

10-09-2015

# The State of the Justice and Security Sector in Egypt



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**Disclaimer on sources and information**

This report was written according to the common EU-guidelines for processing factual COI (2008). It was therefore composed on the basis of carefully selected, publicly available sources of information. All sources used are referenced. All information presented, except for undisputed/obvious facts has been cross-checked, unless stated otherwise.

The information provided has been researched, evaluated and processed with utmost care within a limited time frame. However, this document does not pretend to be exhaustive. Neither is this document conclusive as to the merit of any particular claim to refugee status or asylum.

If a certain event, person or organization is not mentioned in the report, this does not mean that the event has not taken place or that the person or organization does not exist. The information in the report does not necessarily reflect the opinion of the authority and makes no political statement whatsoever.

## 1. Introduction

The purpose of this report is to outline the performance of Egypt's justice and security sector in terms of sustaining the population's ability to exercise their civil rights and the safeguards provided by the institutions within the above mentioned sectors to maintain these practices. The report further identifies the actors involved in upholding the legal and practical functions of these institutions (i.e., the courts, prosecution and the police force).

In this regard, the report examines the capacity and the integrity of the institutions that make up the justice and security sectors in Egypt. Capacity is identified as the actual ability for these institutions to provide adequate protection for the citizens of Egypt. This is done by studying the competencies of each sector, which in this case, means looking at the educational background, appointment, training, as well as gender and religious representation. Integrity describes the will to implement this ability, as well as the accountability of the actors should they fail to meet their obligations in this regard. Issues pertaining to the integrity of the justice and security sector include corruption, nepotism, accountability, the independence of the judiciary, as well as the ability for these institutions to respect human rights in their treatment of, and duties towards the citizens of the country.

The report mainly relies on written information from open sources. Additional information was gathered following a fact-finding mission, by a delegation from Lifos, to Cairo on 19-27 October, 2014. Information on all quoted sources is provided in the source list. Some sources have asked to remain anonymous for reasons of security.

## 2. Summary

Egypt's path towards establishing a new democratic order following the fall of the Mubarak regime in 2011 is far from tranquil. The political turbulence that emerged following the uprising has since resulted in the instatement of three presidents, in addition to two referendums for a new constitution, the last of which was held in January 2014. The absence of constitutionally approved elections laws has suspended parliamentary elections. This in turn has consolidated all legislative power to be held by the country's President, Abdul Fattah al-Sisi.

The security situation is equally turbulent. The post-Morsi era has witnessed further unrest as security forces continue to clamp down on supporters of the Muslim Brotherhood and secular activists, leading to thousands of arrests and harsh sentences being upheld by the courts against protestors. New laws and decrees, like the controversial protest law and the anti-terrorist law, have empowered the judiciary and security sectors in quelling political opponents and civil rights activists.

The court system rests on an established legal framework that stipulates the role of the judiciary and its actors (i.e., the judges and prosecutors). The legal framework allows provisions for judicial independence in terms of supervision and budgetary independence. The Ministry of Justice continues to hold executive power with regard to judicial affairs relating to appointment, relocation and disciplinary procedures taken against judges.

Judges retain a high level of trust in society and are also loyal to the state. They have a sense of duty to the rule of law and due process, and strive to maintain a sense of integrity for upholding institutional guarantees of independence. This is illustrated in the role played by the Judges' Club in 2008 to push forward amendments to the legislation (known as the Judicial Authority Law) regulating the judges' duties and responsibilities, in 2008. In 2012, judges took a stand against president Morsi when he tried to impose changes to the same legislation.

Lack of resources and adequate training is prevalent. Resources are limited. The growing backload leads to serious delays in adjudication (i.e., carrying out of sentences). Nepotism and the culture of appeasement are also common.

The legal framework is authoritarian in its context, and lawmakers often augment the authority of the state in a manner that makes laws vague in their interpretation. This in turn is reflected in the harsh sentences applied by some judges in executing the law. Another factor to the strict implementation of the law is the rise in the number of political and security cases handled by the regular judiciary, which is ascribed to the prevailing political and security conditions in the country.

The increase in referral of political and security cases to the regular judiciary raises further concerns as to the independency of the judiciary. This development has come to reflect negatively on the public's trust in the integrity of the institution, and the role the judiciary is expected to play in upholding its independence. Another issue of concern is the haphazard and prevailing inconsistency in the courts' adjudication of their ruling, particularly with regard to cases pertaining to supporters of the Muslim Brotherhood, activists, and other security-related cases. If anything, these rulings reflect on the lack of experience judges have in dealing with cases of this nature, as they were earlier dealt with in Military and Security Courts; additionally, it also displays how the ongoing political polarization is contributing to politicizing the judiciary.

With regard to the security sector, the legal framework and organizational structures of the security sector are well defined and explicit in its mandate. The constitution adopted in 2014 gave the Ministry of Interior autonomy, free from public oversight.

Corruption and nepotism are widespread within the security sector, and impunity continues unabated. As a result, public confidence in the police

force is low. The promulgation of laws targeting national security and terrorism has contributed to empowering the security sector. In addition, the sense of resentment and vengeance resulting from the targeting of police force, by the public, in the aftermath of the 2011 uprising is now manifesting itself in excessive deployment of force. This is particularly demonstrated against members of the Muslim Brotherhood and young activists. Violence and torture have resulted in gross violations leading to deaths while in police detention. Detention facilities have now expanded to overcrowded make-shift detention centres set up in remote areas outside of city limits.

The indiscriminate increase in sexual violations carried out by the security sectors underscores the government's strategy in suppressing all political opposition in the country.

The political and security narrative in Egypt today is becoming more entrenched in the judiciary and the security sector. Those components are the main obstacles to achieving reforms within these core sectors. The political challenges that confronted the successive governments that took power after Mubarak, coupled with their lack of experience and mandate contributed to stifling further pursuit of reforms. The absence of a legislative parliamentary body is also likely to hamper any efforts of achieving reform in the near future. Most importantly, the threat of home-grown and cross-border jihadi groups is the main argument for upholding the existing structures within the security sector and, to some extent, the judiciary as well. The overriding threat posed by the unfolding political events in the region is an additional security priority that trumps all other issues. As things stand today, there are no indications prompting any comprehensive changes to the state administration.

Political opponents, supporters of the Muslim Brotherhood, secular activists and journalists are often charged with protesting without authorization, incitement or vandalizing public property, or belonging to terrorist groups – charges for which they risk indictment by military courts. Women and Christians, as well as LGBTQ persons also face increasing harassment and violations, some of which are perpetrated by members of the security sector.

### 3. The Political and Security Situation after the Fall of Mubarak

#### 3.1. Political turmoil in the post-Mubarak era

In January 2011 thousands of protesters beckoned through social media and inspired by the unfolding events in Tunisia took to Tahrir square demanding freedom, social justice and reform. All attempts to quell the protest through threats, violence as well as promises of reform could not hold back the uprising that was looming. The uprising brought an end to Mubarak's 30 year era. The former president was subsequently removed by the military, tried and imprisoned.

The Supreme Council of the Armed Forces (SCAF) took over the interim running of the country. The military leaders lay down a six-month timetable in which to draft amendments to a new constitution and hold parliamentary elections.

Egypt's path towards establishing a new democratic order has been anything but tranquil. The country has, since 2011, undergone one parliamentary and two presidential elections, one of which brought to power the first civil elected president in Egypt's modern history, Mohammed Morsi. The rule of the Muslim Brotherhood (MB), who won the country's first parliamentary and presidential elections, was short lived. In addition, the country has gone through two entangled amendments of its constitution. The last referendum was in January 2014.

The Parliament, the House of Representatives, was dissolved by the Supreme Administrative Court in June 2012, two days before the second round of the first presidential elections after the fall of the Mubarak regime. The court argued that the law upon which the elections were held is contrary to the rules of the constitution<sup>1</sup>. The parliament had been elected in accordance with the prevailing electoral law, which is a complex system in which voters cast ballots for both party lists, that make up two third of the total seats in parliament, and also for individual candidates that make up for the remaining seats<sup>2</sup>. The Supreme Administrative Court ruled that one third of the legislature was elected illegally. The decision further marked the power struggle between the MB and the SCAF. As a result, executive power was reverted to the SCAF and the upper house- *Majlis al-Shoura*- pending new elections<sup>3</sup>.

Shortly after his inauguration President Mohammed Morsi challenged the army and the judiciary. He first attempted to reinstate the parliament, but was blocked by the Constitutional Court. In August 2012, Morsi removed

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<sup>1</sup> Hearst, David, Hussein Abdel-Rahama, The Guardian, *Egypt's supreme court dissolves parliament and outrages Islamists*, 2012-06-14

<sup>2</sup> al-Jazeera, *Egypt court orders dissolving of parliament*, 2012-06-14

<sup>3</sup> Hearst, David, Hussein Abdel-Rahama, The Guardian, *Egypt's supreme court dissolves parliament and outrages Islamists*, 2012-06-14

the Minister of Defense (MoD), Hussein Tantawi, who also was head of the SCAF. The decision came following an unpredicted attack by Islamist militants on the border posting of Rafah, in Northern Sinai in which 16 soldiers were killed. Tantawi was replaced by General Abdel Fatah al-Sisi<sup>4</sup>. The decision further contributed to diminishing, if not quelling, the army's growing political influence following the January 2011 uprising. In November 2012, Morsi announced a decree granting him legislative powers, thus exempting his decisions from judicial review. Subsequent to the decision, Morsi extended the mandate of the Islamist-dominated constitution assembly in order to finalize the drafting of the constitution<sup>5</sup>.

The decree provoked a nationwide outcry. Thousands of Egyptians took to the street in protest against the president and Muslim Brotherhood, in what they saw as a return of the Mubarak era. The government tried to quell the demonstrators, but it was to no avail. In July 2013, after unrelenting mass demonstrations in Tahrir Square and protesters estimated between 14 and 33 million participants<sup>6</sup>, Morsi ultimately stepped down from office following pressure from military leadership. On July 03, 2013, former army chief Abdel Fattah al-Sisi announced that in line with the military's ultimatum, the country's new constitution would be suspended and the head of the Supreme Constitutional Court (SCC), Adly Mansour, would be given authority to conduct the country's affairs until new elections could be held<sup>7</sup>.

In May 2014, former army chief Abdel Fatah al-Sisi won the presidential election after receiving around 96 percent of the ballots cast. Election turnout was low, with only 48 percent of Egypt's 53 million eligible voters participating in the elections<sup>8</sup>.

Following his inauguration as president, Sisi pushed forward to hasten the SCC's view and amend the parliamentary elections law accordingly. In January 2015, the law was ratified after approval of the cabinet. The parliament is to have a total of 567 seats, whereby 420 seats are designated to independent candidates and 120 for party-based candidates, while the remaining 27 seats are set aside for presidential appointees<sup>9</sup>.

The law sparked controversies amongst political parties and human rights advocates, all critical to the uneven distribution of the election districts in proportion to population and governorates<sup>10</sup>. The electoral law further weakens the powers of the political parties in comparison to the previous

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<sup>4</sup> BBC News, *Egypt leader Mursi orders army chief Tantawi to resign*, 2012-08-11

<sup>5</sup> Birnbaum, Michael, *Washington Post*, *Egypt's President Morsi takes sweeping new powers*, 2012-11-22

<sup>6</sup> Middle East Monitor, *June 30 anti-Morsi crowd figures just don't add up*, 2013-07-16

<sup>7</sup> Ahrmonline, *Egypt military unveils transitional roadmap*, 2013-07-03

<sup>8</sup> Kingsley, Patrick, *The Guardian*, *Abdel Fatah al-Sisi won 96.1% of vote in Egypt presidential election, say officials*, 2014-06-03

<sup>9</sup> Daily News Egypt, *Al-Sisi ratifies electoral districts law amid concerns over fair democratic representation*, 2014-12-23

<sup>10</sup> Ibid

law, which allocated two thirds of the seats to political parties<sup>11</sup>. Opponents to the law further stated that the increase in the number of the independent candidates may open opportunities for MB sympathizers to enter parliament<sup>12</sup>.

On March 03, 2015, the Administrative Court suspended the country's planned elections which were scheduled to begin on March 21, 2015, after the SCC declared the election law's provision on voting districts unconstitutional<sup>13</sup>.

The suspension is seen by analysts as a means for president Sisi to consolidate legislative power. Delays in the parliamentary elections could further diminish the political role of parliament. The upcoming elections are the last phase in Egypt's transitional road map introduced following the removal of Mohammad Morsi from office in July 2013. It will be Egypt's first legislative body since the SCC dissolved the parliament in 2012<sup>14</sup>. A new parliament would also entail overview and approval of all laws that have been instated after the fall of the Morsi regime, including controversial laws like the protest law, the anti-terrorism law, the counter terrorism law and the civil society law (see 3.7.3)<sup>15</sup>.

### **3.2. Security concerns continue to prevail**

The security narrative in Egypt has been one of dramatic decline in the past four years. The fall of Mubarak brought at first a wave of violent attacks against the security sector, primarily police stations and offices of the security forces. This came as no surprise, as the institutions were long regarded as a symbol of repression under Mubarak's rule. Consequently, police and security forces withdrew from the streets. With that came a rise in the level of crimes. Robberies, carjacking, assaults and other crimes escalated. Egyptians were left to fend for themselves as vigilant neighbourhood watch groups took to the streets in the early days that followed the uprising.

The instatement of Mohammed Morsi, the country's first civil elected president, brought with it hope for stability and much needed economic. However, the continuant decline in the economy prompted new bouts of unrest throughout the country. Protests and demonstrations peaked in the year that the Muslim Brotherhood held power, particularly following Morsi's decree of granting himself legislative powers over the judiciary.

The situation continued to deteriorate following the ousting of Morsi in July 2013. Over 1,400 people were killed in protests between July 2013 and the

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<sup>11</sup> el-Shewy, Mohamed, Sada, *Sisi's Parliamentary Fear*, 2015-03-06

<sup>12</sup> Daily News Egypt, *Al-Sisi ratifies electoral districts law amid concerns over fair democratic representation*, 2014-12-23

<sup>13</sup> Laforgia, Elisabeth, Jurist, *Egypt court delays parliamentary elections*, 2015-03-03

<sup>14</sup> The Daily Star, *Sisi benefits from suspended elections*, 2015-03-16

<sup>15</sup> el-Shewy, Mohamed, Sada, *Sisi's Parliamentary Fear*, 2015-03-06

end of 2014, the majority of which were killed by the security forces when they dispersed sit-ins by Morsi supporters at *Rabaa al-Adawiya* and *al-Nahda* Squares in Cairo on 14 August, 2013. The crackdown against the MB also saw the arrest and detention or imprisonment of up to 40,000 people<sup>16</sup>. As a result, the MB was banned, and later forbidden, and its leaders were arrested and jailed. Those who were not arrested were forced into exile. Hundreds of members were sentenced to prison terms or to death<sup>17</sup>.

Other than the violence triggered by four years of political unrest, the country has also witnessed an upsurge in lethal attacks against its security forces by extremist jihadi groups in Northern Sinai. The Sinai Peninsula has longstanding historical grievances with the Egyptian government. Neglected during Mubarak's rule, the area became a reputed smuggling route for Gazans and Bedouins across the border. Governance of the region was overseen by the Ministry of Interior (MoI) and the Egyptian Intelligence that sought to sustain calm without paying attention to the local population. As a result of the withdrawal of the law enforcement from the public scene after the uprising, law and order was left to the military. As a show of force, the military launched Operation Eagle in Northern Sinai. However, despite its increased presence in the area, the military was not able to contain the attacks targeting the police, gas pipelines<sup>18</sup>, and now recently members of the judiciary<sup>19</sup>. The August 2012 attacks on the Rafah barracks shook the military and Egypt's population alike. The army, following Morsi's instatement of former General Abdul-Fatah al-Sisi as Ministry of Defence (MoD) launched Operation Eagle II in order to step up security and counter smuggling through underground tunnels (over a thousand at the time) between Gaza and Sinai. The clampdown intensified during the end of Morsi's rule. Reportedly, fewer than ten tunnels were still functioning by July 2013<sup>20</sup>.

The Post-Morsi era has since witnessed the most intense and sustained military operation on the Sinai Peninsula. The region has also seen an increase in deadly attacks by jihadist groups both inside but even outside the peninsula<sup>21</sup>. The most vocal and active of these groups is *Ansar Beit al-Maqdis* (ABM). The group emerged on the jihadi scene during the uprising of January 2011. In the beginning the group was focused on Israel, in particular attacking and destroying gas pipelines between Israel and Egypt.

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<sup>16</sup> Amnesty International, *Amnesty International Report 2014/15*, 2015-02-25,

<sup>17</sup> Ibid

<sup>18</sup> Gold, Zack, International Center for Counter Terrorism- The Hague, *Security in the Sinai: Present and Future*, March 2014

<sup>19</sup> Dearden, Lizzie, The Independent, *Egyptian judges shot dead in Sinai hours after former president Mohamed Morsi sentenced to death*, 2015-05-17

<sup>20</sup> Gold, Zack, International Center for Counter Terrorism- The Hague, *Security in the Sinai: Present and Future*, March 2014

<sup>21</sup> Ibid

Following the fall of Morsi, the group started targeting security and military forces in the area<sup>22</sup>.

