

Egypt: A Return to a Permanent State of Emergency?

A Briefing Paper

June 2018

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From the 1981 assassination of former President Anwar Al-Saddat until 2012, Egypt was essentially under a continuous and permanent state of emergency (SoE). During this time, measures adopted under the SoE resulted in serious and systematic violations of human rights.

Between 2012 and 2017, former President Mohamed Morsi promulgated a SoE for one month, as did former President Adly Mansour. Current President Abdel Fattah Al-Sisi also declared a SoE in November 2014 for three months in North Sinai. For the first time in decades, however, emergency measures were the exception and not the rule.

However, on 10 April 2017, a new SoE declared by President Al-Sisi¹, came into effect through Decree No. 157/2017 after the bombing of two Coptic churches in Alexandria and Tanta. Initially it was prescribed for a period of three months, but was renewed by another Presidential Decree, No. 289/2017, for a further three months starting from 10 July 2017. Decree No. 289/2017 also empowered the Prime Minister to exercise all the President's competencies under law 162/1958 on SoEs. With the constitutionally permitted time limit for the SoE coming to an end, President Al-Sisi purported to declare a new SoE on 10 October 2017 through Presidential Decree No. 510/2017² "given the current circumstances the country is passing through"³. On 31 December 2017, another Presidential Decree, No. 647/2017, renewed the SoE as of 13 January 2018 for a period of three months. President Al-Sisi declared a new SoE on 14 April 2018 for a period of three months. The declaration allows security forces to "take measures necessary to confront the dangers and funding of terrorism and safeguard security in all parts of the country." This move has given rise to new fears in Egypt that the country may be returning to the permanent SoE characteristic of pre 2012 Egypt.

Under international human rights law, measures that would otherwise violate certain human rights, also known as derogations, can be justified in "time(s) of public emergency which threatens the life of the nation" and must be strictly limited in content, scope, geographic reach and time, to what is proportionate in responding to the specific emergency.⁴ Historically, the threshold for triggering and extending a SoE and associated measures under Egyptian law has been very low. Successive governments have employed violent criminal acts, including terrorist attacks, as a justification for perpetuating disproportionate measures under a SoE.

¹ "The president said the announcement of the emergency state comes to protect the country's security and prevent any harm to its ability and capabilities. He called on security bodies to intensify efforts to arrest the perpetrators, criminals and those who are behind them as soon as possible to hold them to account. Sisi urged media to honestly and responsibly address the situation and to behave with awareness to avoid causing more suffering for people. The president announced forming a supreme council on combating terrorism and extremism in Egypt and issuing a law to grant powers to this council to fulfill its tasks in all media, judicial and legal aspects.", State Information Service (SIS), Presidential Activity, April 2017, <http://www.sis.gov.eg/Story/108980?lang=en-us> . Prime Minister Sherif Ismail speech on the same "There is no doubt that the emergency law is targeting the enemies of the nation and the citizen. It will give the State agencies more powers and flexibility and rapid action to stand up to a treacherous and mean enemy who does not scruple to kill and destroy without any justification or discrimination." Statement by H.E. Prime Minister Sherif Ismail at the House of Representatives on declaring the state of emergency nationwide for three months as of April 10, 2017, <http://www.sis.gov.eg/Story/108640?lang=en-us>

² Published at the Official Gazette on 10 October 2017

³ PM addresses parliament on renewal of state of emergency, <http://www.sis.gov.eg/Story/119167?lang=en-us>

⁴ See International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt in (1967), article 4, and Human Rights Committee, General Comment no 29 on states of emergency, UN Doc CCPR/C/21/Rev.1/Add.11 (2001).

Furthermore, instead of acting as a check on the use of emergency measures by the executive, Egypt's parliament has failed to adequately address the impact of the sweeping powers conferred by the SoE law on the executive and security forces in relation to the enjoyment and exercise of fundamental rights and freedoms, including those relating to the fair administration of justice. Rather, the Egyptian Parliament has acted as a "rubber stamp", simply approving request measures with little scrutiny.

Under the framework of the SoE decree and law, Egyptian Prime Minister Sherif Ismail issued Decree No. 2165/2017 on 7 October 2017 which placed numerous crimes, including those related to protest, assembly, terrorism and labour law, which under Egyptian law would normally be under the jurisdiction of ordinary courts, have instead been placed under the jurisdiction of the Emergency State Security Courts (ESSC)⁵ for the duration of the emergency.⁶ These courts, described in greater detail below, impact on the right to a fair trial, right to liberty and other rights in ways that cannot be justified, even under a SoE.

In this briefing, the ICJ analyses the latest legal developments relating to the SoE in Egypt, assesses their compliance with Egypt's obligations under international law, including the International Covenant on Civil and Political Rights and accordingly formulates recommendations for amendments and reform with a view to ending the abusive use of emergency laws and related measures in Egypt.

I. State of Emergency: Legal Framework

a. Constitution

Article 154 of the Egyptian Constitution (2014) stipulates (emphasis added):⁷

After consultation with the Cabinet, the President of the Republic may declare the state of emergency as regulated by law. Such a declaration must be presented to the House of Representatives within the following seven days to decide thereon as it deems fit.

If the declaration takes place while the House of Representatives is not in regular session, the house must be invited to convene immediately in order to consider the declaration.

In all cases, the declaration of the state of emergency must be approved by a majority of the members of the House of Representatives. **The state of emergency shall be declared for a specified period not exceeding three months, which may only be extended for another similar period** after obtaining the approval of two-thirds of the house members. In case the House of Representatives has not been elected, the matter shall be referred to cabinet for approval on the condition that it is presented to the new House of Representatives at its first session.

