Security forces intentionally falsify dates of arbitrary detention to erase the real date of arbitrary detention and whatever crimes criminalized by international law and humanitarian international law that accompanies it as torture and forced disappearance.

After the end of the detention period pending a legal case detainees are usually included in another case, or referred to the department specialized in terrorist cases, for example, those who were detained pending proceedings in the legal case that is known as "Downtown oppressed victims"

Detention Watch project half-year report

Committee for Justice



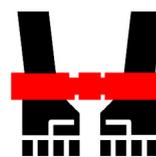
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violations



923

Enforced disappearance



638

cases of arbitrary

case" faced this situation when they were released when the provisional detention legal period terminated, their case was referred to Court Circuit 21 Terrorism, and that procedure prolonged their detention, and the aforementioned working group's report confirms that every unjustified prolongation makes the arresting procedure void and is considered arbitrary automatically even if the procedure was legal in its form, but the fact that it was misused arbitrarily in fabricated cases or void charges or intentionally prolonged makes it arbitrary according to the United Nations' group consideration.

Arbitrary detention periods are renewed according to the aforementioned manner which is releasing those who were detained for weeks or months and then detain them pending new legal cases with the same charges, the human rights lawyer Mahienour El-Massry and the lawyer Mohamed Hamdoun faced this situation. The other way is through issuing releasing decisions for detainees without implementing them, as they disappear for a period of time and then suddenly appear detained pending a new case proceedings, a clear example of this is "Al-Etihadya parade case" as detainees remained detained despite the fact that their preventive detention period legally terminated, and there were even some of them were granted a release on bail by a court decision, but despite that, eventually they were not released. It is worth noting that this fact contradicts with the international standards for judicial independence, and that latter doctrine represents two basic elements in modern democracy, namely the rule of law and the separation of powers. Article 14 of the International Covenant on Civil and Political Rights affirms judicial independence which in practice means, partially, the non-politicization and exploitation of judiciary for the benefit of a certain party.

As pointed out by Amnesty International, the authorities' practices in Egypt created what can be called a "revolving door" through an arbitrary detention's system in civil judiciary, but anyway military judiciary has also contributed to it too.

The group working on arbitrary detention at the United Nations pointed out the negative role played by military courts, as this role is classified under the 3rd category of arbitrary detention.

In principle, this group views a clear contradiction in values which the military courts' composition cannot correct or resolve, it is a contradiction that does not lead primarily to the denial of justice, but rather to direct injustice, as while a civilian judge is presumed to be independent, the military judge operates within a special hierarchy imposed by his militaristic profession, in which this profession is held more valuable than his work as a judge. It is worth to be noted that during the reign of Hosni Mubarak more than 12,000 were referred to military courts, and those figures significantly increase during President Al-Sisi's reign who issued Law 136 of 2014, which provided the military the authority to protect public and governmental facilities for two years. More than 7,000 civilians were subject to this law's provisions within two years of passing this law. In principle, these figures fall with in the 3rd category given the absence of fair trial conditions which provide that civilians should be tried only before civilian courts, an indication for that, the Egyptian parliament extended the implementation of Law 136 of 2014 for an additional five years until 2021.

The aforementioned contradicts with constitutional democracy, its conditions and several international texts and provisions. These conditions fulfill the international community's tendency since the two world wars to devote human principles in societies and nations as a tool to avoid wars as it fulfills the concern of maintaining each country's internal peace which relates directly to the system of government and the social contract that exists in it. The "Social contract" theory assumes

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that the State is formed according to a contract whether between the ruler and those who are ruled as John Locke viewed it or between those who are ruled and each other as viewed by Thomas Hobbes, while the social contract according to Jean-Jacques Rousseau is a pact whereby individuals assign themselves to a bigger community as a part of it and by this the contract ends the State of nature and steps towards forming a community is taken where sovereignty and authority become a right for the community as a whole not a single individual. Hobbes, Locke and Rousseau agree that if the state fails to play its part, the contract will be rescinded. Consequently, the individual returns to the state of nature in which he is forced to rely on himself, and therefore he is authorized to use whatever means he deems necessary and beneficial to ensure his survival, in which he himself is the only one with the authority to decide those means.