Deadly attacks in October 2014 killed over 30 officers and soldiers in Northern Sinai. Consequently, the government declared a state of emergency in the area, imposed a curfew, closed Egypt's border with Gaza, and began constructing a buffer zone along it. Military reinforcements launched a combing operation to identify militants within the area's population, causing further violations and arbitrary arrests. Daily operations by the army have resulted in the death, injury and arrest of local citizens accused of carrying out terrorist acts despite the lack of evidence to confirm these allegations. Army activities are not subject to any government oversight or investigation. Media and NGOs are prohibited from carrying out activities in the Sinai area<sup>23</sup>. According to the Arab Organization for Human Rights (AOHR) in the United Kingdom, 3,206 families have been displaced from their homes following the demolition of the border town of Rafah; in addition, over 300 civilians were killed as well as 1,400 arrested in 2014<sup>24</sup>. The security prospects for Northern Sinai continue to be bleak. In November 2014, ABM swore allegiance to the Islamic State in Iraq and Syria (ISIS) –also known as the Islamic state (IS)<sup>25</sup>, and thereafter changing its name to *Wilayat Sinai* (Sinai Province).

Security-related incidents have since accelerated beyond the Egyptian-Palestinian border and are now targeting civilians<sup>26</sup>. Coordinated attacks have, for example, targeted several metro stations in Cairo. Improvised explosive devices (IEDs) have been set off in various locations in the capital. Other major cities have also been targeted in a similar manner<sup>27</sup>. Civilians, banks, schools and foreign enterprises have become new targets<sup>28</sup>. The identity of the perpetrators is often unclear. The MoI has initially blamed the MB for these incidents, accusing them of inciting unrest and jeopardizing national security in the country<sup>29</sup>. The severest of these attacks is ascribed to the killing of the Prosecutor General, Hisham Barakat, on 29 June, 2015. Barkat died as a result of his injuries when a bomb targeted his motorcade nearby his home in the district of Heliopolis in Cairo. The murder of Barkat is described as the first terrorist attack against a top Egyptian official since the failed attempt on the Minister of Interior,

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<sup>22</sup> Gold, Zack, International Center for Counter Terrorism- The Hague, *Security in the Sinai: Present and Future*, March 2014

<sup>23</sup> Arab Organization for Human Rights in the UK (AOHR UK), *A massacre in Sinai in the name of fighting terrorism*, 2015-01-15

<sup>24</sup> Ibid

<sup>25</sup> al-Monitor, *Ansar Beit al-Maqdis joins Islamic state*, 2014-11-13

<sup>26</sup> Gold, Zack, The Jamestown Foundation, *Terrorism Now Targeting Civilians in Egypt*, 2014-08-02

<sup>27</sup> Ibid

<sup>28</sup> Khairat, Mohammed, *Egyptian Streets, School, Banks and Shopping Centers the New Targets of Terrorism in Egypt*, 2015-03-10

<sup>29</sup> Gold, Zack, The Jamestown Foundation, *Terrorism Now Targeting Civilians in Egypt*, 2014-08-02

Mohammed Ibrahim, in 2013<sup>30</sup>. The attack took place in conjunction with earlier threats by extremist groups to target the judiciary<sup>31</sup>. In May 2015 three judges were in Sinai Peninsula<sup>32</sup>.

In addition, there has also been an increase in sectarian violence by Morsi supporters and Salafi-jihadi groups against Coptic Christians, Churches and Christian owned property<sup>33</sup>.

Sinai Province's religious pledge - *Bay'a* - to ISIS serves as an indicator that the Caliphate is gaining ground among radical jihadists. The Sinai branch of ISIS has also claimed attacks in Egypt's western desert, indicating its ability to link up with the Libyan ISIS province (*Wilayat Libya*) that has taken root there. The Egypt-Libya border is over 1,200 km long, making it virtually impossible to contain, particularly given Egypt's already stretched military resources. The proliferation of weapons in Libya as a result of the fall of Qadahfi, and the ability for jihadi groups to move freely, are posing a major challenge for Egypt's President Sisi<sup>34</sup>. A political analyst that the delegation spoke to in Cairo asserted that retaining security and reviving the economy are the wave that brought Sisi to power. National security priorities virtually trump all other issues. Sisi is aware that he must deliver. Unlike his predecessors, Sisi is not affiliated with any political party, and therefore is not likely to receive the political backing formerly enjoyed by his predecessors. Nor is his military background a guarantee for him to remain in power; quite the contrary, he may well be replaced by the army if they deem it necessary<sup>35</sup>.

## 4. The Capacity of the Judiciary

### 4.1. The Legal System

Egypt's legal system, like most of the Arab world systems, rests on a combination of Islamic law (*Shari'a*) and Napoleonic Code, which was introduced subsequent to Napoleon Bonaparte's occupation of Egypt. Since that time, Egypt has adopted a more Roman (Civil Law) system, in which matters involving personal status such as marriage, inheritance and divorce are subject Islamic substantive law in cases involving Muslims, whether Egyptians or foreigner. Non-Muslims (i.e., Christians) are subject to the substantive law of the Church<sup>36</sup>.

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<sup>30</sup> Farid, Sonia, al-Arabiya, *Why was Egypt's prosecutor-general assassinated?*, 2015-06-30

<sup>31</sup> Farid, Sonia, al-Arabiya, *Why was Egypt's prosecutor-general assassinated?*, 2015-06-30

<sup>32</sup> Ibid

<sup>33</sup> Ibid

<sup>34</sup> Simon, Stevens, Middle East Institute, *Egypt's Security Challenge: ISIS, Sinai and the Libya Border*, 2015-02-19

<sup>35</sup> Meeting with political analyst, Cairo 2014-10-21

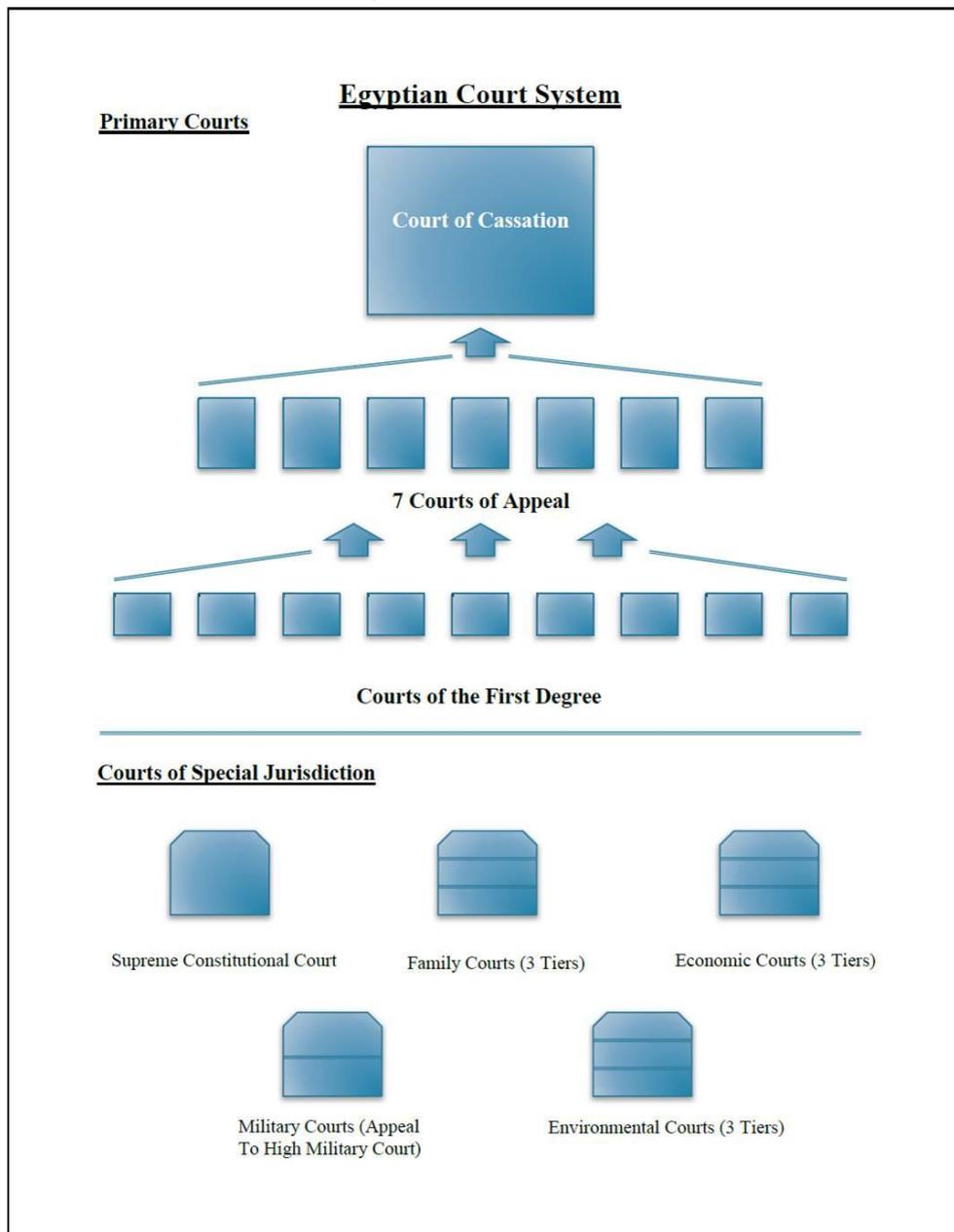
<sup>36</sup> Abdel Wahab, Mohammed S.E., Jadaliyya, *An Overview of the Egyptian Legal System and Legal Research*, 2012-10-12

Legislation is the prime source of law. Contrary to the Anglo-Saxon traditional judicial system, Egypt's judges are charged with implementing the law and not drafting it. The ordinary judiciary in Egypt is divided into two main branches. First is the **regular judiciary**, which is headed by the Court of Cassation, and charged with upholding the uniformity and consistency of the implementation and interpretation of the law. The other branch is the **administrative branch**, represented by the State Council- *Majlis al-Dawla*- that adjudicates in administrative disputes. In addition, Egypt also has a **specialized judiciary** that is subject to executive authority control. The State Security Courts and Military Courts, the Family Courts as well as the Court of Ethics, all fall under the mandate of specialized judiciary<sup>37</sup>.

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<sup>37</sup>Farhat, Dr. Mohammed Nour, Sadek, Counselor Ali, The Arab Center for the Development of the Rule of Law and Integrity (ACRLI), *Promoting the Rule of Law and Integrity in the Arab Countries; Report on the State of the Judiciary in Egypt*, p. 5, 2012

## 4.2. The Court System



### 4.2.1. The Regular Judiciary

This judicial branch is divided into three levels: the Courts of the First Degree (*Mahkmat el Daragah el Aoulah*), the Courts of Appeals (*Mahkmat el Esti'anaf*), and the Court of Cassation (*Mahkmat el Naqd*)<sup>38</sup>.

#### 4.2.1.1. The Courts of the First Degree

The Courts of the First Degree are responsible for adjudicating misdemeanours and civil cases that involve financial disputes that do not exceed EG £5,000 (about US \$800). One judge presides over the proceedings of the court. These courts have jurisdiction over commercial,

<sup>38</sup> Egyptian American Rule of Law Association, *Egypt's Court System*

contractual, insurance, intellectual, and real property disputes. Capital crimes are not tried within the first instance<sup>39</sup>.

There are 17 Courts of the First Degree in the country. These are located in the capitals of the districts: Alexandria, Aswan, Benha, Beni Suif, Damanhour, Dumiat, Fayum, Kafr Minya, Northern Sinai, Port Said, Qena, Shebin, Sohag, Southern Giza, Southern Sinai, Suez and Zaqaq<sup>40</sup>.

#### 4.2.1.2. *The Courts of Appeals*

The Courts of Appeal serve as courts of first instance for capital crimes<sup>41</sup>. There are seven Appeals Courts located in the major cities of Egypt, Alexandria, Assuit, Beni Suif, Cairo, Giza, Northern Ismailia and Tanta<sup>42</sup>.

Each court has jurisdiction over the region assigned. Each court is comprised of three judges, a chief justice and two assistants. They preside over and review decisions related to misdemeanours and civil matters issued by Courts of the First Degree across the country. As the legal system applies civil and criminal codes modelled primarily on the French Napoleonic Codes, there is no jury system. The Court of Cassation represents the final stage of criminal appeals.

#### 4.2.1.3. *The Court of Cassation*

There is only one Court of Cassation, which is located in the capital, Cairo. It is considered the highest judicial body in the Egyptian court system. It consists of criminal and civil sections. A defendant or plaintiff may access this court only if a breach of law is claimed as the basis for the appeal<sup>43</sup>. The Court of Cassation is a court of law only, and not of trial law. Its main objective is to control the sustained implementation of the law.

#### 4.2.2. **Courts of Special Jurisdiction**

This branch of the judiciary consists of different types of courts with specialized jurisdiction. The courts of special jurisdiction include the Supreme Constitutional Court (*el-Mahkamah el-Dostouriah el-Aolyah*), Family Courts (*Mahkmat el-Ausrah*), Military Courts (*el-Mahakm el-Askariyah*), Economic Courts (*el-Mahkma el-Eqtsadyah*), Environmental Courts (*el-Mahkma el-Beaeyah*), and Council of State (Administrative Judicial Court) (*Mahkmat al-Qda'a el-Edari*)<sup>44</sup>.

##### 4.2.2.1. *The Supreme Constitutional Court*

The Supreme Constitutional Court (SCC) is an independent body. It is located in Cairo. The court is responsible for upholding the constitutionality

<sup>39</sup> Egyptian American Rule of Law Association, *Egypt's Court System*

<sup>40</sup> Egyptian American Rule of Law Association, *Judicial Districts*.

<sup>41</sup> Egyptian American Rule of Law Association, *Egypt's Court System*

<sup>42</sup> Egyptian American Rule of Law Association, *Judicial Districts*

<sup>43</sup> Egyptian American Rule of Law Association, *Egypt's Court System*

<sup>44</sup> Egyptian American Rule of Law Association, *Egypt's Court System*

of the laws as well as assuming the mandate of interpretation of laws issued by the legislative authority -upon the request of the Ministry of Justice (MoJ)-, as well as the decrees issued by the President of the Republic in cases pertaining to their implementation. The SCC also rules on disputes over the competent authority among the judicial authorities<sup>45</sup>. Its president is appointed by the President of the Republic without consultation of the Higher Judicial Council (HJC). The President of the Republic also appoints the judges of the court, subsequently after consulting the HJC<sup>46</sup>.

#### 4.2.2.2. *Family Courts*

Family Courts were founded in 2004 as a specialized judicial tool with the objective of settling family disputes. The courts also serve as a safeguard to uphold the rights of children in disputes relating to tutelage, divorce, alimony and custody. In addition, the courts uphold settlements relating to family problems through specialized and professional guidance agencies<sup>47</sup>. The courts apply Islamic Law -*Shari'a* - in disputes and in matters of inheritance involving Muslims. The court also rules in cases pertaining to married Christian couples belonging to different Christian sects. The family court system is a three-tiered system, with first instance, intermediate, and final appellate courts<sup>48</sup>.

#### 4.2.2.3. *Economic Courts*

The enactment of Law No.120/2008 created specialized Economic Courts. As a specialized judiciary, the court retains competence over economic matters in both criminal and civil proceedings, and offers expedited commercial and investment justice<sup>49</sup>.

Economic Courts have jurisdiction over criminal, as well as civil and commercial, economic matters. The economic court system is a three-tiered system, with first instance, intermediate, and final appellate courts<sup>50</sup>.

#### 4.2.2.4. *Environmental Courts*

The Environmental Courts have jurisdiction over civil and criminal violations of environmental laws. Environmental Courts were initially set up to adjudicate in crimes relating to the pollution of the Nile River. The

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<sup>45</sup> Farhat, Dr. Mohammed Nour, Sadek, Counselor Ali, The Arab Center for the Development of the Rule of Law and Integrity (ACRLI), *Promoting the Rule of Law and Integrity in the Arab Countries; Report on the State of the Judiciary in Egypt*, 2012, Abdel Wahab, Mohammed S.E., Jadaliyya, *An Overview of the Egyptian Legal System and Legal Research (Chapter 6, 6.5 The supreme Constitutional Courts)*, 2012-10-12

<sup>46</sup> Farhat, Dr. Mohammed Nour, Sadek, Counselor Ali, The Arab Center for the Development of the Rule of Law and Integrity (ACRLI), *Promoting the Rule of Law and Integrity in the Arab Countries; Report on the State of the Judiciary in Egypt*, p.5, 2012,

<sup>47</sup> Wahab, Mohammed S.E., Jadaliyya, *An Overview of the Egyptian Legal System and Legal Research (Chapter 6, 6.6 Family Courts)*, 2012-10-12.

<sup>48</sup> Egyptian American Rule of Law Association, *Egypt's Court System*

<sup>49</sup> Wahab, Mohammed S.E., Jadaliyya, *An Overview of the Egyptian Legal System and Legal Research (Chapter 6, 6.7 Economic Courts)*, 2012-10-12.

<sup>50</sup> Egyptian American Rule of Law Association, *Egypt's Court System*

environmental court system is also a three-tiered system, with first instance, intermediate, and final appellate courts<sup>51</sup>.