The House of Representatives may not be dissolved while the state of emergency is in force.

Article 92 of the Egyptian Constitution (2014) also stipulates that:

⁵ For further discussion on the Emergency State Security Courts, see ICJ, "Egypt's Judiciary: A Tool of Repression -- Lack of Effective Guarantees of Independence and Accountability" (2016), pp. 146-153.

⁶ According to the law when the State of Emergency ends the ESSC continues with the cases that it's dealing with till a decision is issued as a final verdict, however new cases cannot be referred to it.

⁷ <http://www.sis.gov.eg/newvr/dustor-en001.pdf>

“Inalienable rights and freedoms of citizens may not be suspended or reduced.”⁸

Thus far, the term “inalienable right” has not been defined. Article 93 of the Constitution however affirms, “the State shall be bound by the international human rights agreements, covenants and conventions ratified by Egypt, and shall have the force of law after publication in accordance with the prescribed conditions.” Accordingly, Egypt is bound by Article 4 of the ICCPR, which regulates derogations from rights in times of emergency, and prohibits all forms of derogation including the right to life and the right to be free from torture or cruel, inhuman or degrading treatment or punishment.

According to the SoE law, once a SoE is declared, it takes effect immediately and its implementation requires no further legal procedure. The law on SoE does not explicitly address the need for measures adopted under the SoE to be consistent with the prohibition of suspension or reduction of rights and freedoms under Article 92 of the Constitution.

Article 154 of the Constitution does not explicitly refer to Article 92, nor does it include the various requirements that international human rights law imposes on derogating measures. Together with the lack of definition in Article 92, these gaps seem to suggest that certain derogating measures are in violation Egypt’s obligations under international law. For instance:

- The constitutional stipulation does not mention when and why the President of the Republic is allowed to declare a SoE, as opposed to Article 4 of the ICCPR, which permits derogations from ordinary human rights protections only in “time of public emergency which threatens the life of the nation”.
- The Article does not specify a geographical limitation on SoEs and there is no limitation on the measures adopted under SoE as is the case under Article 4 of the ICCPR, “to the extent strictly required by the exigencies of the situation.”
- The Constitution does not specify certain rights that can never be subject to derogations even in the most extreme SoEs as required by Article 4(2) of the ICCPR, such as the protection against torture.

The only two conditions that Article 154 of the Constitution imposes are: (i) the necessity of approval by “a majority” of members of the House of Representatives; (ii) and that the declaration is limited to three months. This time limitation however, may only be extended for a similar period of time “after obtaining the approval of two-thirds of the House members.” The article would appear not to prevent a SoE from being continued indefinitely (even forever), at least, if it is separated each six months by a short period of time.

b. Presidential Decision 510/2017

On 10 October 2017, a presidential Decree (No. 510/2017)⁹ issued by President Sisi declared a SoE for three months starting from 13 October 2017. Article 1 of the Decree stipulates that a “State of Emergency is declared in all parts of the country for three months” starting from 13 October. Article 2 of the same decree indicates that “armed forces and the police are to take the necessary measures to counter the threat of terrorism and its financing; to maintain security in the country; and to protect public and private property and the safety of citizens.” Article 3 of the decree

⁸ <http://www.sis.gov.eg/newvr/dustor-en001.pdf>

⁹ Published at the Official Gazette on 10 October 2017

continues the delegation of power from the President to the Prime Minister as enacted in the SoE law.

After the operation of the previous period of declared SoE, there was an interval of two days before the new declaration of a SoE. The declaration of a SoE was approved by a majority of members of the House of Representatives on 22 October 2017.

In order to enable an assessment of whether derogating measures are justified and proportionate to any given emergency, the President can, and should, include a description of the circumstances that led him or her take such a decision, coupled with an explanation as to how the emergency measures will address those circumstances in the declaration. In this respect, the October 2017 declaration is even less detailed than, for instance, Presidential Decree No. 417/2015. Issued on 26 October 2015, it declared a SoE in the North Sinai governorate and precisely specified the geographical limitation of its application as well as application of a curfew at a specific time of the day in specific parts of the governorate "given the dangerous security circumstances". The President should, even when declaring a SoE in a specific area of the country, ensure that the declaration meets the threshold of threatening the life of the nation that can only be addressed through measures that may not respect the ordinary protections of human rights, and it should not be renewed or re-issued without an assessment of whether any derogation measures are still strictly required by the exigencies of the situation as it stands at that time.

A SoE had been first declared, on 9 April 2017, by Presidential Decree No. 157/2017 after two suicide bombing attacks in Churches were carried out, allegedly by Islamic State affiliates. The following day, the Parliament discussed the Presidential Decree and the parliamentary speaker invited the Prime Minister to give a statement on the reasons and circumstances that engendered a SoE. The Prime Minister stated that the SoE would give the authorities "flexibility to confront enemies of the nation"¹⁰. Following the Prime Minister's address Parliament unanimously approved the Decree. During the session a parliamentary speaker added, "SoE is for protecting the state. This goal is above all laws, including the constitution"¹¹.

In July, Parliament approved by a two-thirds majority, Presidential Decree No. 289/2017, which extended the SoE for another three months¹².