Experts discuss throughout the time the question of which crisis is more dangerous to the Egyptian State, the security crisis, the economic one or freedom's crisis, but actually the most dangerous crisis in the recent years was the lack of respect to rule of law, as the State does not respect it in most its actions whether by taking illegal measures, or manipulating laws and circumvent the law and constitution or through issuing unconstitutional laws that would continue to be in force for years before they being considered by the Supreme Constitutional Court, we have witnessed that in issuing laws for protest, civil action and organizing the judiciary, and also when laws were circumvented to sell Tiran and Sanafir islands, which witnessed a real legal farce, and thus, between a brutal executive authority, complicit legislative, and a powerless judiciary, a citizen can no longer resort to law in any of his life's affairs.

Perhaps the worst step in losing confidence in rule of law was embodied in the involvement of the judiciary in the political battle between the regime and citizens. After the state of emergency lasted 30 years during the reign of former President Hosni Mubarak, the various systems shifted from using political detention to fabricating legal cases for opponents as a kind of legalizing repression, and During the Supreme Council of the Armed Forces reign thousands of civilians were tried before the military courts, and after that, during the reign of former President Mohamed Morsi, detainees returned to appear before regular civil judiciary which had some honorable stances in supporting detainees, but it was the beginning of pre-trial detaining on precautionary measures for long period which the July 3 regime continued extensively.

This all started when former president Adly Mansour issued an amendment to the Criminal Procedure Law that allowed prolonging periods precautionary detention, when the demonstration law was issued and when special court circuits was formed to consider precautionary detention decisions, the ones which is called "Terrorism Circuits", and eventually The Public Prosecution had begun to favor issuing the decisions of precautionary detention without consideration or review which led to the continuing detention of detainees for months and years without reckoning or trial.

This involvement of judiciary in the political conflicts and the consequent loss of the judicial system's independence and prestige and its transformation into a tool in the hands of the executive authority is very evident in the State Security Prosecution's transformation from prosecution specializing in issues related to national security, dealing with terrorism, espionage and attempts to overthrow the regime by force to prosecution for judging citizens for their political opinions

and activists for their posts on social media, moreover an accusation as “joining a terroristic organization” become ridiculous as it people are being charged with it without any real evidence or a real cause, it became just a cliché for legal cases so as to be referred to State Security Prosecution and fall with in its scope of jurisdiction.

Originally, the Supreme State Security Prosecution is one of the specialized prosecution offices, and its jurisdiction was established according to the decision of the Minister of Justice which was published in No. 22 of the Egyptian Gazette and issued on 12 March, 1953, and it is specialized in dealing with serious cases It is the prosecution that investigates issues related to the country's internal and external security, political issues, and espionage, and it has the right to issue a decision prohibiting publication in any issue when necessary.



The Supreme State Security Prosecution is also specialized in acting towards crimes and misdemeanors harmful to the security of the government committed abroad and within borders, bombings crimes, bribery and misdemeanors related to religion and misdemeanors that occur through newspapers, or other means of publication if the victim is a public official or a person with a public prosecution capacity or in charge of a public service, crimes of strikes and inciting it, assaulting the right to work, its freedom, and stopping it in public offices and facilities gathering, public meetings and demonstrations in public roads, and crimes related to maintaining order in educational institutes.

The jurisdiction of the State Security Prosecution also includes considering crimes related to protecting national unity, crimes related to freedom of the country and citizens, crimes related to the political party system amended by Law No. 36 of 1979, and crimes of issues related to supply, forced pricing, determination of profits and decisions enforcing them.

Comparing to Public Prosecution, the State Security Prosecution has many advantages the most important of which is its authority in precautionary detention, as the general jurisdiction of the prosecution in precautionary detention is to detain for a period of 4 days before referring to the opposition appeal judge to consider whether to renew detention or not, but Article 206 bis of the Criminal Procedure Law allows State Security Prosecution to renew detention for a period of 105 days without referring to a judge, and after the termination of this period the detainee shall be referred to a criminal court circuit to consider the matter of renewing detention.

And DAAM Center has issued before two research papers about State Security Prosecution violations but with the continuation of violations and their increase, we have found it important to monitor the legal sins committed by the prosecution on a daily basis with negligence and lack of awareness that such actions promote forming a lawless state.

The State Security Prosecution has consistently violated one of the most important legal principles

that the Egyptian Court of Cassation promoted regarding the necessity of validity of investigation procedures as it stated that : "Procedural legitimacy, whether related to the investigator's neutrality or related to ensuring the accused person's personal freedom and human dignity and taking due care of defense rights are all legal constants that were upheld by the Constitution and the law and the judiciary was always keen on protecting them, not for a personal interest but because they aim to achieve a public interest which is protecting the doctrine of presumption of innocence and providing reassurance for the people to the justice of the judicial system"¹

The ten deadly sins

1 - Preventing Lawyers from entering Prosecution facilities or attending interrogations with defendants

[Article 54 of the Egyptian constitution states that:](#)

Personal freedom is a natural right which is safeguarded and cannot be infringed upon. Except in cases of in flagrante delicto, citizens may only be apprehended, searched, arrested, or have their freedoms restricted by a causal judicial warrant necessitated by an investigation.