#### 4.2.2.5. *Military Courts*

The Military Court (MC) system is stipulated under Article 204 of the Egyptian constitution, amended in 2014.

With regard to the definition, the military judiciary Article 204 mandate stipulates: *The Military Judiciary is an independent judiciary that adjudicates exclusively in all crimes related to the armed forces, its officers, personnel, and their equals, and in the crimes committed by general intelligence personnel during and because of the service*<sup>52</sup>.

Although MCs are considered to be a professional judiciary, competent to look into crimes of pure military character, they cannot be regarded as an independent judiciary; their judges are not subject to guarantees of impartiality and autonomy, as required by regular courts. The MCs operate under the authority of the MoD<sup>53</sup>. The law does not stipulate that the judges of the military courts be legally qualified<sup>54</sup>. The judges appointed are serving military officers<sup>55</sup>.

With regard to the MCs and trials of civilians, Article 204 stipulates:

*Civilians cannot stand trial before military courts except for crimes that represent a direct assault against military facilities, military barracks, or whatever falls under their authority: stipulated military or border zones; its equipment, vehicles, weapons, ammunition, documents, military secrets, public funds or military factories; crimes related to conscription; or crimes that represent a direct assault against its officers or personnel because of the performance of their duties.*

*The law defines such crimes and determines the other competencies of the Military Judiciary*<sup>56</sup>.

The amendments in the article are regarded as an improvement on the equivalent articles from the 1971 and 2012 constitutions, as they limit the types of cases for which a civilian could stand trial before a military court, something that previous articles failed to do. However, the article continues

<sup>51</sup> Egyptian American Rule of Law Association, *Egypt's Court System*

<sup>52</sup> Constitute, *Egypt's Constitution of 2014*, 2015-03-11

<sup>53</sup> Human Right Watch, *Egypt: Surge of Military Trials*, 2014-12-18

<sup>54</sup> Farhat, Dr. Mohammed Nour, Sadek, Counselor Ali, The Arab Center for the Development of the Rule of Law and Integrity (ACRLI), *Promoting the Rule of Law and Integrity in the Arab Countries; Report on the State of the Judiciary in Egypt*, p. 18, 2012

<sup>55</sup> Human Right Watch, *Egypt: Surge of Military Trials*, 2014-12-18

<sup>56</sup> Constitute, *Egypt's Constitution of 2014*, 2015-03-11

to allow referrals of disputes between civilians and personnel in a military zone to MCs for trial<sup>57</sup>.

Given the military's deep entrenchment in Egyptian society, military zones also include military-owned properties<sup>58</sup>. The 2014 constitution therefore gives the military jurisdiction to even include public facilities owned by the military, thereby enabling the authorities to detain civilians in circumstances that controvert the constitution<sup>59</sup>. This can even include properties such as petrol stations, recreational areas and even theatres owned by the military<sup>60</sup>.

Egyptian authorities continue to refer civilians to military courts. In October 2014, President Sisi issued a decree, Law No.136<sup>61</sup>, expanding the military's jurisdiction over civilians. The decree places all 'public and vital facilities' under military jurisdiction for the next two years. Public facilities also include electricity networks and stations, gas pipes, oil fields, railways, and road and bridge networks<sup>62</sup>.

Article 1 of the decree allows provisions for members of the armed forces to collaborate and coordinate with the police forces to protect vital government facilities. Article 2 of the same decree further obligates state prosecutors to refer any crimes committed at those venues to their military counterparts<sup>63</sup>.

It is difficult to estimate the exact number of cases that have been referred to the military courts since the 2011 uprising. Human Rights Watch (HRW) estimates that more than 11,000 cases have been tried by military courts since then<sup>64</sup>. Over 2,000 reported referrals were submitted between the issuance of the October 2014 decree and April 2015<sup>65</sup>.

The majority of the cases referred to the military relate to students participating in demonstrations on university campus as well as alleged members and supporters of the MB. According to the *No to Military Trials*-movement, 140 students have been referred to military trials. An additional 390 students are awaiting referrals of their cases to the MC following the presidential decree of October 2014<sup>66</sup>. In February 2015, the public

<sup>57</sup> Tarek, Sherif, al-Ahram Online, *Inside Egypt's draft constitution: Debates over military powers continue*, 2013-12-12

<sup>58</sup> Ibid.

<sup>59</sup> Farid, Farid, Atlantic Council, *The Militarization of Justice*, 2015-04-15

<sup>60</sup> Tarek, Sherif, al-Ahram online, *Inside Egypt's draft constitution: Debates over military powers continue*, 2013-12-12

<sup>61</sup> Official Gazette, Law 136 (Arabic), 2014-10-27

<sup>62</sup> Abaza, Jihad, Daily News Egypt, *Rights Groups Condemn Jurisdiction of Military Courts*, 2014-10-31

<sup>63</sup> Human Right Watch, *Egypt: Surge of Military Trials*, 2014-12-18

<sup>64</sup> Mada Masr, *As more civilians sent to military courts, police may be protected*, 2014-12-

30, Mada Masr, *HRW warns against new law expanding military jurisdiction*, 2014-11-17

<sup>65</sup> el-Fekki, Amira, Daily News Egypt, *More Students sentenced to 3-5 years in prison by military court*, 2015-04-01

<sup>66</sup> Middle East Monitor, *Egypt tries 140 civilians in military courts*, 2015-01-19

prosecutor referred former president Mohammed Morsi and several officials of the MB to a MC on charges of committing violence<sup>67</sup>. In April 2015, an additional 187 alleged Brotherhood supporters were referred to the military courts following charges of attacking and killing police officers at a police station in the southern province of Minya in August 2013<sup>68</sup>.

The Cairo Institute for Human Rights Studies and the *No to Military Trials*-movement have, in a joint intervention to the 20th session of the UN Human Rights Council, described the situation in the military courts as follows:

*..The right to a fair and public hearing before a competent, independent, and impartial tribunal; the right to have adequate time to prepare a defence; and the right to be defended by a lawyer of one's choosing, are all violated under the military judicial system. No defendant against whom a judgment is issued may take procedures for challenging the judgment unless it has been announced following ratification by the certification officer. This in turn restricts the freedom of the defendant based on the will of the officer, as there is no stipulation that obliges him to ratify the judgment within a specific period. This tactic is commonly used against defendants in political cases to ensure their prolonged detention and prevent them from appealing their verdicts. Additionally, the court sometimes restricts the defendant from access to an attorney of his request. In cases where the defendant does select his attorney, the attorney does not have enough time to review the case documents that enable him to perform his task to its best. Moreover, in several incidents, the court does not respond to the defence's crucial requests that are liable to alter the position of the accused in the case..<sup>69</sup>.*

#### 4.2.3. The Council of State- *Majlis al-Dawla*- (Administrative Judicial Court system)

The Council of State has jurisdiction over administrative matters related to government contracts, tenders and administrative decisions. The Council is also responsible for settling administrative disputes between individuals and government bodies in the state as well as cancelling governmental decisions and compensation<sup>70</sup>. All members of the Council have the same immunity enjoyed by the judges in regular courts.

The Council of State is composed of three divisions: the **Judicial**, the **Consultative** and the **Legislation**<sup>71</sup>. The Judicial Division includes the Administrative courts, the Supreme Administrative Court, the Disciplinary Courts, the Courts of Administrative Jurisdiction and the division of State Commissioners<sup>72</sup>.

<sup>67</sup> al-Jazeera, *Egypt's Morsi to face trial in military court*, 2015-02-17

<sup>68</sup> Reuters, *Egypt refers 187 Brotherhood supporters to military courts: Prosecutor*, 2015-04-05

<sup>69</sup> The Cairo Institute for Human Rights Studies and the No Military Trials for Civilians Group, *Military Trials of Civilians in Egypt since the January 25 Revolution*,

<sup>70</sup> The Cairo Post, *Egyptian State council*, 2014-03-11

<sup>71</sup> Attalla, Abdel-Ghani, *The Judicial Organization in Egypt*, p. 6, February 2007

<sup>72</sup> Ibid

#### 4.2.3.1. *Administrative Courts*

Each governorate (27 in total) has an Administrative Court. The courts have jurisdiction over the validity of the administrative decisions of public officials at a certain level (2 and 3), as well as the annulment of such decisions if deemed necessary. The court has also jurisdiction to grant compensation as well as to settle disputes concerning administrative contracts<sup>73</sup>.

#### 4.2.3.2. *The Disciplinary Courts*

The Disciplinary Courts have the jurisdiction to rule in cases pertaining to high level officials within the public administration. These courts are located in Cairo and Alexandria, each having a number of circuits. Three judges preside at each circuit<sup>74</sup>.

Disciplinary Courts also rule in cases at lower levels (1 to 3) within the public administration. These courts are situated within some of the departments in the country, with three judges presiding over the procedures<sup>75</sup>.

#### 4.2.3.3. *The Court of Administrative Jurisdiction*

The Court of the Administrative Jurisdiction has a general jurisdiction in matters pertaining to administrative disputes. It can act as a court of first instance in matters concerning administrative disputes, but also has the jurisdiction to act as a second degree court (i.e., appeal instance) in matters concerning challenges brought before it against decisions made by the administrative courts.

#### 4.2.3.4. *Supreme Administrative Courts*

The Supreme Administrative Court is situated in Cairo. The court has jurisdiction to decide in matters considered in violation of or inappropriate application of the law, misinterpretation of its provisions, or where there are contradictions between irrevocable decisions<sup>76</sup>. The Supreme Administrative Court examines challenges brought against the Administrative Courts, the Disciplinary Courts and the Courts of Administrative Jurisdiction<sup>77</sup>. The court is divided into a number of circuits, with five judges presiding on each. In addition, there is a special circle headed by three judges, which examines the form of the challenges presented.

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<sup>73</sup> Attalla, Abdel-Ghani, *The Judicial Organization in Egypt*, p. 7, February 2007

<sup>74</sup> Ibid

<sup>75</sup> Ibid

<sup>76</sup> Ibid

<sup>77</sup> Ibid p. 8

#### 4.2.3.5. *The State Commission*

The State Commission upholds a number of administrative judges and one higher ranked presiding judge (rank of vice-president). The body helps prepare lawsuits to be presented before the courts of the State Council<sup>78</sup>.

#### 4.2.3.6. *The Department of Consultation*

The Department of Consultation is a consultative body in matters pertaining to the interpretation and examination of the implementation of the administrative law. It serves the President, the Council of Ministers, as well as the ministries and public services<sup>79</sup>.

#### 4.2.3.7. *The Department of Legislation*

The Department of Legislation is primarily responsible for overseeing and revising the wording of decisions of legislative character made by the President, as well as regulations issued by any ministry.

### 4.3. **The Judges' Club**

The Judges' Club was founded in 1939 to solidify relations amongst judges. Any member of the ordinary judiciary and the Office of the Public Prosecution (OPP) can be a member. Since its establishment, the association has evolved into an unofficial professional forum on issues relating to the judiciary<sup>80</sup>. The Club also confirms the members' right to expression as well as association<sup>81</sup>. Its legal status is, however, controversial as it refuses to register as an association in order to avoid falling under the supervision of the Ministry of Social Solidarity (MoSS)<sup>82</sup>.

The club was instrumental in pushing forward the amendments to the Judicial Authority Law (JAL) in 2006 regarding court supervision, disciplining judges and the budgetary independence of the judiciary<sup>83</sup>.

The association has long been critical of the widespread fraud and irregularities during elections in the Mubarak era. In 2005, the judges resorted to using the media, staging sit-ins and threatening with boycotts in an effort to achieve judicial independence. This eventually led to amendments in the election process in March 2007<sup>84</sup>.

<sup>78</sup> Attalla, Abdel-Ghani, *The Judicial Organization in Egypt*, p. 8, February 2007

<sup>79</sup> Ibid p. 8-9

<sup>80</sup> Bernard-Maugiron, Nathalie, American University in Cairo Press, *Judges and Political Reform in Egypt, Chapter 4: The General Prosecutor between the Judiciary and the executive authority*- p. 12, 2008

<sup>81</sup> Farhat, Dr. Mohammed Nour, Sadek, Counselor Ali, The Arab Center for the Development of the Rule of Law and Integrity (ACRLI), *Promoting the Rule of Law and Integrity in the Arab Countries; Report on the State of the Judiciary in Egypt*, p. 30, 2012

<sup>82</sup> Ibid

<sup>83</sup> Ibid

<sup>84</sup> Farhat, Dr. Mohammed Nour, Sadek, Counselor Ali, The Arab Center for the Development of the Rule of Law and Integrity (ACRLI), *Promoting the Rule of Law and Integrity in the Arab Countries; Report on the State of the Judiciary in Egypt*, p. 30, 2012

The club also provides cultural and educational services, as well as social support in cooperation with the MoJ, which grants financial allowances to the club's activities.

#### 4.4. The Office of the Public Prosecutor

Article 189 of the 2014 constitution outlines the mandate of the public prosecution. The article defines the public prosecution as an integral part within the judiciary<sup>85</sup>.

The Office of the Public Prosecutor (OPP) is headed by the Prosecutor General (PG). One of the significant amendments of the 2014 constitution is the appointment of the PG, whereby the constitution returns the appointment power from the President of the Republic to the Supreme Judicial Council (SJC). With regard to the appointment, Article 189 stipulates that the PG is selected from among the deputies to the President of the Court of Cassation, the Presidents of the Court of Appeals or Assistant Prosecutor General. The appointment is also limited for a period of four years, or upon reaching the age of retirement, whichever comes first. In addition, the appointment can only be given once during a judge's career<sup>86</sup>.

##### 4.4.1.1. Members of the Office of the Public Prosecutor

The OPP has a hierarchical structure, comprised of the following members:

1. General Prosecutor – *al-Naib al-'Amm*
2. Assistant General Prosecutor – *Musa'id al-Naib al-'Amm*
3. Chief Public Attorney- *Muhami 'Amm Awwil*, (22)
4. Public Attorney - *Muhami Amm*, (69)
5. Chief Prosecutor- *Ra'is Niyaba*, (297)
6. Public Prosecutor- *Wakil Niyaba*, (1688)
7. Assistant Prosecutor- *Musa'id Wakil Niyaba*, (817)
8. Auxiliary Prosecutor- *Mu'awin Niyab*, (194)

Prosecution members are represented at all levels within the court system<sup>87</sup>.

The Assistant General Prosecutor is chosen from among the vice-presidents of the Courts of Appeals or the Counsellors of the Court of Cassation<sup>88</sup>.

A Chief Public Attorney is assigned to each Court of Appeals in the country. He also acts as a representative for the OPP before the Court of Appeals within his designated district. He also has the authority to supervise the staff of the Court of Appeals<sup>89</sup>.

<sup>85</sup> Constitute, *Egypt's Constitution of 2014*, 2015-03-11

<sup>86</sup> Ibid

<sup>87</sup> Bernard-Maugiron, Nathalie, American University in Cairo Press, *Judges and Political Reform in Egypt, Chapter 4: The General Prosecutor between the Judiciary and the executive authority*- p. 62, 2008

<sup>88</sup> Ibid, p. 63

<sup>89</sup> Ibid

The Public Attorneys are appointed to the Courts of the First Degree where they carry out the functions of the OPP. They are also designated to supervise the prosecution staff (i.e., chief prosecutor and public prosecutors) attached to their courts<sup>90</sup>.

The duties of the OPP at the level of the Court Cassation are to act as director for an independent Public Prosecution. The appointment is selected by the MoJ. The appointed director is chosen from among counsellors within the Court of Cassation, the Courts of Appeals, or the Public Attorneys<sup>91</sup>.

#### 4.4.1.2. *Duties of the Office of the Public Prosecutor*

The GP represents the public interests in a lawsuit and its proceedings pending final judgement. His competence, as that of members of his office, is to investigate and to convict in all crimes committed in the country. The judge carrying out the investigation must be neutral. The office has also the power to issue arrest and search warrants. The OPP is also allocated the responsibility of inspecting prisons and investigating allegations of torture, mistreatment and other forms of violations committed by police officers<sup>92</sup>. In addition, the MoJ can request the PG to initiate disciplinary investigation against judges, which can result in dismissal<sup>93</sup>.

The OPP has a close relationship to the police force. Police officers are entitled to assist the prosecution authorities in conducting criminal investigations. The OPP also relies on the police for coercive measures, for example, arrests, searches, property seizures and bringing in witnesses<sup>94</sup>.

## 4.5. **Competency of the Judicial Body**

### 4.5.1. **Competency of Judges**

Legislation regulating the appointment of judges is specified under the JAL (Law No. 46/1972, amended to law 142/ 2006). The appointment is decided through executive authority, pursuant to a presidential decision after the approval, and nomination, of the Higher Judicial Council. The requirement for the appointment set by the law stipulates that the person should: be of Egyptian nationality, above the age of 30 for the appointment in the Courts of the First Degree, 38 years for the appointment in the Courts of Appeals and 41 years for the appointment as counsellor at the Cassation Court. In

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<sup>90</sup> Bernard-Maugiron, Nathalie, American University in Cairo Press, *Judges and Political Reform in Egypt, Chapter 4: The General Prosecutor between the Judiciary and the executive authority*- p. 63, 2008

<sup>91</sup> Ibid

<sup>92</sup> Ibid p. 66-67

<sup>93</sup> International Bar Association Human Rights Institute (IBAHRI), *Separating Law and Politics: Challenges to the Independence of the Judges and Prosecutors in Egypt*, p. 28, February 2014

<sup>94</sup> Bernard-Maugiron, Nathalie, American University in Cairo Press, *Judges and Political Reform in Egypt, Chapter 4: The General Prosecutor between the Judiciary and the executive authority*- p. 66-67, 2008

addition, the person should possess a law degree<sup>95</sup> (with a grade between 65 to 100 percent<sup>96</sup>), have a good reputation and no convictions. The law further stipulates that the candidates should have specific work experience according to the court degree they are being appointed to.<sup>97</sup> A law graduate who joins the OPP is eligible for appointment as a sitting judge in the lower courts upon reaching the age of 30<sup>98</sup>, and after serving the OPP for two years<sup>99</sup>.