On 12 October, only a few days after exhausting the constitutional limit of imposing and extending SoEs, President Al-Sisi issued another decree, No. 510/2017 in order to declare a new SoE, which was again unanimously approved by Parliament on 22 October 2017 after exceeding the seven day limit stipulated in Article 154 of the constitution. Mr. Ehab El-tamawy, a Member of Parliament and Secretary of the Legislative Committee, affirmed that the Presidential Decree which imposed a SoE was new, and not an extension of the previous SoE after passing an interval time. He also commented on exceeding the seven day limit, saying that there was no violation

¹⁰ Parliament approves State of Emergency for three months after Sherif Ismail statement, 11 April 2017, available at:

<http://www.nile.eg/%D8%A5%D8%B3%D9%85%D8%A7%D8%B9%D9%8A%D9%84-%D8%A3%D9%85%D8%A7%D9%85-%D8%A7%D9%84%D9%86%D9%88%D8%A7%D8%A8-%D8%A7%D8%B9%D9%84%D8%A7%D9%86-%D8%AD%D8%A7%D9%84%D8%A9-%D8%A7%D9%84%D8%B7%D9%88%D8%A7>

¹¹ <http://www.youm7.com/story/2017/4/11/قرار-على-موافق-النواب-مجلس-البرلمان-تاريخية-جلسة-بالصوت/3186226>

¹² <http://www.ahram.org.eg/News/202316/60/602396/الطوارئ-جالة-مد-على-موافق-البرلمان-السيسي-المشود-اشهر-ثلاثة-لمدة.aspx>

as the 22 October session was scheduled to be the first session of Parliament.¹³ It seems likely that the technique of imposing a “new” SoE after an interval time of a few days, for the same or similar reasons to a prior SoE, will continue to be used as a means of maintaining SoEs over long periods of time.

The decrees declaring the emergency do not specify any particular measure that were to be authorized under the SoE, nor has much information been made public about what measures have been implemented in practice, aside from some cases where protesters were and still are being tried before the ESSC.¹⁴ Apart from this, under Egyptian law any declaration of SoEs automatically brings the provisions of the SoE law 1958 into effect, as will be discussed in greater detail below.

c. State of Emergency Law 1958

The law on SoEs contains 20 articles, including:

- Article 2: provides that the declaration of a SoE should specify the situation for which it was declared; the geographical application; and the start date and duration of the SoE.
- Article 3 (according to the last amendment on 3 June 2013): Once a SoE is declared, the President of the Republic has the right to, put limitations on fundamental freedoms, including freedom of movement, assembly, residence and traffic in certain places or times. The same article allows for the surveillance of all forms of “correspondence” and expression, including newspapers and other publications before publication, and the power to shut down publication houses and confiscate materials for “public safety or issues of national security”.
- Article 3 bis: any person who is arrested or detained according to Article 3 should be informed in writing of the reasons for his/her arrest or detention, and s/he has the right to contact any person of his/her choosing and the right to access a lawyer. In such cases, the detention is considered similar to pre-trial detention.¹⁵ The detainee or his/her family member can appeal the detention order to the Supreme Emergency State Security Court (SESSC) if 30 days has passed and s/he has not been released. The SESSC should respond with a reasoned decision after hearing the detainee within 15 days, or else s/he should be released immediately.

¹³ http://www.masrawy.com/news/news_egypt/details/2017/10/12/1170768/النيواب-تشريعيا-امرين-الطوارئ-خالة-فرض-سيويهد-البيزلمان

¹⁴ Aswan protestors <https://www.almasryalyoum.com/news/details/1218667>, *Itehad al-Garabi'* http://www.masrawy.com/news/news_cases/details/2018/1/4/1235028/%D8%AA%D8%A3%D8%AC%D9%8A%D9%84-%D9%85%D8%AD%D8%A7%D9%83%D9%85%D8%A9-9-%D9%85%D8%AA%D9%87%D9%85%D9%8A%D9%86-%D8%A8%D9%80-%D8%A7%D8%AA%D8%AD%D8%A7%D8%AF-%D8%A7%D9%84%D8%AC%D8%B1%D8%A7%D8%A8%D9%8A%D8%B9-%D9%84%D8%AC%D9%84%D8%B3%D8%A9-18-%D9%8A%D9%86%D8%A7%D9%8A%D8%B1 and even the case of sexual harassment allegation made against a guest of a TV show <http://gate.ahram.org.eg/News/1646996.aspx>

¹⁵ Even in the absence of SoE, pre-trial is being used in Egypt as a form of political punishment. EIPR, “Detention with No End”, May 2016, <https://eipr.org/publications/%D8%AD%D8%A8%D8%B3-%D8%A8%D9%84%D8%A7-%D9%86%D9%87%D8%A7%D9%8A%D8%A9-%D9%83%D9%8A%D9%81-%D8%AA%D8%AD%D9%88%D9%84-%D8%A7%D9%84%D8%AD%D8%A8%D8%B3-%D8%A7%D9%84%D8%A7%D8%AD%D8%AA%D9%8A%D8%A7%D8%B7%D9%8A-%D9%81%D9%8A-%D8%BA%D9%8A%D8%A7%D8%A8-%D8%A7%D9%84%D8%B7%D9%88%D8%A7%D8%B1%D8%A6-%D8%A5%D9%84%D9%89-%D8%A3%D8%AF%D8%A7%D8%A9-%D9%84%D9%84%D8%B9%D9%82%D8%A7%D8%A8-%D8%A7%D9%84%D8%B3%D9%8A%D8%A7%D8%B3%D9%8A%D8%9F>