All those whose freedoms have been restricted shall be immediately informed of the causes therefor, notified of their rights in writing, be allowed to immediately contact their family and lawyer, and be brought before the investigating authority within twenty-four hours of their freedoms having been restricted.

Questioning of the person may only begin once his lawyer is present. If he has no lawyer, a lawyer will be appointed for him. Those with disabilities shall be provided all necessary aid, according to procedures stipulated in the law.

[Also Article 124 of Criminal Procedures Law states that:](#)

"In cases other than flagrante delicto and urgency out of fear of loss of evidence, no investigator in a crime may interrogate a suspect or confront said with other suspects or witnesses unless the relevant lawyer, if available, is present. The suspect shall state the name of the lawyer thereof in a report written at the court registry or to the warden of the prison or the investigator, the lawyer also has the right to carry out this report, and if the suspect did not have a lawyer or his lawyer was not present or did not attend after being informed, the investigator shall appoint a lawyer for the suspect"

[Article 139 of Criminal Procedures Law states that:](#)

"Any person arrested or placed in temporary detention shall immediately be informed of the reasons thereof."

The tragedy began in the State Security Prosecution in 2015 when the lawyers were surprised when they entered the building of the State Security Prosecution at the Fifth Compound Courts to conduct their work, that the security forces, along with some employees in the Prosecution Building who wore civilian clothes, prevented them from entering the Prosecution building and obliged them to stand on the streets and hand over Their requests are from outside the iron fence that surrounds the building, then return after four o'clock in the afternoon to receive the response from the same place, without being able to enter the headquarters of the prosecution or meet the members of the prosecution or its chiefs or administrative staff. Lawyers were forced to wait for the response in the streets next to the iron fence for hours.

Prevention began by strictly restricting access to the prosecution as lawyers were not able to enter it freely along with the absence of information about interrogations with suspects and defendants or knowing the court sessions time as the prosecution got used to randomly refer defendants to court and thus their lawyers were not able to attend and represent them.

Some Lawyers challenged this prevention by appeal before the Administrative Court and the Supreme Administrative Court handed over a verdict deciding allowing lawyers to enter the Prosecution's building, but this verdict is not applied up till now. ²

¹ - Appeal No. 18753 of the legal year 65 / session 12/15/1998 S/49 p. 1456

² - The full legal reasoning for the Supreme Administrative Court's verdict upholding the rule to

After beating this obstacle, lawyers finally entered the Prosecution's building to obtain information about their arrested clients who have often been detained for more than the 24 hours stipulated by law, and some of them have been forcibly disappeared for weeks or months, Lawyers usually face denial when asking about the exact information regarding the time the client spent in detention or arrested. And if the Prosecution member wanted to interrogate the defendant - as a preliminary investigation – Prosecution waits till the end of the day to make sure that lawyers are gone away or even worse than that as when the Prosecution member rejects to let the Lawyer attend the interrogation with the defendant in order to be able to be alone with the defendant and violates his/her legal rights.

The aforementioned is a clear violation to the amendments set by Law No. 145/2006 to interrogation provisions which was stated in Article 124 of the Criminal Procedures Law and Article 54 of the Egyptian Constitution which is:

The obligation to call the lawyer of the defendant in the misdemeanor punishable by imprisonment, and that shall be, before being interrogated or confronted with other defendants or witnesses, and this guarantee was limited only to the amendment of the felonies.

Obligating the investigator, all by himself, to assign a lawyer to attend interrogations and confrontations if the defendant did not have a lawyer or his lawyer did not attend after being called in misdemeanors and felonies punished by imprisonment and the public treasury shall bear the fees of the assigned lawyer, and this guarantee was only available at the trial stage in felonies.

Stipulating in the last amended paragraph of Article 124 on the attending lawyer's right to state in the transcript any demands, requests, defenses or observations.

Prevention began by strictly restricting access to the prosecution as lawyers were not able to enter it freely along with the absence of information about interrogations with suspects and defendants or knowing the court sessions time as the prosecution got used to randomly refer defendants to court and thus their lawyers were not able to attend and represent them.