Candidates are also required to sit an examination set by the Judicial Council. The council receives thousands of applications each year, but only three- to four hundred are selected to sit the exam<sup>100</sup>.

Article 47 of the JAL makes provisions for lawyers with relevant academic and advocacy experience to be appointed to the courts of the first instance. In fact, the law requires that a quarter of the judges appointed to the Courts of the First Degree and a tenth of the presidents in those courts be selected from among practicing lawyers. This objective does not appear to have been achieved, as the overall majority of judges continue to be appointed from within the OPP<sup>101</sup>.

Appointments to higher courts, with the exception of the State Council and the SCC, are made by the president of the court after selection from a list of names submitted by the senior judges of that court. The choice is further reviewed and approved by the Supreme Judicial Council (SJC).

Appointment of judges from within the OPP is carried out by the Chief Justice of the Constitutional Court<sup>102</sup>.

The International Bar Association Human Rights Institute (IBAHRI) maintained in its report on Egypt's judiciary in 2014, that the appointment of judges was not fully based on the required qualifications; instead, it was more common that sons and close relatives of judges were more likely to become judges than those who qualified academically for the

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<sup>95</sup> Farhat, Dr. Mohammed Nour, Sadek, Counselor Ali, The Arab Center for the Development of the Rule of Law and Integrity (ACRLI), *Promoting the Rule of Law and Integrity in the Arab Countries; Report on the State of the Judiciary in Egypt*, p. 50, 2012

<sup>96</sup> International Bar Association Human Rights Institute (IBAHRI), *Separating Law and Politics: Challenges to the Independence of the Judges and Prosecutors in Egypt*, p. 23, February 2014,

<sup>97</sup> Farhat, Dr. Mohammed Nour, Sadek, Counselor Ali, The Arab Center for the Development of the Rule of Law and Integrity (ACRLI), *Promoting the Rule of Law and Integrity in the Arab Countries; Report on the State of the Judiciary in Egypt*, p. 50

<sup>98</sup> International Bar Association Human Rights Institute (IBAHRI), *Separating Law and Politics: Challenges to the Independence of the Judges and Prosecutors in Egypt*, p. 22, February 2014

<sup>99</sup> Interview with Head of the Lawyers Syndicate, Cairo 2014-10-27

<sup>100</sup> Ibid

<sup>101</sup> International Bar Association Human Rights Institute (IBAHRI), *Separating Law and Politics: Challenges to the Independence of the Judges and Prosecutors in Egypt*, p. 23, February 2014

<sup>102</sup> Ibid, p. 24

appointment<sup>103</sup>. This was also confirmed by the head of the lawyers' Syndicate during Lifos' fact-finding mission to Cairo in October 2014<sup>104</sup>. The IBAHRI report further notes that it is also common practice for former police officers to be appointed as judges<sup>105</sup>. Reportedly, the judiciary continues to promote and appoint from within its own core of judges and public prosecutors, thus preventing other categories, such as lawyers, university professors and others from contributing with new experiences and dynamism to the judiciary<sup>106</sup>.

Laws governing the judiciary do not prohibit the appointment of women. Article 11 of the recently amended constitution sets provisions for equal rights between men and women in all civil, economic, social and cultural issues<sup>107</sup>. While half of the law students are women, including many female law professors and lawyers, women remain underrepresented within the judiciary. Attempts to find official statistics as to the exact number of women in judiciary has proved cumbersome. Media sources the IBAHRI consulted suggest that there are approximately 42 female judges (out of a total 12,000 to 13,000 judges) holding office within the judiciary<sup>108</sup>. The first female judge was Tahani el-Gabali, who was appointed to the Constitutional Court in 2003<sup>109</sup>. The State Council earlier attempted to ban women from sitting as judges, on the grounds that they could not be expected to geographically rotate. The State Council retracted its decision in 2010, allowing women to serve as judges<sup>110</sup>.

As for religious minorities, it is estimated that approximately ten percent of the judges are Christians. That figure equates with the proportion of Christians in the country<sup>111</sup>.

Promotion of judges is regulated by the JAL, and is carried out once a year. The decision is issued by the President of the Republic after approval of the Higher Judicial Council. Promotion is based on the criteria of seniority and proficiency, whereby seniority is the main factor for promotion, provided the judge fulfils all conditions of proficiency. Proficiency is evaluated through technical inspection that is carried out by the Judicial Inspection

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<sup>103</sup> International Bar Association Human Rights Institute (IBAHRI), *Separating Law and Politics: Challenges to the Independence of the Judges and Prosecutors in Egypt*, p. 25, February 2014

<sup>104</sup> Interview with Head of the Lawyers Syndicate, Cairo 2014-10-27

<sup>105</sup> International Bar Association Human Rights Institute (IBAHRI), *Separating Law and Politics: Challenges to the Independence of the Judges and Prosecutors in Egypt*, p. 25, February 2014

<sup>106</sup> Farhat, Dr. Mohammed Nour, Sadek, Counselor Ali, The Arab Center for the *Integrity in the Arab Countries; Report on the State of the Judiciary in Egypt*, p. 52, 2012

<sup>107</sup> Constitute, *Egypt's Constitution of 2014*, 2015-03-11

<sup>108</sup> International Bar Association Human Rights Institute (IBAHRI), *Separating Law and Politics: Challenges to the Independence of the Judges and Prosecutors in Egypt*, p. 30, February 2014

<sup>109</sup> Ibid

<sup>110</sup> Ibid

<sup>111</sup> Ibid

Directorate within the MoJ. In addition, judges due for promotion must have upheld the same office for two years as well as retained the evaluation of proficient in the last two assessments of proficiency<sup>112</sup>. A Judge can protest against the inspection report within a limited time period or give his remarks to the Higher Judicial Council prior to decisions being made<sup>113</sup>. However, controversy and criticism have been raised over merits and entitlements of the appointment and proficiency of judges and public prosecutors<sup>114</sup>.

The JAL does not make provisions for the training of judges. In 1981, the National Center for Judicial Studies was established by virtue of a presidential decree. The National Center is affiliated with the MoJ. The objective is to improve the professional level of judges, as well as public prosecutors, by providing theoretical and practical knowledge and training within judicial work<sup>115</sup>. However, the training sessions lack follow-up for trainees as well as evaluation of the training received by the beneficiaries<sup>116</sup>. Representatives at the Law & Society Research Centre at the American University in Cairo (AUC) that the delegation spoke to maintained that there is very little research carried out within the judiciary, if any at all<sup>117</sup>. The lack of systematic and critical study of law is what prompted the recent establishment of a Law & Society Research Centre at the AUC in 2014. The sources further reiterated the need for mapping the whole judicial system as well as the law enforcement sector. The objective is to bring together the expertise of a diverse set of scholars (e.g., lawyers, academics, researchers and activists) to form a working group to look at the state of the judiciary after the fall of the Mubarak regime. The Law & Society Research Centre aims to target the judiciary as well as persons looking to reintroduce stability in the country<sup>118</sup>.

Furthermore, the annual transfer and promotion of judges and ensuing change of work weakens the efficiency of the training, as the nature of the work and caseload are constantly changing<sup>119</sup>.

#### 4.5.2. Competency of the Public Prosecutor

The JAL stipulates the same conditions set for judges when it comes to the appointment of the public prosecutors. The law also makes provisions for appointment from outside the judicial body (e.g., practicing lawyers). The law stipulates that the appointment of practicing lawyers should not be less

<sup>112</sup> International Bar Association Human Rights Institute (IBAHRI), *Separating Law and Politics: Challenges to the Independence of the Judges and Prosecutors in Egypt*, p. 53-54, February 2014

<sup>113</sup> Ibid

<sup>114</sup> Ibid p. 52

<sup>115</sup> Ibid p. 55

<sup>116</sup> Ibid p. 56

<sup>117</sup> Meeting with representatives from the Law & Society Research Centre, American University in Cairo (AUC), Cairo 2014-10-27

<sup>118</sup> Ibid

<sup>119</sup> Farhat, Dr. Mohammed Nour, Sadek, Counselor Ali, *The Arab Center for the Integrity in the Arab Countries; Report on the State of the Judiciary in Egypt*, p. 56, 2012

than one quarter of the total appointees in public and lower positions such as, for example, associate or assistant prosecutor<sup>120</sup>. Appointment of public prosecutors is, on the other hand, chosen from the Courts of Appeals or Court of Cassation. The decision is made by the President of the Republic but, in contrary to the appointment of judges, does not require the approval of the High Judicial Council, thereby, making the president the exclusive appointing authority<sup>121</sup>. In addition, public prosecutors take the legal oath before the president, unlike judges that take their oath before the MoJ<sup>122</sup>.

Appointment of public prosecutors is also known to be tainted with nepotism. It is not uncommon for certain high profile members of the judiciary to use their influences to ensure positions as prosecutors for their children or other relatives<sup>123</sup>.

The same promotion criteria, seniority and proficiency, is applied for public prosecutors as it is for judges (see 3.4)<sup>124</sup>.

Public prosecutors are also given access to the National Center for Judicial Studies. The centre holds basic training for new members of the public prosecution, which lasts from six months up to one year (see 3.4)<sup>125</sup>.

#### 4.5.3. Competency of Judicial Personnel

The JAL does not make specific provisions regarding the appointment of judicial personnel. The law does not stipulate a specific academic degree or distinction for employees within judicial offices. The law does not require admission tests or preparatory programs when recruiting judicial personnel. Nepotism is, again, widespread within these circuits of employment, whereby children of judges and policemen are being appointed to these positions when, for example, appointing associate and assistant public prosecutors<sup>126</sup>.

Employees in the courts and the OPP, including judicial assistants, investigation clerks and court sessions secretaries, do not receive training sessions. This has a negative impact on the efficiency of the judicial work. The lack of specific selection criteria and qualifications has also resulted in decline of performance and delay in adjudication. This in turn has become a source of complaint from both plaintiffs and judges<sup>127</sup>.

<sup>120</sup> Farhat, Dr. Mohammed Nour, Sadek, Counselor Ali, The Arab Center for the *Integrity in the Arab Countries; Report on the State of the Judiciary in Egypt*, p. 50, 2012

<sup>121</sup> Ibid p. 51

<sup>122</sup> Ibid

<sup>123</sup> International Bar Association Human Rights Institute (IBAHRI), *Separating Law and Politics: Challenges to the Independence of the Judges and Prosecutors in Egypt*, p. 25, February 2014

<sup>124</sup> Farhat, Dr. Mohammed Nour, Sadek, Counselor Ali, The Arab Center for the *Integrity in the Arab Countries; Report on the State of the Judiciary in Egypt*, p. 53-54, 2012

<sup>125</sup> Ibid p. 55-56

<sup>126</sup> Ibid p. 51-52

<sup>127</sup> Ibid p. 56

## 4.6. Efficiency and Resources

One of the biggest challenges facing members of the judiciary in Egypt today is the growing workload and lack of resources facing them.

It is difficult to obtain official statistics to assess the ability of the judiciary to dispense efficient justice. IBAHRI reported that judges may deal with up to 300 to 400 cases per day. The situation is exacerbated by the fact that judges work alone, without help from court clerks or other assistants, as they are usually allocated to other jurisdictions<sup>128</sup>.

The huge backlog allocated to the judges leads to serious delays of cases, which in turn can amount to considerable delays in adjudication. Availability of online legal material is also limited, causing further delays in preparation of cases<sup>129</sup>.

## 4.7. Integrity of the Judiciary

### 4.7.1. The Independence of the Judiciary

What is meant by the independence of the judiciary is the existence of a higher judicial body that alone can supervise the judicial affairs with regard to the appointment, promotion, transfer and investigation of judges, as well as taking disciplinary measures against them. The judiciary's independence further entails the allocation of an independent budget for the judiciary, placed under the control of a higher judicial body. In addition, judges should also enjoy individual independence, whereby the law should guarantee them special immunity, allowing them to practice law without external influences<sup>130</sup>.

The last amendments made in the JAL in 2006 (Law No. 142/2006) allowed certain provisions towards judicial independence<sup>131</sup>. One of the positive impacts provided by the amendment was the imperative approval of the SJC in most judiciary cases, thus restricting some of the MoJ's executive powers<sup>132</sup>. However, the ministry continues to exercise considerable authority over the judiciary, particularly the civil, criminal and administrative courts. Article 36 of the JAL makes provisions for the MoJ to assign and transfer judges geographically within the country. The ministry also decides on the secondment of judges to work within the MoJ or other governmental bodies. The ministry still retains the power to initiate disciplinary procedures against judges<sup>133</sup>. The JAL further empowers the

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<sup>128</sup> International Bar Association Human Rights Institute (IBAHRI), *Separating Law and Politics: Challenges to the Independence of the Judges and Prosecutors in Egypt*, p. 32, February 2014

<sup>129</sup> Farhat, Dr. Mohammed Nour, Sadek, Counselor Ali, The Arab Center for the *Integrity in the Arab Countries; Report on the State of the Judiciary in Egypt*, p. 57-58, 2012

<sup>130</sup> Ibid p.20 & 24

<sup>131</sup> Ibid p. 22

<sup>132</sup> Ibid p. 22

<sup>133</sup> International Bar Association Human Rights Institute (IBAHRI), *Separating Law and Politics: Challenges to the Independence of the Judges and Prosecutors in Egypt*, p.26, February 2014

ministry to select judges that are to be seconded to the Disciplinary Department (*tafteesh*) in order to investigate other judges. Judges assigned to the disciplinary department serve in the capacity of civil servants<sup>134</sup>. More specifically, the JAL further retains authority over the ministry to request the OPP to initiate disciplinary proceedings against judges<sup>135</sup>. Some judges, for instance, have been pushed out of the judiciary on unfounded grounds. The decisions have been used to harass and embarrass them. Reportedly, these judges are then offered to have their file closed in exchange for their resignations. Others are coerced to leave the country to limit their influence over other judges<sup>136</sup>. In October 2014, 60 judges were referred to the disciplinary board for investigation on charges of signing a statement supporting the MB sit-in in *Raba'a al-Adawya*<sup>137</sup>. In March 2015, the disciplinary court ordered the retirement of 31 of the investigated judges, while an additional 10 were removed from their posts for joining the 'Judges for Egypt' that supported the MB<sup>138</sup>.

With regard to the allocation of an independent budget, the amendments in the JAL provide an independent budget for the judges as well as the OPP<sup>139</sup>.

The growing numbers of referrals from the military courts to the civil courts are also another challenge reflecting on the independence of the judiciary. According to representatives from the Egyptian Initiative for Personal Rights (EIPR), there is a growing mistrust within Egyptian society towards the judiciary, which is increasingly seen as a tool in the hands of those with executive powers. During the Mubarak era, the system relied on both treating political cases through the parallel court system (e.g., the Military Courts) as well as on the administrative detention allowed by the emergency laws. This meant that the judges within the regular court system did not have to get involved in these cases, and instead could focus on common law cases<sup>140</sup>.

The situation has now changed, the legal system relies on excessive pre-trial detention and on managing political cases within the regular court system, whereby judges who are perceived as 'loyal' to the state are appointed and rewarded by the executive powers. This is also the case for prosecutors, who are appointed not on merits, but on personal links within the security apparatus or with influential politicians. Sections within the judiciary itself are opposed to this practice. The EIPR representatives further raised

<sup>134</sup> International Bar Association Human Rights Institute (IBAHRI), *Separating Law and Politics: Challenges to the Independence of the Judges and Prosecutors in Egypt*, p.27, February 2014

<sup>135</sup> Ibid p. 28

<sup>136</sup> Aziz, Sahar, Sada, *Egypt's Judiciary, Coopted*, 2014-08-20

<sup>137</sup> Ahramonline, *Egypt refers 60 'pro-Brotherhood' judges to disciplinary board*, 2014-10-20

<sup>138</sup> Al-Jazeera, *Egypt sacks 41 judges for 'supporting' Brotherhood*, 2015-03-15

<sup>139</sup> Bernard-Maugiron, Nathalie, The American University in Cairo Press, *Judges and Political Reform in Egypt*, 2008

<sup>140</sup> Meeting with representatives from the Egyptian Initiative for Personal Rights (EIPR), 2014-10-21

concerns as to how this process gradually undermines both the judiciary's independence and the public's trust in the courts. They added that there are fears of a system breakdown if allowed to continue<sup>141</sup>.