- Article 3 bis (b) (added 27 April 2017¹⁶): law enforcement officers are allowed to detain any suspect for up to 24 hours before informing the prosecution. If the latter permits, the person can be detained for information gathering purposes for a period that does not exceed 7 days, given that an investigation with the person starts during this period.
- Article 3 bis (c) (also added 27 April 2017): Upon request from the public prosecution, the Misdemeanour Emergency State Security Courts (MESSC) can authorize the detention of suspects without charge for a month with the possibility of indefinite renewal, if there is evidence that the detainee poses a threat to public security.
- Article 4: security forces or military forces will enforce the orders of the President of the Republic or of those to whom he delegates.
- Articles 7 and 8: establish the ESSC system.
- Article 9: allows the President of the Republic to refer any case to the ESSC.
- Article 12: Appealing ESSC decisions is not allowed in any way and these decisions are considered final only when the President of the Republic ratifies them.
- Article 13: the President of the Republic can close a case or order the temporary release of detainees before the case is referred to the ESSC.
- Articles 14 and 15: the President of the Republic can amend the decision of the ESSC in different ways, including not to execute the penalty or minimize it and to send the case for retrial or other amendments, except in circumstances of premeditated murder.
- Article 19: when the SoE ends, the ESSC remains in charge of the cases referred to it. Cases that have not yet been referred to the ESSC should be dealt with by regular courts.

d. Historical Context

The current situation unfolds against the backdrop of a legacy of human rights violations under successive States of Emergency in Egypt. For instance, the ESSC usually tries students, human rights defenders, political activists, union members and those suspected of opposing the government.¹⁷

Egypt also has a history of systematic torture of detainees. Between 2012 and 2016, the UN Committee Against Torture, which interprets and applies the UN Convention against Torture, undertook a rare second "Article 20 Inquiry" concerning Egypt.¹⁸ Article 20 applies in cases of "well-founded indications that torture is being systematically practised in the territory of a State party". In 2016, the Committee concluded as follows:¹⁹

¹⁶ Law 12/2017 amending the SoE law, Official Gazette, issue 17 (ibis), 27 April 2017.

¹⁷ Egypt: No justice for 49 facing trial before emergency court, 5 September 2008, <https://www.amnesty.org/en/latest/news/2008/09/egypt-no-justice-49-facing-trial-emergency-court-20080905/>

¹⁸ First inquiry happened in 1996, UN Committee Against Torture, (CAT), [http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f51%2f44\(SU PP\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f51%2f44(SU PP)&Lang=en)

¹⁹ UN Committee Against Torture (CAT) annual report, 2017. Para. 69, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=dtYoAzPhJ4NMy4Lu1TOebJtOzHI9Ya%2>

"Torture appears to occur particularly frequently following arbitrary arrests and is often carried out to obtain a confession or to punish and threaten political dissenters. Torture occurs in police stations, prisons, State security facilities, and Central Security Forces facilities. Torture is perpetrated by police officers, military officers, National Security officers and prison guards. However, prosecutors, judges and prison officials also facilitate torture by failing to curb practices of torture, arbitrary detention and ill-treatment or to act on complaints. Many documented incidents occurred in greater Cairo, but cases have also been reported throughout the country. Perpetrators of torture almost universally enjoy impunity, although Egyptian law prohibits and creates accountability mechanisms for torture and related practices, demonstrating a serious dissonance between law and practice. In the view of the Committee, all the above lead to the inescapable conclusion that torture is a systematic practice in Egypt."

While Egypt rejected the findings of the Committee, it accepted some of the recommendations the Committee made to address the situation. Still, Egypt specifically rejected the Committee's recommendations "to immediately end the use of incommunicado detention; create an independent authority to investigate allegations of torture, enforced disappearance and ill-treatment; restrict the jurisdiction of the military courts to offences of an exclusively military nature; and enforce the prohibition against 'virginity tests' and end the practice of forensic anal examinations for those accused of crimes."²⁰

According to the Report of the OHCHR Mission to Egypt in 2011:²¹

"The Emergency law (Law No. 162 of 1958) in place since 1967, save for an 18-month period in the 1980s (which ended with the assassination of President Anwar El Sadat in 1981), has been hindering the full consolidation of the rule of law in Egypt. Under this law, state security powers were extended, constitutional rights suspended and fundamental rights and freedoms restricted. President Hosni Mubarak relied on the state of emergency to control the country: The establishment of political parties was severely restricted. In addition, strikes, unregistered financial donations were formally banned, and thousands of opponents were arbitrarily detained and allegedly tortured. In fact, the Emergency Law gave the Government the right to detain individuals indefinitely, without any judicial safeguards."

"The system of administrative detention and the emergency powers in place for the past 30 years have led to serious human rights violations, including arbitrary detention, disappearances, torture and ill-treatment. These practices were reportedly widespread in detention centres and prisons. Several reports of NGOs indicate that torture and other cruel, inhuman and degrading treatment have allegedly continued since the SCAF took over power."

[bxza%2bE%2bvtPfEMjvoay0x2iV30x2zj4TLGEMjRXVex9Q%2fNhnR3%2fZHIww27bw4ZF3htxFLucJ9b7NxE%3d](http://www.ohchr.org/Documents/Countries/EG/OHCHR_MissiontoEgypt27March_4April.pdf)

²⁰ UNCAT Annual Report 2017, para 71.

²¹ Para. 7 and para. 26

http://www.ohchr.org/Documents/Countries/EG/OHCHR_MissiontoEgypt27March_4April.pdf

II. International Law and Standards on States of Emergency

International human rights treaties to which Egypt is a party, including the International Covenant on Civil and Political Rights (ICCPR), recognise and protect a range of human rights including, the right to life; the right to liberty and security of person; the prohibition of torture and other ill-treatment; the right to fair trial; the right to privacy; the right to freedom of expression; the right to freedom of movement; the right to freedom of peaceful assembly and freedom of association; and the prohibition of discrimination and right to equality before the law and the equal protection of law. Some but not all of these rights, even in normal times, can be restricted on grounds such as public order or national security, but any such restriction must meet the requirements of the ICCPR. Accordingly, any restriction must be demonstrably proportionate to the specific objective they are meant to attain.²²

a. State of Emergency and Derogations

Article 4(1) of the ICCPR provides that: "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

