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Egypt: authorities must end politicization of the judiciary and ensure its independence and accountability

The Egyptian authorities must end executive interference in judicial affairs and act to ensure that the judiciary is independent and that it serves to safeguard human rights and uphold the rule of law, the ICJ said today.

The statement came as the ICJ released its new report *Egypt's Judiciary: a Tool of Repression. Lack of Effective Guarantees of Independence and Impartiality*.

The report documents the many ways in which the judiciary has been used as a tool to silence those suspected of opposing the Military and Executive.

This include prosecutors and judges initiating and continuing prosecutions on unfounded charges; adopting a presumption in favour of pre-trial detention; applying laws in violation of human rights standards and refusing to permit constitutional challenges to those laws; and failing to respect fundamental fair trial rights.

Convictions in Egypt are regularly based on poorly reasoned judgments and without individual findings of guilt.

"Egypt's military and executive have subordinated the judiciary to their political will, making it a docile tool in their on-going, sustained crackdown on human rights in Egypt," said Said Benarbia, ICJ MENA Director.

"In doing so, judges and prosecutors have abdicated their primary responsibility in upholding the rule of law. Rather than acting as a check on the arbitrary exercise of power, judges themselves have become complicit in violating the very rights they are mandated to protect," he added.

Thousands of political opponents, human rights defenders, pro-democracy campaigners, journalists and individuals exercising their right to freedom of expression and assembly have been subjected to politicized prosecutions and convicted following unfair trials.

The report also documents how the military and the executive's crackdown has extended to lawyers and judges suspected of opposing the authorities, the very individuals who are supposed to be the last line of defence of rights and freedoms.

The ICJ has found that the structural and systemic politicization of the Egyptian judiciary has been facilitated, in part, by the failure of the legal framework in force to provide for the necessary guarantees for judicial independence and accountability.

The report analyses how the composition, mandate and actions of the High Judicial Council (HJC), have undermined its ability to ensure respect of judicial independence.

The institutional and functional subordination of the Office of the Public Prosecutor to the Executive has meant politicized prosecutions against perceived opposition figures, and a failure to investigate and prosecute alleged human rights violations by police and military personnel.

The report also document how the wide jurisdiction of military and exceptional courts as well as the limited access to the Supreme Constitutional Court (SCC) have contributed to further undermining judicial independence.

The report contains 136 recommendations to the Egyptian authorities aimed at guaranteeing, in law and practice, the independence and accountability of the judiciary in Egypt.

These recommendations include calls on the Egyptian authorities to act to ensure that:

- i. Executive interference in judicial affairs ends.
- ii. The convictions and sentences of all civilians tried by military courts and those of individuals convicted following unfair trials in civilian courts are quashed.
- iii. Prosecutors perform their duties fairly, consistently and expeditiously, and do not initiate or continue prosecutions where an impartial investigation shows the charges are unfounded.
- iv. Judicial proceedings are conducted fairly and that the rights of the parties are respected.
- v. Automatic pre-trial detention is prohibited and that detention of an individual pending trial can only be ordered by a judge, in circumstances clearly defined in the law.
- vi. The independence of the HJC is guaranteed in law and at least half of its members are judges who are elected by their peers.
- vii. The powers presently held by the Minister of Justice of managing the careers of judges, including selection, appointment, assignment, secondment and discipline, are transferred to the HJC.
- viii. There are fair, open and transparent procedures for managing the careers of judges, which are overseen by the HJC. Such procedures must be based on objective merit-based criteria and must redress past discrimination that has resulted in the under representation of women on the bench.
- ix. A code of ethics and judicial conduct that is consistent with international standards is established by the judiciary and used as the basis on which judges are disciplined and subject to removal from office.
- x. There is a transparent and open procedure for the appointment of members of the SCC. Such process is based on objective merit-based criteria, redress past discrimination and enhance the institutional and individual independence of the SCC.
- xi. There is a clear and transparent procedure for bringing constitutional challenges before the SCC and that the standard applied by lower courts in referring cases is not unduly burdensome or restrictive.
- xii. The Office of the Public Prosecutor is institutionally and functionally independent, and that the Minister of Justice has no authority to interfere with prosecutorial decision-making in individual cases.
- xiii. Clear and transparent prosecutorial guidelines are established that require prosecutors to give due attention to the prosecution of crimes committed by public officials, including human rights violations, and crimes under international law.
- xiv. The elaboration and adoption of a code of conduct for prosecutors that is consistent with international standards, with the active participation of prosecutors themselves, as well as defence counsel and judges.
- xv. The jurisdiction of military courts is limited to trials of military personnel only for breaches of military discipline.
- xvi. Military courts have no jurisdiction over crimes under international law or other human rights violations, such as torture or enforced disappearance or unlawful killing.
- xvii. Military courts have no jurisdiction to try civilians, even where the victim is a member of the Armed Forces or equivalent body or the conduct is alleged to have occurred in territory controlled by the military.

Contact

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