#### 4.7.2. Nepotism and Corruption within the Judiciary

It is not possible to talk about corruption within the judiciary without reference to its independence. The MoJ can, in accordance to the JAL, Articles 9 and 30-31, assign judges to specific courts and cases, consequently jeopardizing the transparency of the procedure. Furthermore, IBAHRI maintained in its report that the interference by the MoJ in the secondments and transfers to more lucrative government posts creates a system of appeasement by the judges which can threaten the independence of the judicial institution<sup>142</sup>.

Nathan J. Brown, a professor of political Science and international affairs at George Washington University, and long acquainted with the workings of the Egyptian judiciary, describes the Egyptian judiciary as upholding institutional guarantees of independence even if they are incomplete. The judiciary has a sense of mission to the rule of law and due process, in addition to a well-developed legal framework which gives it considerable autonomy in personnel and budgetary matters. Professor Brown maintains that the problems and challenges facing Egypt's judiciary cannot be entirely attributed to authoritarianism of the justice system, but that there are other factors that threaten the integrity of those upholding the system. He adds that judges generally have a strong sense of loyalty to the state and are generally supporters of political and social order. This in turn also reflects on the judiciary body, particularly in its unwillingness to distance itself from the state<sup>143</sup>. The political crises brought about by the rule of the MB was also shared by many of the judges, and that perhaps explains some of the brutal proficiency displayed by the judges in the trial of cases in the aftermath of the Morsi regime<sup>144</sup>.

According to Cecilia Uddén, correspondent for Radio Sweden (*Sveriges Radio*), judges have enjoyed a relatively high level of trust among Egyptians compared to other institutions. The majority of judges perceived the rule of the MB as a threat to their independence and that of the judicial system<sup>145</sup>. Morsi's regime adopted a confrontational strategy with the judicial institutions under the banner of reform. Morsi's constitutional declaration in

<sup>141</sup> Meeting with representatives from the Egyptian Initiative for Personal Rights (EIPR), 2014-10-21

<sup>142</sup> International Bar Association Human Rights Institute (IBAHRI), *Separating Law and Politics: Challenges to the Independence of the Judges and Prosecutors in Egypt*, p.26 -27, February 2014

<sup>143</sup> Brown, Nathan, The Washington Post, *Why do Egyptian courts say the darndest things?*, 2014-03-25

<sup>144</sup> Ibid

<sup>145</sup> Meeting with journalist Cecilia Uddén, Radio Sweden, *Sveriges Radio* (SR), Cairo 2015-10-20

November 2012 and his attempt to amend the JAL in the first half of 2013, were met with fierce resistance from the majority of the judges, which in turn also contributed to the fall of the rule of the Brotherhood<sup>146</sup>. C. Uddén further maintained that the ouster of the Morsi regime and subsequently the Brotherhood, also brought about a silent ‘counter revolution’ amongst the judges, aimed at pushing Islamism back. Concretely, this has now manifested itself in harsh sentences towards the movement’s supporters<sup>147</sup>. The most astounding of these verdicts is probably the death sentences of 683 men (including the MB’s spiritual leader, Mohammed Badie) upheld by a judge in the court of Minya in March 2014 on charges of killing a policeman in Matay, Minya Governorate, in August 2013<sup>148</sup>. Subsequently, the judge was later reassigned from the criminal judiciary to the administrative court<sup>149</sup>. The decision was seen as a demotion which only occurs in circumstances attributed to the judge’s reputation or capacity of hearing cases of a specific nature<sup>150</sup>.

The recent appointment of the new Minister of Justice, Ahmed el-Zend, who was former chairman of the Judges’ Club, is likely to raise certain concerns with regards to trials pertaining to members of the MB. El-Zend was at the forefront of the conflict between the Morsi regime and the judges. This included the amendments of the JAL, which proposed reducing the age of retirement for judges from 70 to 60 years, which at the time would have entailed the forced retirement of 25 percent of Egypt’s 13,000 serving judges<sup>151</sup>.

Another issue touching the integrity of the judiciary is that of nepotism. The judicial control over matters of appointment and promotion, coupled with the fact that the judiciary is a lifelong career (one that is often passed from father to son (see 3.4.1)), is seen as giving the judiciary a strong sense of corporate identity<sup>152</sup>. The recent resignation of the former Minister of Justice further enhances this view. Reportedly, the Minister, Mahfouz Saber, resigned in May this year amid public outcry over his comment that sons of rubbish collectors were not qualified to become judges<sup>153</sup>.

The appointment of Ahmed el-Zend to succeed Saber has also prompted mixed reactions, as the newly appointed minister has a reputation for controversial remarks of a similar nature<sup>154</sup>. El-Zend is known to have supported the appointment of family members within the judiciary during a

<sup>146</sup> Auf, Yusuf, The Atlantic Council, *Prospects for Judicial Reform in Egypt*, 2014-10-21

<sup>147</sup> Meeting with Cecilia Uddén correspondent for Radio Sweden, *Sveriges Radio (SR)*, Cairo 2015-10-20

<sup>148</sup> The Guardian, *Egyptian judge sentences 720 men to death*, 2014-04-28

<sup>149</sup> Middle East Eye, *Egypt’s mass death sentence judge removed*, 2014-10-

<sup>150</sup> Jurist, *Egyptian Judge involved in mass sentence of Muslim Brotherhood removed from post*, 2014-10-04

<sup>151</sup> Ahrmonline, *Mixed reactions on Egypt’s new justice minister El-Zend*, 2015-05-20

<sup>152</sup> Brown, Nathan, The Washington Post, *Why do Egyptian courts say the darndest things?*, 2014-03-25

<sup>153</sup> BBC News, *Egypt’s justice minister sacked over social class remarks*, 2015-05-11

<sup>154</sup> Ahrmonline, *Mixed reactions on Egypt’s new justice minister El-Zend*, 2015-05-20

strike carried out by court personnel over the employment of sons of judges instead of more qualified candidates. At the time, el-Zend is quoted to have said: *'The hiring of the sons of judges will continue year after year, and no power in Egypt will stop this holy crawl'*<sup>155</sup>.

#### 4.7.3. The Politicization of the Judiciary

The legal framework that Egypt's judges strive to uphold is authoritarian by nature. This is seen in laws governing most aspects of life within society, such as civil society, political life, media, religion and local government. Lawmakers often augment the authority of the state in a manner that makes these laws very vague in their interpretation, consequently criminalizing activities that ordinarily seem to be basic rights enjoyed by citizens<sup>156</sup>.

The promulgation of the protest law, the anti-terrorism law, the counter-terrorism law as well as the law regulating the work of civil society are probably the most evident example of this. The protest law (Law 107/2013) issued in November 2013, restricts public assembly and demonstrations without prior notification to the MoI. The law gives the MoI the right to disperse any public meeting exceeding 10 persons. Article 10 of the law grants the ministry the right to ban public meetings on the basis of information or evidence that can pose a threat to peace and security, without any requirement to provide specific justification<sup>157</sup>. Organizers can, in theory, appeal a ban before the local court of first instance. However, the law does not set a timeframe, meaning that the court can hear the case after the scheduled date of the event<sup>158</sup>. Violations can lead to imprisonment from two to five years, or heavy fines of 50,000 to 100,000 Egyptian Pounds (approximately US\$ 7,000 to 15,000)<sup>159</sup>. Thousands, mostly supporters of the MB, have since been detained and charged in accordance to the protest law<sup>160</sup>.

The anti-terror law issued in November 2014 (Law No. 8/2015) empowers the government to label organizations that express political or social opposition as terrorists<sup>161</sup>. Furthermore, the law gives the executive branch, the security sector and the public prosecutor authority to dissolve, freeze the assets of, and arrest the members of an organization designated as a terrorist entity<sup>162</sup>. On August 15, 2015 President Sisi approved a stringent counter-terrorism law (Law No. 94/2015)<sup>163</sup> in an effort to combat extremist insurgency following the killing of PG Hisham Barkat in June this year<sup>164</sup>. The law stipulates large fines between 200,000 and 500,000 (Pounds (US\$

<sup>155</sup> Ahramonline, *Mixed reactions on Egypt's new justice minister El-Zend*, 2015-05-20

<sup>156</sup> Brown, Nathan, *The Washington Post, Why do Egyptian courts say the darndest things?*, 2014-03-25

<sup>157</sup> Human Rights Watch, *Egypt: Deeply Restrictive New Assembly Law*, 2013-11-26

<sup>158</sup> Ibid

<sup>159</sup> Ibid

<sup>160</sup> BBC News, *Egypt protests: New Law condemned as repressive*, 2013-11-24

<sup>161</sup> Suto, Ryan J. *Atlantic Council, Egypt's New Terrorism Law*, 2014-12-12

<sup>162</sup> Ibid

<sup>163</sup> Official Gazette, *Law 94/2015 (Arabic)*

<sup>164</sup> BBC News, *Egypt's al-Sisi imposes strict anti-terrorism laws*, 2015-08-17

25,000-64,000) for journalists contradicting official accounts of militant attacks. The law further stipulates prison sentences of five to seven years for inciting violence or websites deemed for the purpose of spreading terrorism, as well as 25 years for financing terrorist groups<sup>165</sup>. Joining a terrorist group will carry up to 10 year imprisonment. Trials for suspected militants will be fast-tracked through special courts<sup>166</sup>.

Egypt is described as having one of the largest and most vibrant civil society sectors in the developing world; there are some 40,000 local NGOs registered with the Ministry of Social Solidarity (MoSS)<sup>167</sup>. Article 75 of the 2014 constitution stipulates the right for citizens to form institutions and non-governmental organizations, allowing them to engage in activities free from interference by administrative agencies<sup>168</sup>. Laws and regulations monitoring the work of NGOs have always been strict. The situation has gradually worsened since the uprising in 2011, and particularly after the ouster of the Morsi regime. Amendments to the laws regulating the rights and practices of civil society have been overshadowed by other laws targeting terrorism and national security. The recent amendments, issued in November 2014, require associations to register with the MoSS. The law provides provisions for the ministry, through a coordinating committee, to review all civil society organizations receiving external funding from abroad. The committee is comprised of eight governmental bodies, which includes a representative from the MoI as well as from the General Intelligence. As a result, all NGOs were given 45 days to re-register with the designated ministry<sup>169</sup>.

NGOs and social activities associated with the MB were already targeted prior to these recent amendments. In September 2013, the Court for Urgent Matters (i.e., a court of first instance) banned all social activities of the MB. The ruling at the time was described by some sources as an attempt by the judiciary to appease the government<sup>170</sup>. The amendments that followed in November 2014 have forced many associations to close, or to stop receiving much needed funds from abroad<sup>171</sup>.

The judicial system is not only dependent on its own integrity and competency in upholding the rule of law, it is also dependent on the evidence that is presented by the law enforcement and the OPP that carry out these investigations<sup>172</sup>. The OPP's failure to process cases relating to abuse and other allegations committed by the police have long been subjected to criticism. The United Group, an independent Egyptian Human

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<sup>165</sup> BBC News, *Egypt's al-Sisi imposes strict anti-terrorism laws*, 2015-08-17

<sup>166</sup> Ibid

<sup>167</sup> Qantara.de, *Silencing the voice of civil society*, December 2014

<sup>168</sup> Constitute, *Egypt's Constitution of 2014*, Article 75, 2015-03-11,

<sup>169</sup> Mikhail, Amira, Open democracy, *The obliteration of civil society in Egypt*, 2014-10-06

<sup>170</sup> McCrummen, Stephanie, The Washington Post, *Egypt Bans Muslim Brotherhood*, 2013-09-23

<sup>171</sup> Qantara.de, *Silencing the voice of civil society*, December 2014

<sup>172</sup> Brown, Nathan, The Washington Post, *Why do Egyptian courts say the darndest things?*, 2014-03-25

Rights law firm, issued a report in January 2015 concerning incidents of abuse in custody reported in the past two years, from October 2013 through August 2014<sup>173</sup>. The report, which is based on interviews with 465 alleged victims of police violations, concluded that 163 of the interviewed victims had filed complaints to the OPP, of which only seven had reached the courts. Of the other cases, 69 remain under investigation, and 87 were rejected by the prosecutors<sup>174</sup>.

A representative from the EIPR the delegation spoke to maintained that accountability of law enforcement staff is difficult to achieve when the only mechanism for complaints against the police means that they investigate themselves<sup>175</sup>. The bias of these internal investigations is exemplified by the case in which 37 prisoners suffocated in a police van in August 2013<sup>176</sup>. It was only after the court requested further investigation into the matter that a ruling could be made<sup>177</sup>; one officer was sentenced to 10 years in prison, while three other policemen were given a one-year suspended sentence each on charges of involuntary manslaughter and extreme negligence<sup>178</sup>. According to HRW, only four officers have been indicted since the fall of the Morsi regime<sup>179</sup>, all of which are related to the above mentioned case. The few cases that make it to the courts are insufficient due to lack of evidence, and security agencies have no will to cooperate with the courts<sup>180</sup>.

#### 4.7.4. Reforms within the Judiciary

Demands to reform Egypt's institutions, including the judiciary, go back as far as the creation of these institutions. The Judges' Club attempt during the Mubarak era to amend the JAL is probably the most significant reform carried out by the judiciary at the time. The Judges' Club was not able to follow through on all the proposals, but those that were passed were able to guarantee a certain leverage of independence, such as budgetary independence and the empowerment of the SJC in matters relating to judges' work<sup>181</sup>.

Nevertheless, the judiciary still remains a conservative institution, largely rooted in preserving its 'status quo' traditions that it has upheld for generations. It is particularly sensitive to reforms that come from outside of the judicial establishment. This was clearly seen in the confrontation between the judiciary and the Morsi regime. The constitutional declaration

<sup>173</sup> United Group, *Roads Blocks to Justice*, September 2014

<sup>174</sup> Human Rights Watch, *Egypt: Investigate Professor's allegations of Torture*, 2015-02-03

<sup>175</sup> Meeting with representatives from the Egyptian Initiative for Personal Rights (EIPR), 2014-10-21

<sup>176</sup> Reuters, *Egyptian lawyers call for investigation into deaths of 37 Islamists*, 2013-08-19

<sup>177</sup> Human Rights Watch, *World Report 2015: Egypt*, 2015-01-29.

<sup>178</sup> Yahoo News, *Egyptian court jails policeman linked to Islamist deaths*, 2014-03-18

<sup>179</sup> Human Rights Watch, *World Report 2015: Egypt*, 2015-01-29

<sup>180</sup> Meeting with representatives from the Egyptian Initiative for Personal Rights (EIPR), 2014-10-21

<sup>181</sup> Bernard-Maugiron, Nathalie, The American University in Cairo Press, *Judges and Political Reform in Egypt, Chapter 3: The Law on Judicial authority and Judicial Independence*, 2008

in November 2012 declared by Morsi and the attempt to amend the JAL, with regard to the age of retirement for judges, were ascribed by the government as reforms. The attempt was met with fierce resistance from the judges<sup>182</sup>, which subsequently led to the resignation of Ahmed Mekky, Minister of Justice at the time. Mekky a former judge, and an outspoken reformist during the Mubarak era, resigned in protest to what he described as undue interference in the judicial process<sup>183</sup>. The experience has proved that institutional reform is not feasible in an ongoing political climate and, should it take place, it should happen from within the institution<sup>184</sup>.

## 5. The Capacity of the Security Sector

### 5.1. Ministry of Interior

Egypt's domestic security force, under the executive authority of the MoI, is one of the biggest places of employment in the country. In 2009 the MoI employed 1.7 million individuals, including 850,000 police and administrative staff, 450,000 Central Security Forces (SCF) -*al-Amn almarkazi*, and 400,000 individuals within Homeland Security- *al-amn al-watani*<sup>185</sup>.

The MoI's primary security forces are the **Egyptian National Police (ENP)** and the paramilitary **Central Security Forces (CSF)**. Although the Egyptian Armed Forces are generally responsible for external defence, they have also played a role in internal security due to lack of police capacity. The interim government of Adly Mansour granted military forces arrest authority (Law No. 136)<sup>186</sup> during periods of significant turmoil<sup>187</sup>.

The MoI's authority covers numerous geographical and functional security agencies that deal with criminal investigation, drug trafficking, policing morality, immigration and border control, counterterrorism and homeland security, as well as traffic control, vehicle licensing, tax evasion, prison management, election administration, public transportation security and tourism security. There is security directorate (*Moderyat al-Amn*) in each of Egypt's 27 governorates<sup>188</sup>.

Egypt's newly amended 2014 constitution stipulates visions of the police's mission, to serve and ensure safety and security for the citizens, as well as

<sup>182</sup> Auf, Yusuf, Atlantic Council, *Prospects for Judicial Reform in Egypt*, 2014-10-21,

<sup>183</sup> The Guardian, *Egypt's justice minister resigns in row over judiciary independence*, 2013-04-21

<sup>184</sup> Auf, Yusuf, Atlantic Council, *Prospects for Judicial Reform in Egypt*, 2014-10-21,

<sup>185</sup> Brumberg, Daniel, Sallam, Hesham, United States Institute of Peace, *The Politics of Security Sector Reform in Egypt*, p.6, 2012-10-01

<sup>186</sup> Official Gazette, Law 136 (Arabic), 2014-10-27

<sup>187</sup> US Department of State, *EGYPT 2013 HUMAN RIGHTS REPORT*, p. 8, updated 2014-05-03

<sup>188</sup> Brumberg, Daniel, Sallam, Hesham, United States Institute of Peace, *The Politics of Security Sector Reform in Egypt*, p. 6, 2012-10-01

honouring human rights (Article 206)<sup>189</sup>. Noteworthy, reference to international human rights instruments were dropped from the final draft<sup>190</sup>. The constitution further outlines the role of a consultative body (Article 207) to the MoI, the Supreme Police Council (SPC) (*al-Majlis al-A'ala lil shorta*), which is to assist in organizing the police force and managing the affairs of its members<sup>191</sup>. The council must be consulted on any law affecting the police.