The Human Rights Committee, the body mandated by the ICCPR to interpret and apply its provisions, offered this explanation:

A fundamental requirement for any measures derogating from the Covenant, as set forth in article 4, paragraph 1, is that such measures are limited to the extent strictly required by the exigencies of the situation. This requirement relates to the duration, geographical coverage and material scope of the state of emergency and any measures of derogation resorted to because of the emergency. Derogation from some Covenant obligations in emergency situations is clearly distinct from restrictions or limitations allowed even in normal times under several provisions of the Covenant. Nevertheless, the obligation to limit any derogations to those strictly required by the exigencies of the situation reflects the principle of proportionality which is common to derogation and limitation powers. Moreover, the mere fact that a permissible derogation from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation.²³

Article 4(2) of the ICCPR prohibits any derogation to certain provisions, including: article 6 (right to life), article 7 (prohibition of torture or cruel, inhuman or degrading punishment) and article 18 (freedom of thought, conscience and religion).

²² For further explanation see, for instance, Human Rights Committee, General Comment no 34 on freedom of expression (2011), paras .21 to 36

²³ Human Rights Committee, General Comment no 29 on states of emergency (2001), paragraph 5.

The Human Rights Committee has further stated that there are aspects of other rights, not specifically mentioned in article 4(2), that cannot be subjected to lawful derogation under Article 4. They include the following:²⁴

- There can be no exceptions to the requirement that “all persons deprived of their liberty be treated with humanity and with respect for the inherent dignity of the human person.”
- There are no circumstances in which prohibitions against “taking of hostages, abductions or unacknowledged detention” can be justified.
- “Even if a State party, during a state of emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of its procedures governing judicial or other remedies, the State party must comply with the fundamental obligation, under article 2, paragraph 3, of the Covenant to provide a remedy that is effective.”
- “The provisions of the Covenant relating to procedural safeguards may never be made subject to measures that would circumvent the protection of non-derogable rights. ... Thus, for example, as article 6 of the Covenant is non-derogable in its entirety, any trial leading to the imposition of the death penalty during a state of emergency must conform to the provisions of the Covenant, including all the requirements of articles 14 and 15.”
- “[F]undamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party’s decision to derogate from the Covenant.”

The African Charter on Human and Peoples’ Rights, a regional treaty to which Egypt has been party since 1984, recognises and protects a range of human rights in similar terms to those included in the ICCPR. However, it does not contain any provision addressing derogations in SoEs. The African Commission on Human and Peoples’ Rights stated in its decision in *Communication 74/92 Commission Nationale des Droits de l’Homme et des Libertés v. Chad*: “the African Charter, unlike other human rights instruments, does not allow for State parties to derogate from their treaty obligations during emergency situations. Thus, even a civil war in Chad cannot be used as an excuse by the State violating or permitting violations of rights in the African Charter.”²⁵

According to the Principles and Guidelines on Human and Peoples’ Rights while Countering Terrorism in Africa, adopted by the Commission on Human and Peoples’ rights established under the African Charter: “only in exceptional circumstances may States restrict certain human rights and freedoms. The justification for any restriction must be prescribed by law, strictly proportionate with and absolutely necessary for addressing a legitimate need as set forth under the African Charter on Human and Peoples’ Rights, and in accordance with regional and international human rights law. A

²⁴ See Human Rights Committee, General Comment no 29 on states of emergency (2001), paragraphs 13 to 16.

²⁵ <http://caselaw.ihrrda.org/doc/74.92/view/en/#holding> , para. 21

limitation may not erode a right such that the right itself becomes illusory. It must be possible to challenge the lawfulness of restrictions on rights before a court."²⁶

States must ensure that any derogation from a right subject to derogation during an emergency is temporary, strictly necessary and proportionate to meet a specific threat and does not discriminate on the grounds of race, colour, gender, sexual orientation, religion, language, political or other opinion, national, social or ethnic origin, property, birth or other status.²⁷ States must also ensure, at all times and in all circumstances, that alleged offenders are tried only by an independent and impartial tribunal established by law and that they are accorded full fair trial guarantees, including the presumption of innocence, the right to test evidence, rights of defence, especially the right to effective legal counsel, and the right of judicial appeal.²⁸ Evidence obtained by torture, or other means that constitute a serious violation of human rights against a defendant or third party is never admissible and cannot be relied on in any proceedings.²⁹

In her first report to the General Assembly, recently appointed UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ms. Fionnuala Ní Aoláin, stated that "permanent states of emergency"³⁰ were at the forefront of her agenda. The special rapporteur stated "human rights treaties require the states to remain cognizant of their legal obligation to return to regular legal order within a legally defined period of time."³¹ She continued, "if the same end can be achieved by regular legislation or administrative procedure, as opposed to exceptional legal norms, states should not resort to exceptional national security powers, derogate unnecessarily on the protections of rights and freedoms and defer to the capacity of the ordinary legal system to address the challenges at hand."³²

The fact that all of the provisions of the SoE law, including many that would normally be inconsistent with human rights, are automatically brought into effect by any declaration of SoE by the President, is inherently incompatible with the requirement under article 4 of the ICCPR that derogating measures be strictly limited to what is necessary and proportionate to the specific threat invoked to justify the specific emergency.

As it currently stands, neither Article 154 of the Constitution nor the SoE Law 1958 explicitly include the limitations and meet the other requirements of international law, including the ICCPR as interpreted and applied by the Human Rights Committee in

²⁶ ACHPR, Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, http://www.achpr.org/files/instruments/principles-guidelines-countering-terrorism/principles_and_guidelines_on_human_and_peoples_rights_while_countering_terrorism_in_africa.pdf, page 15.