The Egyptian Court of Cassation decided that "Pleading abatement of the defendant's interrogation procedures in a felony, and his confession that was extracted as a result of the non-attendance of his lawyer, while he did not clearly give up his right to call his lawyer is an essential defense, as it is related to the defense's right and freedom and original guarantees set by law to protect the defendant's rights, and thus, the court is obliged to respond to this pleading, and if it neglected that, its verdict shall be deemed to be void for lack of sufficient legal reasoning" (29/10/1968- Court of Cassation Verdicts- S/19- k/176- p.891)

Undoubtedly after the amendments set forth in the law, this verdict and other verdicts became even more powerful legally for being related to freedom of defense and original guarantees set by law to protect the defendant's rights, in addition to that, the promulgation of 2014 Constitution which obliged in Article 54 the Lawyer's attendance before starting interrogation with defendants changed Article 124 of the Criminal Procedures Law regarding this exception, and thus, it became illegal to start interrogating suspects with the attendance of their lawyers in all cases.

2- Ridiculous accusations without any serious investigation

Law No. 145/2006 amended the Criminal Procedures law:

It restored balance between protecting personal freedom and protecting the community, and thus, enable lawyers to enter the building of the State Security Prosecution," The Egyptian Center for Economic and Social Rights, 10/09/2017".

Professor Fathi Sorour views that this balance is no longer limited to judicial decisions but became a popular will registered through provisions of law 3

And of the most guarantees mentioned in this amendment, is the non- permissibility of being subjected to precautionary detention without being interrogated:

This guarantee is set according to Article 134 of Criminal Procedure Law, and it is applied in Public Prosecution investigations according to the legal referral stated in Article 199 of this law which included in its provisions that the defendant may not be subject to precautionary detention unless he/she was interrogated.

The judge Sery Mahmoud Syam, Former Vice-President of the Court of Cassation, confirms that the word interrogation here means:

Discussing in details and facing the defendant with charges and accusations, he also stressed the point that this guarantee is an important one for applying precautionary detention, which if not applied properly detention shall be void and consequently any procedures or evidence related to it, which in fact increases the importance of this guarantee.

If prior interrogation and questioning is a condition for the validity of issuing a precautionary detention order, then consequently the validity of renewing and extending this detention is conditioned with hearing the defendant's statements according to Articles 142, 143, 202 and 203 of Criminal Procedures law, a procedure that if neglected, the issued order to extend and renew precautionary detention shall be void.⁴

And Professor Abdel-Raouf Mahdi stresses the necessity of interrogating the defendant before being held in precautionary detention, as it is one of the most important guarantees for the investigation's validity because the interrogation provides the opportunity for the defendant to discuss the evidence against him/her and answers the related questions.

And the need for the defendant to know the truth and details of accusations is the essence of the prosecution's preliminary investigation process, and this investigation is a very important process in paving the way to truth without violating legal defense rights and the defendant's personal freedom, as this is the stage where the paradox of balancing the protection of defendants' rights and freedom with the community's interests. Investigators intentionally use some legal articles and violate the defendant's personal freedom through applying precautionary defendant, searching his/her home, accessing his personal correspondences.

This prejudice to the defendant's freedom and rights should only be achieved after being questioned and interrogated

3 - Professor Ahmed Fathi Sorour, The Judge's Sery Mahmoud Syam Book on precautionary detention in the Egyptian law in light of newly legislated guarantees according to law no.145/2006 ,

4 - Professor Ahmed Fathi Sorour, The Judge's Sery Mahmoud Syam Book on precautionary detention in the Egyptian law in light of newly legislated guarantees according to law no.145/2006, Dar Al-Shorouk, p.55

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about the charges in details without negligence, so as to allow the defendant to defend himself/herself and if the investigator intentionally neglected to inform the defendant of the charges in details he loses his assumed neutrality, as investigators should be totally neutral while performing their investigations, and later one during the stage of the legal proceedings of the case they may lose it as they turn into an opponent in court and that is normal.

Hence, throughout the preliminary investigation stage, the investigator must not abandon this neutrality formally and substantially which means that he has a burden to keep the investigation authority away from authoritarian, and away from committing serious negligence, deviation from public interest, or abuse of authority while investigating and dealing with the defendant and his/her lawyer.

[Also Professor Ahmed Fathy Sorour confirms that defendants' interrogation should have guarantees of legal defense:](#)

Knowing charges: the defendant should be informed with charges so as to be able to defend himself/herself and prove his/her innocence, and in this regard the nature of the information provided and its timing is two essential elements for preparing his/her legal defense.