#### 5.1.1. Egyptian National Police

The National Police has a force of 122,000 personnel. The body is primarily responsible for law enforcement<sup>192</sup>.

#### 5.1.2. Homeland Security

In November 2011, Egypt's national security apparatus changed its name to Homeland Security- *Qita' al-Amn al-Watani*<sup>193</sup>. The organization is estimated to employ 100,000 individuals<sup>194</sup>.

The mandate and the internal organization of the security apparatus are vague; it is the only sector within the MoI that does not disclose its structure on the MoI website<sup>195</sup>. In his report on the challenges facing the security sector- *From Bad Cop to Good Cop: The Challenge of Security Sector Reform in Egypt (November 2012)*, Omar Ashour attempts to illustrate the structure of the organization from documents confiscated by activists during the 2011 uprising, as well as from interviews with former officers. O. Ashour notes that structure is made up of a 'general administration' which is organized by region or thematically. The general administration consists of smaller components which are identified as central administrations, groups and then units. Ashour identifies the following groups and units in his report:

1. Extremist Activity, which is the largest unit, and whose mandate was to counter religious-based activism. The Extreme Activity Unit includes sub-units designated to counter MB activism, extremist organizations, and provide prison security (tasked with countering Islamist political activities inside prisons and detention centres)<sup>196</sup>
2. Student Activity Unit .
3. Human Rights Unit, with a mandate to counter human rights activists.
4. Arab Activism Group, for countering Arab nationalistic influences.

<sup>189</sup> Constitute, *Egypt's Constitution of 2014*, 2015-03-11,

<sup>190</sup> Brown, Nathan J., Dunne, Michel, Carnegie Endowment for International Peace, *Egypt's Draft Constitution Rewards the Military and Judiciary*, 2013-12-04

<sup>191</sup> Constitute, *Egypt's Constitution of 2014*, 2015-03-11

<sup>192</sup> Global Security, *Minister of the Interior (MOI)*

<sup>193</sup> Watson, Paul Joseph, Inforwars.Com, *Egypt's Secret Police Renames Itself 'Homeland Security'*, 2011-11-21

<sup>194</sup> Ashour, Omar, Brookings Doha Center, *From Bad Cop to Good Cop: The Challenge of Security Sector Reform in Egypt*, p. 6, November 2012

<sup>195</sup> Ibid

<sup>196</sup> Ibid

## 5. Sectarian Activism, focusing on Christian activists<sup>197</sup>.

### 5.1.3. Other Agencies within the MoI

Those include the following:

1. The Directorate of Ports Security, which controls departments including the General Department of Cairo Airport Police.
2. The Economic Security Sector, which controls the General Departments of the Public Funds Crimes Investigation Police, Supply and Home Trade Police, Environment and Water Bodies Police, Transportation Police, and the Electricity Police.
3. The Public Security Sector, which controls departments including the General Department of Criminal Investigation.
4. The Security and Protection Sector, which controls departments including the General Directorate of VIP protection<sup>198</sup>.

### 5.1.4. Central Security Forces (CSF)

The CSF is the largest paramilitary group, with a force of 350,000 individuals. It is the only paramilitary group controlled by the MoI. Its primary responsibility is to provide security for infrastructure as well as key domestic and foreign officials. The CSF supports the National Police with capabilities including traffic management, and maintaining public order, such as by riot control, for example. The CSF General Headquarters is in Cairo<sup>199</sup>. The CSF recruits its personnel primarily from army conscripts with no former education<sup>200</sup>.

## 5.2. The Capacity of the Security Sector

There is not much detailed information concerning the competencies of the various sections and departments that make up the security sector of the MoI.

As mentioned above, the MoI is one of the largest places of employment within Egypt's public sector. According to the Central Agency for Public Mobilization and Statistics (CAPMAS) there are approximately 5.1 million employees within the public sector.<sup>201</sup>

The work of the police authority is regulated by the Police Institution Law (PIL) No. 109/1971<sup>202</sup>. The law recognizes three categories of law enforcement actors: police officer (*Dhabit*), warrant officer (*Amin Shurta*), together they are referred to as the officers at the line (*dohbat al-saf*), the

<sup>197</sup> Ashour, Omar, Brookings Doha Center, *From Bad Cop to Good Cop: The Challenge of Security Sector Reform in Egypt*, p. 7, November 2012

<sup>198</sup> Global Security, *Minister of the Interior (MOI)*

<sup>199</sup> Ibid

<sup>200</sup> Brumberg, Daniel, Sallam, Hesham, United States Institute of Peace, *The Politics of Security Sector Reform in Egypt*, 2012-10-01

<sup>201</sup> Albawaba, *Public sector shrinking in Egypt*, 2013-03-26

<sup>202</sup> Jurispedia, Police Institute Law No. 109 of 1971 (Arabic), 2009-09-12,

policemen are referred to as first rank soldiers (*Jonoud al-Draja al-Oula*), and finally the conscript soldiers that make up the forces of the CSF, who are referred to second rank soldiers (*Jonoud al-Darja al-Thaniya*)<sup>203</sup>.

Police officers within the MoI possess a degree from the police academy. Secondary school graduates with a grade exceeding 60 percent qualify for application to the academy. However, nepotism is widely practiced amongst applicants<sup>204</sup> (see 4.3).

Article 6 of PIL No. 109/1971 stipulates that graduates of the police academy possess the rank of lieutenant. Upon graduation, officers undergo a trial period of one year. Officers who do not qualify during the trial period can have their trial period extended by six months, subject to approval of the SPC (PIL, Article 6)<sup>205</sup>. Police officers are also subject to annual evaluation (PIL, Article 16). Officers who receive poor evaluations for two consecutive years are reverted to the SPC for review and assessment. This may entail a second chance or reassignment to civilian duties. Cases of officers deemed unsuitable to perform may lead to dismissal from the service<sup>206</sup>.

Warrant officers are graduates of the police institute as accorded in Article 78 of the PIL. Secondary school diploma, or equivalent, is a prerequisite when applying. Article 78 further stipulates that the applicant must be an Egyptian national, with no criminal record and of sound health. The article further states that enrolment to the police institution is a substitution for military service<sup>207</sup>. The terms of appointment upon completing the training at the police institute are similar to those of a graduate from the police academy (PIL, Article 79)<sup>208</sup>.

No referral is made in the law as to the educational requirements for the other ranks within the police force.

Appointment of army conscripts within the MoI is found within the enforcement units of the CSF. The forces are made up of conscript soldiers with no formal education or vocational skills<sup>209</sup>. In fact, their lack of qualifications is a prerequisite for their selection to the CSF<sup>210</sup>. The conscripts often come from socially marginalized areas.

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<sup>203</sup>Jurispedia, Police Institute Law No. 109/1971 (Arabic), Article 2, 2009-09-12

<sup>204</sup> Meeting with representatives from the Egyptian Initiative for Personal Rights (EIPR), Cairo, 2014-10-21

<sup>205</sup> Jurispedia, Police Institute Law No. 109 /1971 (Arabic), 2009-09-12

<sup>206</sup> Ibid

<sup>207</sup> Ibid

<sup>208</sup> Ibid

<sup>209</sup> Adam, Mohammed, Egypt Independent, *Brute force: inside the Central Security Forces*, 2012-11-11

<sup>210</sup> Meeting with a representative from the Egyptian Initiative for Personal Rights (EIPR), April 2015.

The promotion criteria within the officer core are based primarily on graduation class, age and time spent in the force<sup>211</sup>. Promotion is also linked to the proficiency presented in the evaluation. Articles 23 and 24 of the PIL further regulate bonuses and other incentives, e.g. training for proficient officers<sup>212</sup>.

General working conditions remain difficult within the police force. Long working hours, up to 12 hours per shift, is not uncommon. Wages remain low, despite the 300 percent salary raise issued by the Morsi regime in 2102<sup>213</sup>. A warrant officer's monthly salary is about 1,000 Egyptian pounds (US\$ 145), while a police officer's receives around 570 pounds (US\$ 85)<sup>214</sup>. Bribes – *Rashwa*- and other additional sources of income are, therefore, not uncommon<sup>215</sup>.

With regard to the conscript soldiers within the CSF, the situation is the same, if not worse. Living conditions at the camps are both bleak and meagre. Soldiers are repeatedly subjected to humiliation and abuse by their superiors. Reportedly, soldiers are beaten and mistreated by officers<sup>216</sup>. Soldiers who complain risk being charged with insubordination. Their missions outside often involve risk for violence, as when engaging in riot control; however, there is also boredom from standing in one place for hours on end<sup>217</sup>.

Attempts to organize unions after the uprising have so far been rejected<sup>218</sup>. The constitutional amendment of 2014 formalized the autonomy of the security sector from civilian oversight. The constitution rendered the MoI power over any law relating to the police force. As a result, a ban has been imposed on forming police unions as well as the right to vote<sup>219</sup>.

Upgrade in training and forensic capabilities is also undermined. According to the EIPR, there are only 80 forensic specialists in the country, and labs are ill-equipped. As a result, police officers rely on securing confessions, often extracted under duress. The police also rely on criminals-turned-informants within communities, who are easy for the police to pressure due to their past. This informal setup encourages local score settling<sup>220</sup>. In

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<sup>211</sup> Ashour, Omar, Brookings Doha Center, *From Bad Cop to Good Cop: The Challenge of Security Sector Reform in Egypt*, November 2012

<sup>212</sup> Jurispedia, Police Institute Law No. 109/1971 (Arabic), 2009-09-12

<sup>213</sup> Hope, Bradely, The National, *In Egypt, even the police want to reform the police*, 2012-03-02

<sup>214</sup> Michael, Marc, Open Democracy, *Tackling corruption in revolutionary Egypt*, 2011-03-29

<sup>215</sup> Ibid

<sup>216</sup> Adam, Mohammed, Egypt Independent, *Brute force: inside the Central Security Forces*, 2012-11-11

<sup>217</sup> Ibid

<sup>218</sup> Sayigh, Yezid, Carnegie Endowment for International Peace, *Missed Opportunities: The Politics of Police Reform in Egypt and Tunisia*, p. 13, March 2015

<sup>219</sup> Ibid p. 15

<sup>220</sup> Meeting with representatives from the Egyptian Initiative for Personal Rights (EIPR), Cairo 2014-10-21

addition, the training curricula are characteristically militant, often lacking in reflection on human security and service to society<sup>221</sup>. In addition, there is a lack in training procedures for conscripts within the CSF with regard to adopting non-violent riot control tactics<sup>222</sup>.

### 5.3. The Integrity of the Security Sector

Corruption and nepotism are commonly associated with the Egyptian police force when addressing the issue of its integrity.

Transparency International's 2013 report showed that 44 percent of Egyptians surveyed consider corruption in the public sector a very serious problem. Nearly 65 percent said corruption had worsened since January 2011<sup>223</sup>. The majority of those surveyed considered the police and the media as the most corrupt institutions in the country<sup>224</sup>. Although Egypt showed marginal improvement in 2014, corruption continues to prevail. The private newspaper *al-Masry al-Youm* published a controversial article on the security sector in April this year. The article exposed the endemic proliferation of corruption within the security sector, and how that has become entrenched within the ranks of the police core, whereby officers have allegedly received bribes up to 25,000 Egyptian pounds (US\$ 3,500) for various services. These services include everything from cancelling traffic misdemeanours to falsifying official documents<sup>225</sup>. The article discloses further criminal activities involving the police force, such as the case of an officer charged for engaging criminal gangs to rob people when coming out of banks<sup>226</sup>. The article takes up the systematic abuse of power committed by warrant officers at police stations around the country. Reportedly, all dealings with the police authorities are carried out through appeasement and bribery of warrant officers and their superior officers. Failure to comply can lead to false charges<sup>227</sup>.

Nepotism and discrimination within the police force has also been an issue of concern within the security sector. Admission into the Police Academy is not accessible to all. People with critical political views and the sons of low-income families are discriminated against in the application process<sup>228</sup>. Reportedly, 40 students were expelled from the Police Academy in 2014 due to links with the MB. The students, who at were attending their third and fourth years at the Academy, were expelled after an investigation

<sup>221</sup> Ashour, Omar, Brookings Doha Center, *From Bad Cop to Good Cop: The Challenge of Security Sector Reform in Egypt*, p. 15, November 2012

<sup>222</sup> Ibid

<sup>223</sup> Farid, Farid, Transparency International, *EGYPT IN CRISIS: A LOOK AT CORRUPTION FIGURES FOR THE LAST TWO YEARS*, 2013-07-15

<sup>224</sup> Ibid

<sup>225</sup> Al-Masry al-Youm, «البدلة الميري» ثقب في .إشرطة شهداء وخطايا, 2015-04-19

<sup>226</sup> Ibid

<sup>227</sup> Ibid

<sup>228</sup> Gulhane, Joel, The Atlantic Council, *Egypt Turns to Youth to Augment Security Forces*, 2014-12-23

carried out by the security forces and the national security revealed that they had first- and second-degree relatives affiliated with the MB<sup>229</sup>.

Information regarding the representation of women and minority groups is very limited. In 2013, the MoI established a special unit to combat violence against women. The unit, which is comprised of female police officers, was initially set up to deal with cases of sexual harassment<sup>230</sup>. The unit further aims to train police to deal with cases relating to violence against women<sup>231</sup>.

The security and political instability, coupled with public outcry for law and order, has not improved the public's confidence in law enforcement. According to polling data from the Carnegie Endowment for International Peace, confidence in the police dropped from 58 percent in 2009, to as low as 39 percent in 2013. Those expressing no confidence in the police rose from 39 percent in 2011, to 58 percent in 2013. This lack of confidence is also reflected in the crime rate at that given time period (2011-2013), wherein homicide rates had tripled and kidnappings and car thefts quadrupled<sup>232</sup>.

The attitude of the police force has also hardened, as well as demands shifted. The uprising of 2011, which was attributed to deep political, social and economic grievances, was manifested in a rage of anger against the police force for its systematic violations of human rights and its endemic corruption. As a result, the police suffered heavy losses as police stations were attacked and torched. Officers and soldiers were physically and verbally attacked. The perplexed sense of retreat and shock that overcame members of the police force at the beginning of the uprising gradually turned into resentment and vengefulness<sup>233</sup>. This was clearly demonstrated in the excessive deployment of force that followed after the fall of the Brotherhood in 2013<sup>234</sup>.

The uprising in 2011, on the other hand, also gave rise to a new generation of reformist officers who sought to cleanse the force of corruption, as well as improve working conditions and the public image of the force. Several organizations emerged from within the police force, such as the General Coalition of Police officers (GCPO), Officer But Honorable (OBH), and Warrant Officer But Honorable (WOBH). The rise of reformist officers served as a positive indicator of internal dynamics for change within the

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<sup>229</sup> Ahramonline, *40 students expelled from Egypt's police academy over Brotherhood links*, 2014-12-17

<sup>230</sup> Egypt Independent, *Special female police unit to combat violence against women*, 2013-05-22

<sup>231</sup> Meeting with anonymous women's organization, Cairo 2014-10-21

<sup>232</sup> Sayigh, Yezid, Carnegie Endowment for International Peace, *Missed Opportunities: The Politics of Police Reform in Egypt and Tunisia*, p. 27, March 2015

<sup>233</sup> Ashour, Omar, Brookings Doha Center, *From Bad Cop to Good Cop: The Challenge of Security Sector Reform in Egypt*, p. 9, November 2012

<sup>234</sup> Sayigh, Yezid, Carnegie Endowment for International Peace, *Missed Opportunities: The Politics of Police Reform in Egypt and Tunisia*, p. 14, March 2015

Mol<sup>235</sup>. These initiatives have since diminished as successive interim governments failed to meet the reform challenges facing the security sector (see 4.5.)<sup>236</sup>.

#### 5.4. Upholding Human Rights and Accountability

The security sector's use of excessive force has been in focus since the uprising of 2011. The situation has been exacerbated since the fall of the Morsi regime in mid-2013. HRW describes the situation in its annual report- World Report 2015- on Egypt, as the worst in the modern history of the country<sup>237</sup>.

According to HRW, 800 arrests were made against protesters at various demonstrations during Morsi's time in power<sup>238</sup>. Following the ouster of Morsi, the police are reported to have arrested or indicted 41,000 persons. HRW estimates that 29,000 of those detained are sympathizers or members of the MB<sup>239</sup>. The arrests have also included secular and leftist activists charged with protesting without authorization, incitement, 'thuggery,' vandalism and belonging to banned or terrorist groups<sup>240</sup>.