²⁷ ICCPR article 4. Human Rights Committee General Comment no 29 on states of emergency. See also See commentary to the ICJ Berlin Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism, <https://www.icj.org/wp-content/uploads/2004/08/Berlin-Declaration-human-rights-in-fight-terrorism-analysis-brief-2004-eng.pdf>.

²⁸ ICCPR article 14. Human Rights Committee General Comment no 29 on states of emergency and 32 on the right to a fair trial. See also See commentary to the ICJ Berlin Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism, <https://www.icj.org/wp-content/uploads/2004/08/Berlin-Declaration-human-rights-in-fight-terrorism-analysis-brief-2004-eng.pdf>.

²⁹ Convention against Torture, Article 15. See commentary to the ICJ Berlin Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism, <https://www.icj.org/wp-content/uploads/2004/08/Berlin-Declaration-human-rights-in-fight-terrorism-analysis-brief-2004-eng.pdf>.

³⁰ Report of the Special Rapporteur to the UN General Assembly, 27 September 2017 http://www.ohchr.org/Documents/Issues/Terrorism/A_72_43280_EN.pdf

³¹ Ibid., para 14

³² Ibid.

relation to derogations from human rights in situations of emergency. On the contrary, measures adopted under recent SoEs have resulted in arbitrary arrests, torture, unlawful trials and enforced disappearances. Both the Constitution and the SoE Law must be amended to bring their provisions in line with Egypt's international human rights obligations. In addition to changes to address overarching requirements such as proportionality and precision, additional changes may be needed to address the impact of Egypt's emergency measures on, for instance, freedom of peaceful assembly, freedom of association, and freedom of expression.

For illustrative purposes, the following sections analyse specific provisions and practices relevant to the right to fair trial and the right to liberty.

b. The Right to a Fair Trial

In its present form, the SoE law violates the principle of separation of powers. The President of the Republic has sweeping powers over the ESSC that turns him into the final decision maker of any verdict, which constitutes a violation of the right to a fair trial as stipulated by Article 14 of the ICCPR. Article 4 of the SoE law also violates the right to fair trial as it allows for the trying of civilians before military tribunals. The proceedings themselves appear to fail to respect many of the specific fair trial procedural safeguards required under the ICCPR.

Egypt has a long legacy of resorting to the exceptional ESSC.³³ Despite Article 97 of the 2014 Constitution, which now provides that "Individuals may only be tried before their natural judge" and "Extraordinary courts are forbidden", the ESSC founded under Law No. 162 of 1958 (the SoE law), remain.³⁴

The ESSC operate principally under a SoE. However, the SoE law permits the continuation of the ESSC after a SoE ends. Article 19 states that the ESSC shall continue to adjudicate those cases already referred to it. Only individuals who have not yet been presented to an ESSC at the end of a SoE will have their cases transferred from the ESSC to ordinary courts.

According to Articles 7 and 8 of the SoE law, the composition of the ESSC is determined by the President of the Republic, who may order the formation of five types of ESSC:

- MESSC within the Courts of Misdemeanor, consisting of one civilian judge (from the ordinary courts);
- MESSC within the Courts of Misdemeanor, consisting of one civilian judge (from the ordinary courts) and two officers of the armed forces;
- SESSC within the Criminal Court, consisting of three civilian judges (from the ordinary courts);
- SESSC within the Criminal Court, consisting of three civilian judges (from the ordinary courts) and two officers of the armed forces; and

³³ See also "Egypt's Judiciary: A Tool of Repression -- Lack of Effective Guarantees of Independence and Accountability" (2016), pp. 146-153.

³⁴ Another type of security court, the "State Security Courts", were established pursuant to Art. 171 of the 1971 Constitution and Law No. 105 of 1980 but were later abolished by Law No. 95 of 2003.

- An ESSC composed entirely of military officers; either acting as the MESSC (the equivalent of Misdemeanor Courts in the SoE law) or the SESSC (the equivalent of Criminal Courts in the SoE law).³⁵

Generally, the MESSC hear cases involving misdemeanours, while the SESSC hear cases involving felonies. However, the President has broad discretion to determine which type of ESSC hears a case, including whether the judge/s will be civilians or from the military.³⁶ The President appoints the judges of the ESSC, following consultation with the Minister of Justice (and for any appointment of members of the military, following consultation with the Minister of Defence).³⁷

On 16 April 2017, the Prime Minister issued Decree No. 840/2017, appointing members of the ESSC.³⁸ As far as the ICJ has been able to ascertain, thus far only civilian judges have been appointed. On 7 October 2017, Decree No. 2165/2017 was issued by Prime Minister Sherif Ismail which allowed for the public prosecution to refer crimes under the assembly law, the protest law, the anti-terrorism law and other crimes that are related to labour strikes and protests in general, such as the crime of “thuggery” (which is heavily used against protesters), to the ESSC.³⁹

This expanded jurisdiction of the ESSC adds to a broader legal arsenal currently being built that will extend the powers of security forces in the name of fighting terrorism. In April 2017, the President issued several amendments to the Code of Criminal Procedure and the law pertaining to terrorism. In August 2017, news was published by state owned *Al-Ahram* online that new amendments to the Code of Criminal Procedure would be enacted.⁴⁰ All of these new measures have been adopted in the name of combating terrorism and to expedite the legal procedures before courts. The UN Special Rapporteur on the respect of human rights while countering terrorism in the first report of her mandate stated: “there is a grave danger that where national security powers are piled up, essentially in a constant state of ricketing powers upwards, government will take the experience of extraordinary powers and authority granted and exercised during previous emergencies rather than judging the needs of new challenges in light of a sober assessment of the capacity of ordinary legal process to cope.”⁴¹

The use of extraordinary courts, particularly those that have a military character or are subject to interference by executive authorities, raises serious human rights

³⁵ SoE Law, Art. 7.