[And Professor Raouf Ebaid defines arrogation as following:](#)

There is a difference between interrogating defendants and questioning them, as interrogation requires in addition to question them about charges to face them with evidence against them, and discussing this evidence in details, so as the defendant can plead guilty and confess or deny them if he/she wants to.

By applying these legal rules and jurisprudence opinions on National Security Prosecution, we find that there is an accusation that is usually formerly prepared for whoever enters the Prosecution which is (joining a terroristic organization with knowledge of its terroristic objectives), and when the defendant ask about the kind of nature of this organization the Prosecution replies without mention the organization's name or its terroristic objectives, or how the defendant was able to join them or even the statement and acts carried out by the defendant that constitutes a participation in achieving their objectives, or how was he/she able to know about this organization and intentionally participate in achieving their objectives which usually pushes the defendant to adhere to his/her right to remain silent.

[The second accusation that the Prosecution usually charges the defendant with is:](#)

Deliberately broadcasting and publishing false news, rumors and statements that may disturb public security and terrorize people

[The third accusation that the Prosecution usually charges the defendant with is:](#)

Misuse of a social media by broadcasting and disseminating false news, rumors and data

[And if the Defendant adhered to his right to know charges in details:](#)

The prosecution refrains from that.

"The aforementioned confirm the fact that interrogating defendants contradicts with the law as illustrated above, as of its elements are provided in a vague manner and inadequate regarding the defendant's knowledge of charges set against him, and what statements or actions he committed which constitutes the moral and material conditions set for the crime he committed and attributed to him"

3- Depending on false evidence

When the legislator allowed the procedure of precautionary detention legally, he did not stop at condition the perpetrators crime should have a certain degree of seriousness but he set a condition that there should be enough evidence regarding the committed crime as Article 134 of Criminal Procedures stated that clearly. And assessing evidence is a discretionary power left to whoever holds the right to issue the decision of prolonging precautionary detention.

And jurisprudence tends to believe that if the competent court determines that if there is no suffi-

Hence, throughout the preliminary investigation stage, the investigator must not abandon this neutrality formally and substantially which means that he has a burden to keep the investigation authority away from authoritarian, and away from committing serious negligence, deviation from public interest, or abuse of authority while investigating and dealing with the defendant and his/her lawyer

Professor Ahmed Fathi Sorour

cient evidence for the charges that with it the decision to subject the defendant to precautionary detention can be justified, this decision and related procedures shall deemed void and null as well as any evidence based on such a procedure.

And since the Prosecution does not accuse defendants of any real charges but rather mere statements that is not identified clearly, and thus it normal to say that these accusations are built upon mere inquiries and transcripts that have no legal effect.

And most of the evidence that supposedly convict defendants in National Security cases is that one of the National Security officers issued a repeated copied transcript from dozens of previous cases describing the participation of the defendant in an unspecified organization to publish and spread unspecified rumors through an unknown means of communication and then include a list of names and that is sufficient to the Prosecution to remand them on precautionary detention for months and years without investigating the charges.

And if the officer decided to make some effort he will refer to the case's exhibits which are usually the defendant's mobile phone or laptop and send them for technical examination which usually does not issue a report.

The State Security approach to be fully reassured to inquiries contradicts with what the Egyptian Court of Cassation "Inquiries only represent the opinion of whoever carry them out and are subject to possibilities of validity and invalidity, truth and lies which can only be determined by knowing their source and intent, so as the judge can uses his discretionary authority over the evidence, assess its value and whether its valid or not, useful to the case or not".⁵

The court of cassation also stated that:

"Inquiries do not stand alone as evidence or proof, it can only be used to support evidence"

And even the National Security Court itself stated that:

"the court noticed that these inquiries and transcripts was prepared and submitted to the Public Prosecution which in turn referred them to the court based on the fact that National Security officers obtained them from their sources who they never revealed, and thus those are inquiries and information of an unknown source, this vagueness surrounding the evidence raises suspicions about the integrity and seriousness of the information provided to officers, as this information may be an exaggeration, intimidation, incarnation or exploitation of a certain situation.