Reportedly, detainees have been subjected to beatings during arrest, arrival and transport between police stations<sup>241</sup>. Given the escalated number of arrests, detainees are transferred directly to remote detention centres outside the capital without being processed in the police station<sup>242</sup>. Detainees are reported to have been subjected to torture and coerced confessions during detention. The number of deaths in detention has also increased. The newspaper *al-Watan* reported 90 deaths alone in the police stations in the governorates of Giza and Cairo which, according to the newspaper, was an increase by 38 percent from the previous year<sup>243</sup>. The cause of death was attributed to lack of functioning ventilation in the overcrowded make-shift detention centres<sup>244</sup>. State run *al-Ahram* newspaper reiterated the conditions in the prisons in an article following an inspection carried out by the OPP in May this year. The newspaper reported on the conditions in the detention facilities at a police station in old Cairo, where 380 detainees were held in cells that were designated for 100 persons<sup>245</sup>.

<sup>235</sup> Ashour, Omar, Brookings Doha Center, *From Bad Cop to Good Cop: The Challenge of Security Sector Reform in Egypt*, p. 9, November 2012

<sup>236</sup> Sayigh, Yezid, Carnegie Endowment for International Peace, *Missed Opportunities: The Politics of Police Reform in Egypt and Tunisia*, p. 4-6, March 2015

<sup>237</sup> Human Rights Watch, *World Report 2015: Egypt*, 2015-01-29

<sup>238</sup> Human Rights Watch, *All According to Plan: The Rab'a Massacre and Mass Killings of Protesters in Egypt*, 2014-08-12

<sup>239</sup> Human Rights Watch, *World Report 2015: Egypt*, 2015-01-29

<sup>240</sup> Ibid

<sup>241</sup> Ibid

<sup>242</sup> Meeting with a representative from Egyptian Initiative for Personal Rights (EIPR), April 2015

<sup>243</sup> al-Watan, 2014 انفراد بالأسماء: وفاة 90 متهماً في أقسام القاهرة والجيزة خلال 2014-12-11

<sup>244</sup> ibid

<sup>245</sup> al-Ahram, 2015 مات بالاختناق، من لم يمت بالتعذيب.. مات بالاختناق، 2015-05-25

Clashes between police and demonstrators elucidate the use of force demonstrated by the security. There has been extensive reporting on the issue. One of the most exposed is probably the killing of 20 people in January this year, during which there was a peaceful assembly commemorating the anniversary of the uprising. The incident triggered public outrage, as well as worldwide media attention, following the death of female activist and member of the Socialist Popular Alliance, Shaima Sabbagh, who was shot by riot police while attempting to lay a wreath at Tahrir Square<sup>246</sup>. The police denied using bird's eye pellets. An investigation was ultimately carried out after mounting pressure prompted by the intervention of President Sisi<sup>247</sup>. A police lieutenant was sentenced to 15 years in prison for actions that led to the death of Mrs. Sabbagh<sup>248</sup>. Paradoxically, the 17 witnesses that came to testify in the investigation were charged and indicted for illegal protesting. They were later acquitted by a misdemeanour court in May this year<sup>249</sup>.

Numerous attempts by Egypt's interim governments to investigate abuses committed by the security sector have proven futile. A fact-finding commission initiated by the Morsi government to investigate the killings of protestors by state agents from 2011-2012, concluded that the police were responsible for killing 900 protestors as authorized by their commanding officers. The report was later shelved, following the acquittal of six of the most senior commanders from the charges<sup>250</sup>. A similar attempt was carried out by interim president Adly Mansour with regard to the abuses committed by the security sector during the anti-Morsi demonstrations on 30 June 2013, and those that led to the removal of Morsi on 3 July the same year. The executive report of the commission did not make any recommendations to press charges against any member of the security sector. The commission did not have the mandate to subpoena witnesses or documents, determine individual criminal liability, or publicize its findings<sup>251</sup>.

The independent newspaper, Al-Masry al-Youm, revealed grave sexual violations carried out by police officers and warrant officers in its extensive article regarding violations committed by the security sector. One of the cases concerns a young female student in Qaloubiya that was raped in a police vehicle by a warrant officer after he threatened to file a complaint against her and her boyfriend. Another incident regards a young lawyer, Karim Hamdi, who was tortured to death in detention. Another staggering incident discloses that a warrant officer- currently charged with murder, opened fire at a detained member of the MB at a hospital in Cairo. The

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<sup>246</sup> al-Arabiya, *Egypt women protest killing of Shaima Sabbagh*, 2015-01-29

<sup>247</sup> Ahramonline, *Egypt court sentences policeman to 15 years over protester's murder*, 2015-06-11

<sup>248</sup> Ibid

<sup>249</sup> Ahramonline, *Egypt court acquits all defendants in El-Sabagh protesters trial*, 2015-05-23

<sup>250</sup> Sayigh, Yezid, Carnegie Endowment for International Peace, *Missed Opportunities: The Politics of Police Reform in Egypt and Tunisia*, p. 10, March 2015

<sup>251</sup> Human Rights Watch, *World Report 2015: Egypt*, 2015-01-29

detainee who had been taken to hospital for medical treatment got into an argument with the warrant officer over the killing of soldiers in Northern Sinai, at which point, the warrant officer took out his gun and shot him<sup>252</sup>.

A report recently published by the International Federation for Human Rights (FIDH)<sup>253</sup> raises serious concerns over the upsurge in sexual abuse carried out by members of the security sector after the Egyptian military takeover in July 2013<sup>254</sup>. The report notes that police, intelligence officers and members of the military are targeting male and female detainees, as well as children, as a means of quelling public protest<sup>255</sup>. The report maintains that there is no evidence of commanders giving orders for these abuses, but the scale of the violence - and the impunity - suggests that there is a political strategy behind these violations. Victims who file complaints face threats and reprisals by police officers and prison guards<sup>256</sup>.

## 5.5. Challenges of Reforming the Security Sector

In his reports on challenges of the security sector in Egypt, Omar Ashour describes Security Sector Reform (SSR) as: *'the transformation of the security system which includes all the actors, their roles, responsibilities and actions, so that it is managed and operated in a manner that is more consistent to democratic norms and sound principles of good governance, and thus contributes to a well-functioning security framework'*<sup>257</sup>.

In reference to what was mentioned earlier, the long standing enmity between the security sector and the Egyptian people was the driving force to the 25 January uprising. Many saw the uprising as a fight against the brutality and humiliation that Egyptians faced in their daily encounters with the security sector<sup>258</sup>. Despite the overwhelming sentiments, all attempts to reform the security sector have been meagre. Most of the reforms introduced after the uprising focused on personnel reshuffles, which did not result in any institutional changes within the MoI. In July 2012, the MoI forced 454 generals into retirement. This was followed by the appointment of a new Minister of Interior, Mohammed Ibrahim. Parliament asked Ibrahim to devise a strategy for reform. Having failed to deliver, civil society together with members of the police, lawyers and other concerned citizens, initiated the 'National Initiative for Rebuilding the Police'. The reform came to be known as the Police for Egypt (PFE)<sup>259</sup>. The aim was to

<sup>252</sup> al-Masry al-Youm, لشربة شهداء وخطايا، البديل، 2015-04-19

<sup>253</sup> International Federation for Human Rights (FIDH), *Stifling Egyptian civil society: Sexual violence by security forces surges under el-Sisi*, 2015-05-19

<sup>254</sup> BBC News, *Egyptian authorities using sexual violence on 'massive scale'*, 2015-05-19

<sup>255</sup> Ibid

<sup>256</sup> BBC News, *Egyptian authorities using sexual violence on 'massive scale'*, 2015-05-19

<sup>257</sup> Ashour, Omar, Brookings Doha Center, *From Bad Cop to Good Cop: The Challenge of Security Sector Reform in Egypt*, p. 3, November 2012

<sup>258</sup> Brumberg, Daniel, Sallam, Hesham, United States Institute of Peace, *The Politics of Security Sector Reform in Egypt*, p. 9, 2012-10-01

<sup>259</sup> Ibid

reform the domestic security establishment based on principles of accountability, political leadership and decentralization. The plan for reform consisted of five short-term proposals:

1. Dissolve the MoI's General Elections Committee and delegate its responsibilities to the Higher Elections Committee
2. Establish a Homeland Security Sector subject to oversight
3. Investigate MoI officials who ordered the killing of the protestors and discharge policemen on trial charges
4. Expel police officials involved in illicit practices
5. Appoint CSF personnel to patrol duty to counter street crime, as well as increase the number of hotlines to enable reporting<sup>260</sup>.

With regard to the long-term plan, the PFE proposed the decentralization of the police by transferring management to the governorate level. The PFE further suggested that the government adopt legislation that limits the police to investigating crime; this way police would not be able to detain citizens without probable cause. The PFE recommended limiting attendance at the police academy to holders of law degrees and to eliminating discriminatory admission practices. The PFE included improving working conditions in terms of salary scales, working hours, and the right of organizing unions within the security sector. The PFE also recommended that members of the security sector be tried in civil courts instead of military courts for wrongdoings committed in the line of duty<sup>261</sup>.

While deliberations went on at the time, no laws have yet been adopted in reference to the proposals. Attempts made by the successive interim governments to investigate the killings of civilians by state agent actors have so far brought little results. One proposal that has followed through is the trial of members of the security sector in regular courts. In December 2014, the Cairo Administrative Court issued a decree nullifying all previous verdicts issued against police personnel before military tribunals. The court ordered that policemen or officers issued sentences by these military courts are to be retried before criminal courts that fall under the jurisdiction of the regular judiciary<sup>262</sup>.

Yezid Sayigh of the Carnegie Endowment for International Peace, attributes the failure of reform to the following factors:

1. The governments that came to power after the uprising were predominantly officials from the Mubarak era. These officials were not elected, and therefore lacked the mandate, or political legitimacy to initiate major structural reforms of any kind.
2. Political polarization facing the new leaders made it difficult to pursue reform. This was particularly the case for the MB,

<sup>260</sup> Brumberg, Daniel, Sallam, Hesham, United States Institute of Peace, *The Politics of Security Sector Reform in Egypt*, p. 9, 2012-10-01

<sup>261</sup> Ibid, p. 10

<sup>262</sup> Mada Masr, *As more civilians sent to military court, police may be protected*, 2014-12-30

which had earlier been targeted by the security sector under the auspices of the previous regime. Attempts by the Morsi government to replace senior officials prompted accusation from secular rivals, claiming that the government was Islamizing the institution (commonly referred to as *Ikhwanization*).

3. The attitude of transitional political actors towards the security sector was problematic. Many saw the security sector as remnants of the previous regime (commonly referred to as *Feloul*) and, therefore, needing to be purged; meanwhile, others emphasized the need to retain professional expertise and existing structures in order to endorse efficient law enforcement.
4. The threat of home-grown and cross-border jihadis, and other extremist influences, was used as a legitimate argument for upholding the existing structures within the security sector. This also served as a means to oppose government efforts to attain transparency and accountability. These dynamics further allowed the culture of impunity to reassert itself within the security sector.<sup>263</sup>

Commitment to achieving reforms also requires dialogue with other stakeholders, like the judiciary, civil society and political parties<sup>264</sup>. As things stand at present, their contributions are not likely to emerge in the near future.

## 6. Particularly Vulnerable Groups

### 6.1. Christians

According to a leader within the Coptic Church that the delegation spoke to, the rise of violence against Christians after the 2011 uprising has abated<sup>265</sup>. The leader describes the Morsi era as one of the darkest for the Christians in Egypt. Blasphemy cases brought against Christians surged at that time. Many were killed, and women were raped while no mention of it was made<sup>266</sup>.

Representatives from EIPR also concur with this view. Incitement through hate speeches and provocation through official channels during the Morsi era have since abated. The number of blasphemy cases has also declined. The same can be said with regard to the number of reported sectarian incidents<sup>267</sup>.

<sup>263</sup> Sayigh, Yezid, Carnegie Endowment for International Peace, *Missed Opportunities: The Politics of Police Reform in Egypt and Tunisia*, p. 6-7, March 2015

<sup>264</sup> GOV.UK, Country case study-Egypt, 2015-03-12

<sup>265</sup> Meeting with a leader within the Coptic Church, Cairo 2014-10-21

<sup>266</sup> Ibid

<sup>267</sup> Meeting with representatives from the Egyptian Initiative for Personal Rights (EIPR), Cairo 2014-10-21

Both the above mentioned sources maintain that kidnapping incidents continue to increase, particularly in Upper Egypt<sup>268</sup>. The leader within the Coptic Church that the delegation spoke to maintained that the ransom demands range between one to four million Egyptian pounds (approximately US\$ 150,000-500,000). In these cases, the authorities have advised the families to pay the ransom<sup>269</sup>. Kidnappers have carried out their death threats when ransom demands were not met<sup>270</sup>.

Violence against Christians does still continue. Thugs, commonly referred to as *baltagiya*, demand protection money from Christian families. The thugs, remnants of the Mubarak regime, were hired to carry out the dirty work of the security sector. Later, they were used as ‘guns for hire’ by the MB and Salafists, or whoever would pay them sufficiently, often playing their masters against each other for their own gains. *Baltagiya* networks are entrenched and difficult to break; those higher up in the police hierarchy are aware of them, but have no will or ability to eliminate them. The police will deny any association with the thugs if links should be revealed. Reportedly, the police benefit from the protection money the thugs bring in<sup>271</sup>.

According to Cecilia Uddén, correspondent for Radio Sweden, 86 attacks, mostly kidnappings, have been carried out against Christians since the fall of the Morsi regime. Families prefer to keep a low profile in order to secure the person’s release. Official figures are therefore inaccurate, as the actual figures are mostly likely much higher. Unlike Muslims, Christians do not enjoy the same support from clans to protect them<sup>272</sup>.

## 6.2. Journalists

Amnesty reported that at least 18 journalists and other media workers are currently detained in Egypt. Security forces have also arrested scores of journalists and released them only after questioning by prosecutors and the National Security Agency<sup>273</sup>.

Reporters Without Borders ranked Egypt 159 for press freedoms out of 180 countries<sup>274</sup>. Since Mohamed Morsi was ousted as president in July 2013, authorities have rounded up journalists on charges of broadcasting ‘false news, information or rumours’, as well as sedition and incitement to

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<sup>268</sup> Meeting with a leader within the Coptic Church, Cairo 2014-10-2, Meeting with representatives from the Egyptian Initiative for Personal Rights (EIPR), Cairo 2014-10-21

<sup>269</sup> Meeting with a leader within the Coptic Church, Cairo 2014-10-21

<sup>270</sup> Ibid

<sup>271</sup> Meeting with a leader within the Coptic Church, Cairo 2014-10-21

<sup>272</sup> Meeting with Cecilia Uddén, correspondent for Radio Sweden, *Sveriges Radio* (SR), Cairo 2015-10-20

<sup>273</sup> Amnesty International Public Statement, *Egypt: Journalists jailed or charged for challenging the authorities’ narrative*, 2015-05-03

<sup>274</sup> Kortam, Hend, Egypt Daily News, *Egypt ranks 159th of 180 countries in 2014 World Press Freedom Index*, 2015-02-13

violence<sup>275</sup>. The report further stated that Egyptian authorities have systematically targeted foreign and Egyptian media affiliated with the MB since the ouster of President Mohamed Morsi<sup>276</sup>.

The trial of three al-Jazeera journalists, accused of spreading false news, is one of the cases that received immense media coverage worldwide<sup>277</sup>. Journalist, Peter Grete from Australia was deported in February this year, while Canadian-Egyptian Mohamed Fahmy and Egyptian Baher Mohamed were released on bail pending retrial due to procedural flaws in the original case. Subsequently, the two were sentenced to three year imprisonment in August this year, to be served in a maximum security prison. The judge delivering verdict, Judge Hassan Farid, argued that the three journalists were operating without a permit and for broadcasting ‘false news that was ‘harmful’ for Egypt’. Prior to the verdict a court –appointed technical committee had not found any evidence that would suggest that the journalists were involved in fabricating footage in their reporting<sup>278</sup>. The verdict has triggered strong reactions from the United Nations, lawyers, human rights organisations as well as international leaders. The Egyptian Government firmly rejected all commentaries or statements made in relation to the trial, calling the reactions ‘an unacceptable intervention in the rulings of the Egyptian judiciary’<sup>279</sup>. Judge Hassan Farid, presiding in the case, has earlier ruled in other high profile cases. In July 2014 he sentenced MB leader Mohammed Badie and 36 other members to life in prison. In February this year he sentenced prominent activist, Ala’a Abd al Fatah, to five years in prison for violating Egypt’s Protest Law<sup>280</sup>.

In 2013, Egypt was one of the top ten countries in the world incarcerating journalists. The Committee to Protect Journalists (CPJ) ranked the country as the third deadliest country for journalists in 2013<sup>281</sup>. Other rights groups have reported cases of journalists detained for long periods without charge or trial. One of them is an Egyptian photographer known as Shawkan, who has been held for more than 600 days<sup>282</sup>.

### 6.3. Members of the Muslim Brotherhood

The security sector has cracked down hard on the members and supporters of the MB after mass protests put an end to the Brotherhood’s rule in 2013.