³⁶ Pursuant to Article 7 of the SoE Law, Supreme State Security Courts hear cases involving felonies and other crimes as determined by the President regardless of the penalty. The court composed entirely of military officers has jurisdiction either where there is a special judicial framework in place or in relation to specific cases. In addition, any court may examine violations of orders of the President of the Republic.

³⁷ SoE Law, Art. 7.

³⁸ The appointment of “all presidents, vice-presidents, counsels of appeal, and all presidents of categories A and B, and judges of first instance courts” to Emergency State Security Courts (Misdemeanor and Supreme Courts). 16 April 2017, Official Gazette No. 18, dating 4 May 2017.

³⁹ “Law No. 10/1914 on assembly, crimes under Title 1 and 2 and 2 (bis) of the second book of the Criminal Code, crimes listed in articles 163 to 170 of the Criminal Code concerning the disruption of transportation, crimes in articles 172,174,175,176,177,179 of the Criminal Code, Crimes of intimidation, inducing fear and damaging security “thuggary” that is included in Title 16 of the third book of the Criminal Code, Crimes that are included in Law 95/1945 related to public supply and Law 163/1950 on forced pricing and profit determination, crimes of law 394/1954 on weapons and ammunition, crimes in law 113/2008 on protecting places of worship, crimes of law 107/2013 on the right to public assembly and peaceful protest, crimes in law 34/2011 on the prohibition to infringe on the right to work and sabotaging establishments, crime in the counter terrorism law 94/2015”

⁴⁰ “Minister of Parliamentary Affairs Omar Marawan told reporters the draft amendments aim to promote justice by speeding up litigation, particularly in terror-related cases”, <http://english.ahram.org.eg/NewsContent/1/64/274612/Egypt/Politics-/Egypt-parliament-to-discuss-new-amendments-to-crim.aspx>

⁴¹ The SR report para. 16 http://www.ohchr.org/Documents/Issues/Terrorism/A_72_43280_EN.pdf

concerns. Article 5 of the UN Basic Principles on the Independence of the Judiciary provides, "Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals." The Basic Principles further provide, "the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason" (Article 2) and "[t]here shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision" (Article 4).⁴²

Article 14 of the ICCPR provides, "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law" and sets out a number of specific guarantees applicable in criminal proceedings.

As noted above, the Human Rights Committee held, "fundamental requirements of fair trial must be respected during a state of emergency" in relation to all criminal trials. Furthermore, it has held "any trial leading to the imposition of the death penalty during a state of emergency must conform to the provisions of the Covenant, including all the requirements of Articles 14 and 15".⁴³

The Human Rights Committee has also stated, "the requirement of competence, independence and impartiality of a tribunal in the sense of Article 14, paragraph 1, is an absolute right that is not subject to any exception."⁴⁴ It adds:

While the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of Article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned. The Committee also notes that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in Article 14. Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.⁴⁵

The Human Rights Committee has also said, "the right to have one's conviction and sentence reviewed by a higher tribunal established under Article 14, paragraph 5, imposes on the State party a duty to review substantively, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case. A review that is limited to the formal or legal aspects of the conviction without any consideration

⁴² The only exceptions to the principle that judicial decisions are not subject to revision are: "This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law." These exceptions have no application to any form of interference by the President, including as enabled by the SoE Law, other than mitigation or commutation of sentences.

⁴³ Human Rights Committee, General Comment no 29 on states of emergency, paras. 15 and 16.

⁴⁴ UN Human Rights Committee, General Comment No. 32 "Article 14: Right to equality before courts and tribunals and to a fair trial", para. 19.

⁴⁵ *Ibid.*, para 22.

whatsoever of the facts is not sufficient under the Covenant."⁴⁶ The Committee further stated, "the right of appeal is of particular importance in death penalty cases."⁴⁷

The Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa, adopted by the African Commission on Human and Peoples' Rights to interpret and implement provisions of the African Charter on Human and Peoples Rights, similarly provide as follows:

- "In the determination of any criminal charge against a person, or of a person's rights and obligations, everyone shall be entitled to a fair and public hearing by a legally constituted competent, independent and impartial judicial body."⁴⁸
- "No circumstances whatsoever, whether a threat of war, a state of international or internal armed conflict, internal political instability or any other public emergency, may be invoked to justify derogations from the right to a fair trial."⁴⁹
- "Military or other special tribunals that do not use the duly established procedure of the legal process shall not be created to displace the jurisdiction belonging to the ordinary judicial bodies;"⁵⁰
- "The essential elements of a fair hearing include ... equality of arms between the parties to a proceeding, whether they be administrative, civil, criminal, or military;"⁵¹
- "Military courts should not in any circumstances whatsoever have jurisdiction over civilians. Similarly, Special Tribunals should not try offences which fall within the jurisdiction of regular courts."⁵²

The ICJ has adopted the following position:⁵³

The executive, legislative and judicial branches should under no circumstances, invoke a situation of crisis to restrict the competence or capacity of the judiciary to carry out its essential functions, to transfer those functions to non-judicial bodies, to circumvent judicial proceedings, control or review decisions. They must not:

- a) remove from the jurisdiction or supervision of ordinary tribunals the capacity to adjudicate complaints concerning human rights violations or to provide fundamental judicial remedies; or
- b) place the administration of justice under military authority; or
- c) confer on the military any power or authority to carry out criminal investigations in matters within the jurisdiction of ordinary justice.

⁴⁶ Ibid., para 48.