And also those officers, when they received this secret source information added some other information that was previously known to them, and submitted all this information to Public Prosecution in the form of transcripts and inquiries"

This mixture of information that was based on unknown sources and acquaintance, and opinions that were based on deduction and analysis cannot be relied upon to support evidence that proves the criminalized act committed"

And also Article 24/2 of Criminal Procedures Law states that:

"All procedures taken by legally competent officers should be recorded in transcripts signed by them stating the time of taking the procedures and the place of their occurrence. These transcripts

5 - Appeal No. 17759 - for the judicial year 64 - session 3/20/2000 technical office 51 page number 320

in addition to the aforementioned, the signatures of the witnesses and experts who were heard, and these papers should be referred to the Public Prosecution in addition to exhibits”

4- Rejecting to assess acquittal evidence and lack of investigations' developments

According to Article 134 of Criminal Procedures Law:

Legal justifications of precautionary detention decisions are: fearing that the defendant might escape, or fearing the investigation might be affected negatively whether by threatening or bribing witnesses or victims, or tampering with material evidence and proofs or by making agreements with the rest of the perpetrators to change the truth or obscure its features.

Article 381 of Public Prosecution's instructions also illustrated that:

Precautionary detention is one of the investigation procedures measures that aim to guarantee the investigation's integrity through placing the defendant under the authority and control of the investigator and facilitating his/her interrogation or confrontation whenever the investigation requires that, and preventing him/her from escaping and tampering with the case's evidence or affecting witnesses or threatening the victim, as well as protecting the defendant from possible revenge and calming the revolting public feeling against him/her because of the gravity of his/her crime.

On the other hand, defendants and their lawyers often submit acquittal evidence, as evidence related to arresting the defendant days or just months before issuing the inquiry transcripts or the complete lack of connection between the defendant and the organizations he/she is charged with joining “ as accusing communists of joining the Muslim Brotherhood” but the Prosecution usually turns a blind eye to these evidence and even reject to hear rebuttal witnesses if a lawyer demanded them to be heard, which is a clear case of violation to rights and guarantees of the proper conduct

Lawyers must be allowed to review investigations one day prior questioning or confrontation unless the judge decides otherwise, and in all cases it is not permissible to separate the defendant from his lawyer who represents him/ her during the investigation

of carrying out investigations.

“As a matter of fact, there are no investigations carried out by the State Security Prosecution, but rather it has turned into a justification for violating the law and continuing attempts to obscure legal reasoning and distort the judiciary.”

5- Failure to provide protection for defendants

One of the most important roles played by Prosecution during investigations is:

To protect defendants from any violations that he might be exposed to, especially from police forces as the Prosecution is supposed to be a “fair opponent” in criminal cases, as its role originally is to be a defender of society and law and to be concerned with protecting everyone.

The aforementioned does not happen at National Security Prosecution which often the one is committing the greatest number of violations against defendants, and several testimonies from defendants before the State Security Prosecution confirmed that investigators assaulted them physically.

And among the multiple violations of laws committed, not responding to distress calls for defendants is the one that is usually repeated systematically who usually attend investigations in a very bad state before Prosecution after being tortured at the National Security which threatens them in order not to reveal torture marks during investigations or prove it in the transcripts, And if the defendant proved the torture committed against him and revealed that fact, investigators ignore these facts and usually the defendant suffer after that from more violations and torture, and the Prosecution does not even take simple alternative procedures as transferring him/her from the

detention facility or prison where he/ she was assaulted or tortured to another one.

6- Refusing reviewing documents and appeals:

One of the foundational legal defense principles is that:

Lawyers have the right to review all the legal documents of the case and all evidences and proofs that prove the charges against defendants who he/she is defending, and that principle was affirmed by Article 125 of the Criminal Procedures Law: "Lawyers must be allowed to review investigations one day prior questioning or confrontation unless the judge decides otherwise, and in all cases it is not permissible to separate the defendant from his lawyer who represents him/ her during the investigation"

Also Article 52 of Legal Practice law provides that:

"Lawyers have the right to review lawsuits and judicial papers and obtain data related to the lawsuits he/she assume, and all courts, prosecutions, police departments, real estate registry departments and other bodies in which lawyers practice their profession must provide him with facilitations required to carry out his/her profession and enable him/her to review documents, obtain data, and attend investigations with his/her client in accordance with provisions of the law, his requests/her may not be rejected without legal justification, and what happens in court sessions should be mentioned in the transcripts"

And all that does not happen at all at the State Security Prosecution, as whether the lawyer was able to attend investigations with or whether he/she was prevented from attendance and chose to submit an application requesting to copy and review documents as his/her request would be rejected by the Prosecution, which violate all laws and judicial customs. It even contradicts with legal defense logic as how would a lawyer defend his client without knowing the charges and the evidence proving them?!