<sup>275</sup> Amnesty International Public Statement, *Egypt: Journalists jailed or charged for challenging the authorities’ narrative*, 2015-05-03

<sup>276</sup> Kortam, Hend, Egypt Daily News, *Egypt ranks 159th of 180 countries in 2014 World Press Freedom Index*, 2015-02-13

<sup>277</sup> Reuters, *Amnesty says Egypt using courts and jail to intimidate journalists*, 2015-05-02

<sup>278</sup> Miller, Ellisa, Atlantic Council, *The Al Jazeera Trial: The Verdict, Reactions and Next Steps*, 2015-08-31

<sup>279</sup>

<sup>280</sup> Ibid

<sup>281</sup> Kortam, Hend, Egypt Daily News, *Egypt ranks 159th of 180 countries in 2014 World Press Freedom Index*, 2015-02-13

<sup>282</sup> Reuters, *Amnesty says Egypt using courts and jail to intimidate journalists*, 2015-05-02

Since taking office in June 2014, President Sisi continues to regard the MB as a threat to national security. Authorities continue to link the Brotherhood with radical groups, including *Ansar Beit al-Maqds* (ABM), who are based in Sinai and support the Islamic State, an allegation the MB has repeatedly denied<sup>283</sup>. Hundreds of MB supporters have been killed, and thousands have been arrested in one of the toughest security crackdowns in Egypt's history<sup>284</sup>. HRW reports that up to 29,000 supporters and members of the Brotherhood, including high ranking members have been arrested<sup>285</sup>.

On May 16, 2015 Mohammed Morsi was sentenced to death for his part in a mass prison break-out in 2011. Prior to his sentencing, Morsi received a 20-year imprisonment sentence on charges linked to the killing of protesters outside a Cairo presidential palace in December 2012<sup>286</sup>. Another high ranking leader within the organization, Mohammed Badie, was sentenced to death in April this year. Badie is embroiled in an additional 40 cases that have been brought against him. Badie was previously sentenced to death in a case last year related to attacks on police stations in the southern province of Minya. That ruling was, however, later overturned and a retrial ordered<sup>287</sup>.

There have also been extensive referrals of members and supporters of the MB to military courts. In April of this year, the OPP referred 187 alleged supporters of the MB to a military court. They are accused of killing police officers during an attack on a police station in 2013<sup>288</sup>.

The October 2014 presidential decree (i.e., Law No.136) to expand jurisdiction of military courts to try civilians accused of attacking state facilities is part of a broad crackdown that initially targeted Islamists, but has since expanded to include liberal activists. The promulgation and the amendment of the anti-terror law (Law No.8/2015) further endorse the power of the judiciary and the security sector to detain and indict members of organizations they suspect engaging in terrorist activities. Military courts in Egypt are also known for their expedient process in comparison to regular courts<sup>289</sup>. These decrees come as a result of extensive and intensive assaults carried out against security forces in Northern Sinai<sup>290</sup>.

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<sup>283</sup> Georgy, Michael, Mourad, Mahmoud, Reuters, *Egypt's Sisi issues decree widening scope of security crackdown*, 2015-02-24

<sup>284</sup> Ibid.

<sup>285</sup> Human Rights Watch, *World Report 2015: Egypt*, 2015-01-29

<sup>286</sup> The Guardian, *Mohamed Morsi sentenced to death by Egyptian court*, 2015-05-16

<sup>287</sup> BBC News, *Egypt Brotherhood chief Mohammed Badie sentenced to death*, 2015-04-11

<sup>288</sup> Middle East Monitor, *Egypt refers Brotherhood supporters to military court*, 2015-04-06

<sup>289</sup> Middle East Monitor, *Egypt refers Brotherhood supporters to military court*, 2015-04-06

<sup>290</sup> Ibid

Cecilia Uddén is of the opinion that supporters of former President Morsi are vulnerable and at risk of being targeted by the authorities. Their chances of getting a fair trial in comparison to other groups are relatively small<sup>291</sup>.

#### 6.4. Members of Civil Society and Activists

Civil society organizations faced threats of closure and criminal prosecution, forcing many activists to scale down their work or leave the country. In July 2014, the MoSS gave NGOs a 45-day deadline, later extended to November, to register themselves following the amendments to the Law on Associations (Law No.84/2002) (see 3.7.2). The MoSS has further warned that it would hold groups that failed to register 'accountable'. The ministry later announced that it would deal with NGOs on a case-by-case basis, following criticism from other states<sup>292</sup>.

As a result, the authorities shut down groups linked to the banned MB group. The 6 April Youth Movement, one of the forerunner activist groups that led the 2011 uprising, was also ordered to shut down its headquarters in April 2014. The Cairo Court for Urgent Matters ruled to ban the movement on charges of 'espionage' and 'activities that distort Egypt's image'<sup>293</sup>. The ruling was then overturned by the Court for Urgent Matters in April this year, due to lack of jurisdiction in the lawsuit. The movement maintained that the court ruling consolidates the independency of the judiciary. The organization further hoped that the ruling will prevent similar lawsuits from being filed against civil societies in the future<sup>294</sup>.

Activists and advocates for human rights are similarly targeted as members and supporters of the MB<sup>295</sup>. Authorities continue to crack down on human rights defenders and activists for possessing flyers with anti-military slogans, speaking in public against the police, or displaying signs commemorating victims of the Rab'a dispersal. The authorities have further banned activists, journalists, academics as well as former lawmakers from travel outside Egypt<sup>296</sup>.

The much debated protest law is put into use frequently and is randomly applied<sup>297</sup>. Prominent activists, like Alaa Abdel Fattah and human rights

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<sup>291</sup> Meeting with Cecilia Uddén, correspondent for Radio Sweden, *Sveriges Radio* (SR), Cairo 2015-10-20

<sup>292</sup> Ifex, *Egypt's civil society groups facing ultimatum: Register with the government or cease to exist*, 2014-10-24

<sup>293</sup> Fahmy, Nourhan, *Egypt Daily News*, *Court cites 'lack of jurisdiction' in 6 April terrorist designation case*, 2015-04-20

<sup>294</sup> Ibid

<sup>295</sup> Middle East Monitor, *Egypt refers Brotherhood supporters to military court*, 2015-04-06, Suto, Ryan J. Atlantic Council, *Egypt's New Terrorism Law*, 2014-12-12

<sup>296</sup> Human Rights Watch, *World Report 2015: Egypt*

<sup>297</sup> Meeting with Cecilia Uddén, correspondent for Radio Sweden, *Sveriges Radio* (SR), Cairo 2015-10-20

defenders Mahienour al-Masry and Yara Sallam, have received jail sentences ranging between three to five years<sup>298</sup>.

Controversy surrounding the excessive and strict application of the protest law have prompted proposal for an oversight of the law. In conjunction to this, President Sisi has ordered the release of prisoners who have been ‘unjustly detained’ in accordance to the law. According to the Egyptian Organization for Human Rights (EOHR), three lists of detainees have been presented to the President in recent months for him to consider for presidential pardon and release them<sup>299</sup>. It is not clear as to the exact number ultimately to be included in the decision or the criteria being adopted for their release<sup>300</sup>.

## 6.5. Women

Violence against women and girls continues both at home and in public places, including while in detention. Amnesty International recently published a report on the situation of women in Egypt – ‘*Circles of Hell: Domestic, Public and State Violence Against Women in Egypt*’ – describing how impunity continues to foster sexual and gender-based violence despite recent government efforts to combat the practice, including criminalizing sexual harassment and prosecuting some men for such crimes<sup>301</sup>. The strained economic situation and the rise in unemployment, add to societal frustrations which often manifest themselves in violence and harassment against women<sup>302</sup>.

In June 2014, the interim government of Adly Mansour issued a new law (amending Article 306a of the Penal Code) that, for the first time, defined and outlawed sexual harassment and set escalating penalties for different offenses. The law stipulates a minimum sentence of six months imprisonment and a fine of 3,000 Egyptian pounds (US \$385) for an offence. A second amendment to the law stipulates a more severe sentence for an offender who is in a position of authority over the complainant and in cases of offences involving multiple perpetrators<sup>303</sup>. In July the same year, a court sentenced five men to life imprisonment and two others to 20 years for attacking and harassing women during celebrations of President Sisi's inauguration<sup>304</sup>.

<sup>298</sup> Human Rights Watch, *World Report 2015: Egypt*, 2015-01-29

<sup>299</sup> Rizk, Mariam, Ahramonline, *Dozens of detainees expected to be released in Egypt: NCHR member*, 2015-02-24

<sup>300</sup> Ibid

<sup>301</sup> Amnesty International, ‘*Circles of Hell: Domestic, Public and State Violence Against Women in Egypt*’, January 2015

<sup>302</sup> Meeting with anonymous women’s organization, Cairo 2014-10-21

<sup>303</sup> el-Rifae, Yasmin, Middle East Institute, *Egypt’s Sexual Harassment Law: An Insufficient Measure to End Sexual Violence*, 2014-07-17

<sup>304</sup> Saleh, Yasmine, Reuters, *Seven Egyptian men sentenced to life for sex attacks, harassment*, 2014-07-16

In 2002, the National Council for women (NCW) established an Ombudsperson's Office for Gender Equality to receive and investigate complaints by women, including survivors of violence. Despite their best efforts, they do not have the mandate to judicially investigate complaints. They do, however, provide advice, legal support and referrals to women who approach them for assistance. The majority of complaints received by them involve matters linked to marriage, divorce, alimony and social insurance, as well as requests for assistance in issuing identity documents. In 2013, the office registered 2,761 complaints. Of these, 4 percent pertained to violence against women<sup>305</sup>.

In May 2013, the MoI set up the Department to Follow-up Violent Crimes against Women under the Human Rights and Community Liaison Sector of the Ministry<sup>306</sup>.

In June 2014, the MoI also set up new police departments in security directorates for crimes related to violence against women. However, it remains unclear as to how these departments are to carry out their mandate<sup>307</sup>. A representative from an anonymous women's organization the delegation spoke to maintained that the units are still in their initial stages. The organization maintains good relations with the units and tries to help lift the focus on violence against women<sup>308</sup>.

The initiative group for combating sexual harassment –*Harassmap*- recently launched a campaign - *A harasser is a criminal*- in 22 governorates to raise public awareness concerning the legal ramifications of sexual harassment in country. The speakers stressed the importance of reporting crimes relating to harassment to the police and how the normalization of sexual harassment leads to underreporting<sup>309</sup>.

In the absence of sufficient state protection and support for women and survivors of sexual violence, women's rights groups, other NGOs and volunteer movements have diligently filled the gaps. The recent legal restrictions imposed by the new civil society law are likely to hamper what limited efforts these organizations have had in raising awareness, documenting violations, as well as lobbying for legal and policy changes<sup>310</sup>.

The Egyptian legislation does not criminalize domestic violence. According to an 'opinion survey' conducted by the NCW in November 2012 that targeted 13,500 married and unmarried women aged 15-50 across the

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<sup>305</sup> Amnesty International, 'Circles of Hell: Domestic, Public and State Violence Against Women in Egypt', p. 20, January 2015

<sup>306</sup> Ibid

<sup>307</sup> Ibid

<sup>308</sup> Meeting with anonymous women's organization, Cairo 2014-10-21

<sup>309</sup> Mada Masr, *Criminalizing harassment: Local initiative introduces new campaign*, 2015-05-21

<sup>310</sup> Amnesty International, 'Circles of Hell: Domestic, Public and State Violence Against Women in Egypt', p. 23, January 2015

country, a third of the participants had experienced domestic violence at least once in their lifetimes. The forms of violence described included both verbal and physical, including sexual abuse, and infringements on women's abilities to complete their education, leave the house or receive medical treatment<sup>311</sup>.

Other forms of violence against women which include child marriage and female genital mutilation (FGM) continue to prevail despite laws prohibiting them. On 20 November, 2014, the country's first trial for FGM, which began after a 13-year-old girl died from an allergic reaction to penicillin, ended in an acquittal for the girl's father and the doctor who performed the procedure. The prosecutor appealed the acquittal<sup>312</sup>.

The Egyptian Penal Code does not differentiate between violence in the public and private spheres<sup>313</sup>. It still remains difficult for women to report violations committed against them, whether they are of a domestic nature or committed outside the home. Egypt remains a conservative society, and the social stigma related to sexual and gender-related crimes like rape and sexual violations, continue to prevail. Women who report rape are often humiliated as they are no longer virgins. They also run the risk of not being taken seriously or even having their credibility questioned for that matter. It is not uncommon that the perpetrators claim that the sex was consensual<sup>314</sup>.

According to Amnesty International's recent report on sexual violence against women<sup>315</sup>, police officers and prosecutors investigating the cases of sexual assault or rape, frequently attempt to encourage plaintiffs to drop the complaints and 'forgive' the perpetrators. This attitude is mainly attributed to lack of professionalism, a desire to reduce their workload, as well as their tendency to undermine these incidents as 'minor' compared to murder or theft<sup>316</sup>.

Amnesty International further asserts in the same report that victims of violence very rarely consider reporting the most extreme violence to the police. And in cases when the women do report, they are confronted with dismissive and abusive officials who do not consider cases of domestic violence a priority. Officers who have the intention of helping often lack the training and the know-how to handle such cases<sup>317</sup>.

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<sup>311</sup> Amnesty International, *'Circles of Hell: Domestic, Public and State Violence Against Women in Egypt'*, p. 26, January 2015

<sup>312</sup> Human Rights Watch, *World Report 2015: Egypt*

<sup>313</sup> Amnesty International, *'Circles of Hell: Domestic, Public and State Violence Against Women in Egypt'*, p. 32, January 2015

<sup>314</sup> Meeting with anonymous sources, Cairo 2014-10-19

<sup>315</sup> Amnesty International, *'Circles of Hell: Domestic, Public and State Violence Against Women in Egypt'*, January 2015

<sup>316</sup> Amnesty International, *'Circles of Hell: Domestic, Public and State Violence Against Women in Egypt'*, January 2015

<sup>317</sup> Meeting with anonymous sources, Cairo 2014-10-19

## 6.6. LGBTQ Persons

LGBTQ persons face increasing harassment by the police. Some of these incidents are reported by the media. However, the media is very negative in its coverage of LGBTQ-related issues or incidents, and subsequently tends to expose the group in a humiliating manner<sup>318</sup>.

Reported violence against them by the police has increased. In 2013 more than 80 LGBTQ-individuals were arrested on drug charges, prostitution or other charges that could be attributed to immoral behaviour. Some were given between two to twelve years imprisonment. Cases take four to fifteen days to investigate before they go to trial. During their incarceration, LGBTQ persons were reported to have been subjected to gross violations, whereby they were raped, beaten, deprived of food and sleep as well access to the toilet if they did not pay a bribe<sup>319</sup>.

In the legal process, statements are made under duress and victims cannot protest. Cases go to trial on those statements and made up evidence, including falsified medical examination, and false testing positive results for HIV. The media's negative coverage can also cloud a judge's ruling in the case<sup>320</sup>.

One anonymous source that the delegation spoke to, described the situation of a lesbian woman who was attacked and beaten while walking in the street; the result of which, was that she was hospitalized. Her friend chose to report the incident. The police taking her statements were more interested in why she, as a woman, was living alone. The woman was refused treatment by a doctor<sup>321</sup>.

HRW reports of close to a hundred arrests carried out between July 2013 and December 2014<sup>322</sup>. There are no laws in Egypt criminalizing homosexuality; instead, a decades-old law criminalizing prostitution is often used in penalizing the gay community<sup>323</sup>. In December 2014, police raided a Cairo bathhouse and arrested at least 33 men whom they accused of 'practicing debauchery.'<sup>324</sup>The court acquitted 26 men in January this year. The trial caused uproar among activists and rights groups, and captured public attention after a pro-government TV network aired scenes of half-naked men being pulled from the bathhouse by police<sup>325</sup>.

Anonymous sources that the delegation spoke to further asserted that the crackdown on civil society by the authorities is likely to increase intolerance against LGBTQ persons, and the media is likely to continue its negative

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<sup>318</sup> Meeting with anonymous sources, Cairo 2014-10-19

<sup>319</sup> Ibid

<sup>320</sup> Ibid

<sup>321</sup> Ibid.

<sup>322</sup> Human Rights Watch, *World Report 2015: Egypt*, 2015-01-29

<sup>323</sup> al-Jazeera, *Egypt court acquits 26 men in gay trial*, 2015-01-12

<sup>324</sup> BBC News, *Egypt arrests 33 men for 'debauchery' in bathhouse raid*, 2014-12-08

<sup>325</sup> al-Jazeera, *Egypt court acquits 26 men in gay trial*, 2015-01-12

exposure of LGBTQ-related issues. This is already being seen as the media exposes their identities<sup>326</sup>.

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<sup>326</sup> Meeting with anonymous sources, Cairo 2014-10-19

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## 8. List of Acronyms

ABM	Ansar Beit al-Maqdis
EIPR	Egyptian Initiative for Personal Rights
HJC	High Judicial Council
HRW	Human Rights Watch
IBAHRI	International Bar Association Human Rights Institute
JAL	Judicial Authority Law
MB	Muslim Brotherhood
MC	Military Court
MoD	Ministry of Defense
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoSS	Ministry of Social Solidarity
NCW	National Council for Women
OPP	Office of the Public Prosecutor
PFE	Police for Egypt
PIL	Police Institution Law
PG	Prosecutor General
SCAF	Supreme Council for the Armed Forces
SCC	Supreme Constitutional Court
SJC	Supreme Judicial Council
SPC	Supreme Police Council