It should be noted that this situations may continue to exist for years while investigations proceed as lawyers go to investigations and defend clients depending on their experience without being able to distinguish a legal case from another for absence of facts.

The possibility of appealing and challenging the issued detention order is a legal guarantee granted to defendants in accordance with the provisions of Articles No. 164, 166, 167, and 168 of the Criminal Procedure Law, which allow defendants to challenge his/her detention order or decision before a judicial authority higher than the one that issued the challenged decision.

And on principle, and legally speaking, the appeal should be reviewed within 48 hours to take a decision in it or else releasing defendants becomes legally binding, but National Security Prosecution – as the case in any other legal request- rejects the appeal application submitted and thus detention decisions turn into final judgments that cannot be challenged in any way.

7- Exceeding precautionary detention legal periods:

The Code of Criminal Procedure limits the Prosecution's discretionary powers in:

Deciding detaining defendants as a precautionary measure, as Article 143 stated clearly that: "in all cases, precautionary detention periods pending preliminary investigations and in all criminal trial proceedings should not exceed one-third of the maximum depriving of liberty penalty, so that it should not exceed six months in misdemeanors and eighteen months in felonies, and two years if the punishment prescribed for the crime is life imprisonment or death.

Nevertheless, the Court of Cassation and the Court of Referral, if the punishment prescribed for the crime is death or life imprisonment to detain the defendant as precautionary measure for renewable forty five days without being restricted by the aforementioned periods."

And since the State Security Prosecution always includes accusations of joining a terrorist organization the expected punishment for the accused reaches the death penalty, and thus the maximum period of precautionary detention according to the law becomes two years, but this rule is usually violated and the Prosecution ignores this time limit restriction. And that happened to the journalist Hehsam Jafar whose detention exceeded three years before being released.

8- Putting together suspects and defendants randomly:

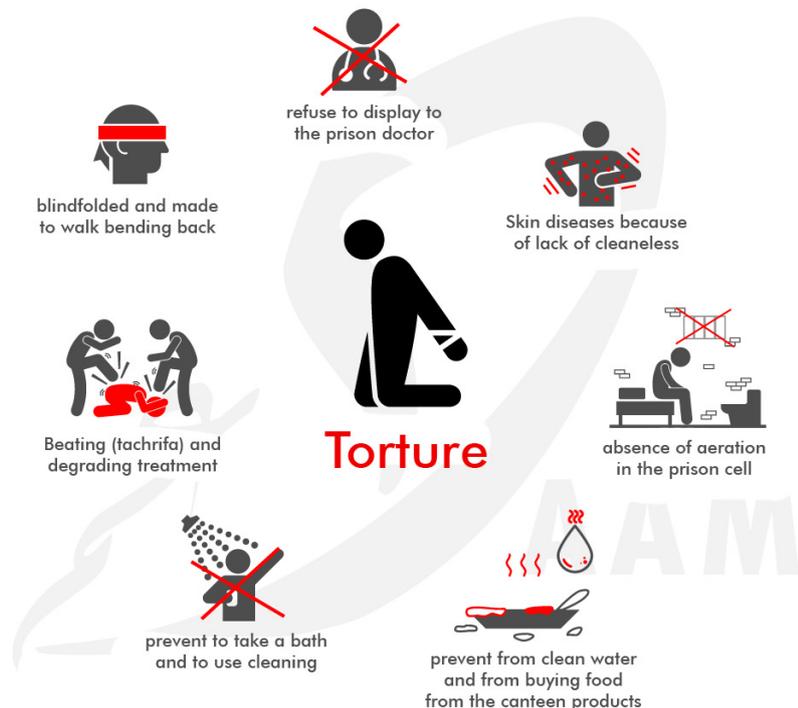
One of the well-established principles is that:

In any case, defendants are punished for one or several related actions, but opinion and conscious cases that are recently considered by the State Security Prosecution became just a number under which people who has no relation to each other are included, but even more this random inclusiveness may put together people affiliated to political currents who oppose each other and has a history of hostility.

One of the most popular examples for the aforementioned is:

Case 488/National Security which initiated after Egypt's Railway Station fire incident after which calls for demonstrations from members of the Muslim Brotherhood living abroad came out by the journalist Moataz Matar and a number of citizens were arrested for responding to those calls. However, the issue soon included a group of activists of different political ideologies such as the famous left-wing activist Kamal Khalil and the former head of the Department of Political Science at the Faculty of Economics and Political Science at Cairo University Hassan Nafea who is well-known of supporting the current regime! And Dr. Hazem Hosni, the former leader of Ahmed Shafiq's presidential elections campaign, and also Constitution Party Khaled Dawoud head of the opposing political party "Constitution Party", until it came down to even including lawyers who were representing defendants in the case for months as Amr Imam and Mahienour El-Massry.

This random inclusiveness of different political currents that are hostile toward each other in one case affirms invalidity of national security inquiries, as how were lawyers who work daily before the National Security Prosecution and who are well known to security forces and members of prosecution included and found themselves among the defendants facing the same charges.⁶



9- Circumvent of releasing decisions through fabricating new legal cases:

After the first five months of precautionary detention:

During this period, the consideration of renewing of precautionary detention occurs before the National Security Prosecution every 15 days, and then this issue gets reviewed by criminal court circuit which sometimes released detainees or exchange detention with other precautionary measures as putting under surveillance, and in the few cases where a release decision is issued from the prosecution, the Prosecution uses extreme methods of summoning that were usually used

in arrests in charges related to Emergency Law before the revolution, and they include them in new legal cases with the same charges with no any difference except for the case's number, so as to prolong precautionary detention period as it shall be calculated according to the new case's date, and thus detainees enters the cycle of periods once again from the beginning.

We can refer here to the case of the satirical blogger Islam Refaee A.K.A "Khourm" who has no relation to political work, Islam Refaee was arrested on 16 November 2017 and was interrogated for 3 days after being disappeared for 12 days and after 9 months he was released by the criminal court from that case on a bail of 2,000 Egyptian pounds on 15 August, and despite the appeal of the Prosecution on the release decision and the rejection of this appeal, he was not released but instead included among others in another case with the number of 441, where he was charged with nearly the same charges in the first case and he is still remanded on custody up till now.

And one of the most famous examples of entering this endless rotational cycle is Dr. Abdel Moneim Aboul Fotouh the former presidential candidate for the 2012 elections and Head of Strong Egypt Party who was arrested on February 2018 and remand on custody pending investigations in case No440, and just before the legal termination of his precautionary detention period the Prosecution decided to release him and then include him in a new case with no. of 1781/2019 and detaining him again pending investigations.

And there are other numerous examples as the Blogger Mohamed A.K.A "Oxygen", Abeer Al-Safty, Ibrahim Metwalli Hossam Al-Deen and his wife Ola al-Qaradawi who supposed to be released but the decision was never applied and they were subject to investigations in new cases and detained pending those investigations.

And there is another type of rotational cycles such as what happened to the activist Alaa Abdel-Fattah and Abdel-Rahman Tariq who spent 5 years in detention pending the famous Al-Shurra Council case and spent their detention in the Police station while they were under surveillance as they were referred to another legal case, and the same happened to Mohamed Adel the activist in the 6th of April Movement, as he was sentenced to 3 years of imprisonment and other 3 years of surveillance and after spending his years of imprisonment and while he was under surveillance he was arrested again to face new charges before the National Security Prosecution and thus he was detained again.

10- Endless cases:

There is no doubt that all the laws and jurisprudence opinions that dealt with precautionary detention viewed it as a temporary exceptional measure that lasts only till investigating accusations is completed, and most scholars have repeatedly warned that precautionary detention might turn into a punishment and a tool for torturing detainees.

However, this is exactly what is happening at the State Security Prosecution which is using precautionary detention for no other reason than imprisoning detainees, as after all the aforementioned violations, the vast majority of cases that have a political nature are not referred to a trial eventually but cases either remain open endlessly without termination keeping the accused's lives pending endlessly or gets archived after taking no real action or measure or proceeding regarding them for years.

During recent years:

Most of opinion or conscious political cases that the Prosecution initiated investigations about were not referred to actual trials before competent courts or taken any real measures in them, and thus, all that was only an affirmation of the absurd image in which the prosecution placed itself. This also applies to the judiciary as a whole, which has become a mere tool in the hands of the executive branch to eliminate opponents.

Conclusion

The situation of lawlessness prevailing today in Egypt, where an initial understanding of the three authorities and their observatory interchangeable role is absent threatens the structure of the state as the executive authority controls the other authorities, especially the judicial authority which is the last resort for individuals against all kinds of violations. And in this case

it is possible to imagine the social contract's termination as its terms clashes to a degree in which the respect to rule of law vanishes, and not surprisingly, this causes the fabric of Egyptian society to collapse as logic of might and personal interests prevail over a unified logic of promoting public interest.