⁴⁷ Ibid., para. 51

⁴⁸ The African Commission on Human and Peoples' Rights (ACHPR), The Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa, 2003. Principle A (1).

⁴⁹ Ibid., Principle R.

⁵⁰ Ibid., Principle A.4(e).

⁵¹ Ibid., Principle A.2(a).

⁵² Ibid., Principle L.

⁵³ Declaration on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis (The Geneva Declaration), adopted by the World Congress of the International Commission of Jurists, in Geneva, December 2008, articles 3, 6 and 10.

The establishment of temporary or interim judges during times of crisis should be avoided. In respect of exceptional circumstances where it may become necessary to augment the capacity of the judiciary by expanding the number of active judges or through the creation of special chambers or units, the fundamental principles regarding the appointment and security of tenure must be strictly respected. Considerations of merit must remain essential criteria for appointments. Appropriate terms of tenure, protection and remuneration of judges must be ensured and the judiciary must have adequate resources to discharge its functions.

In times of crisis, only courts and tribunals should dispense justice and only a court of law or tribunal should try and convict a person for a criminal offence. Every person has the right to a fair trial by an independent and impartial tribunal or court established by law. In times of crisis, civilians must only be tried by ordinary courts or tribunals, except when special rules of international law allow military tribunals to try civilians. All such proceedings must respect the inherent minimum guarantees of a fair trial. In particular, governments must not, even in times of emergency, derogate from or suspend the presumption of innocence; the right to be informed of the charge, the right of defence; the right against self-incrimination; the principle of equality of arms; the right to test evidence; the prohibition against the use of information obtained under torture or other serious human rights violations; the non-retroactivity of criminal liability and the right to judicial appeal.

Among other concerns, Egypt's ESSC cannot be considered independent and impartial tribunals because, as required by Article 14 of the ICCPR, they are subject to strong executive influence.

In particular, the independence and impartiality of the ESSC is undermined by the President's powers, enacted in Articles 14 and 15 of the SoE law to ratify or alter judgments and to cancel or reduce sentences issued by the courts.⁵⁴ The Human Rights Committee has expressed concern about the President's broad authority under the SoE law to "ratify judgments and to pardon", describing this role as "both part of the executive and part of the judiciary system".⁵⁵ Similarly, the African Commission has stated, "a tribunal cannot be said to be independent when the implementation of its decision squarely vests on the executive branch of the Government, in this case the Head of State".⁵⁶ The independence and impartiality of the ESSC is further compromised by the President's ability to control the composition of the ESSC as well as the appointment of judges and military personnel to sit thereon.

Furthermore, no reasonable justification has been offered in relation to the current SoE and for why ordinary courts cannot be relied upon to fairly and effectively adjudicate crimes such as those related to the protest law; the assembly law; the labour law; crimes such as the disruption of transportation; public supplying and pricing; the protection of places of worship. There is a tendency to use the ESSC for any act that can be dealt with by ordinary courts without any justification as to why it is necessary. This runs contrary to the international legal obligations and standards set out above.

Furthermore, no appeal is permitted for any decision issued by the ESSC. In other words, individuals who are tried before an ESSC have no right of review regarding a

⁵⁴ SoE Law, Arts. 12-14.

⁵⁵ Concluding Observations of the Human Rights Committee on Egypt, UN Doc. CCPR/C/79/Add.23, para. 9.

⁵⁶ Egyptian Initiative for Personal Rights and Interights v. Arab Republic of Egypt, para. 204.

decision made by the ESSC before a higher independent tribunal. This is inconsistent with Article 14 of the ICCPR.

The Human Rights Committee has emphasized, “guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights” and that since Article 6 guarantees that no one “shall be arbitrarily deprived of his life”, it follows that any trial leading to the imposition of the death penalty must conform to all the requirements of Article 14 without exception, even in the most grave situations of emergency.⁵⁷

There are more than 100 crimes that are punishable by death under Egyptian law, including under the counterterrorism law of 2015, which sets forth at least another 15 crimes punishable by death by hanging.⁵⁸ Crimes of terrorism were referred by the Prime Minister’s Decree to the ESSC, which lacks certain fundamental elements of the right to a fair trial, including, but not limited to, its lack of independence and the lack of an appeal mechanism. Under international standards, proceedings in death penalty cases must conform to the highest standards of judicial independence, competence and impartiality and must strictly comply with all fair trial rights. In this case, violations of the right to a fair trial by an independent and impartial court would also amount to a violation of the right to life. This is because, in order to respect the non-derogable right to life under Article 6 of the ICCPR, the rights of an accused charged with an offence punishable by death, including under Article 14, must be fully respected, even during states of emergency.

c. The Right to Liberty

Article 3 of the SoE law regulates arrests and detention and confers certain rights on detainees, including the detainee’s right to know the reason of his/her detention; to contact a person of his/her choosing; and to access legal counsel. The Article also considers detainees as having the same legal status of “pre-trial detention”, giving the detainee or his/her family the right to appeal the decision of his/her detention to the ESSC if s/he was not released within 30 days. The ESSC is to respond with a reasoned decision within 15 days after a hearing with the detainee, if not, the latter should be released immediately. Article 3 bis (c) of the law allows for an indefinite renewal of detention, at which time the person is being interrogated.

The right to liberty and prohibition of arbitrary arrest and detention is recognised under Article 9 of the ICCPR, which also provides for a number of relevant safeguards including the right to challenge the lawfulness of any deprivation of liberty before a court. The Human Rights Committee has explained the requirements in greater detail in its General Comment No. 35 issued in 2014. Among other things, the General Comment highlights that any arrest or detention must be authorised by law (which should include “procedures that prevent arbitrary detention”⁵⁹), however, it also stipulates that the concept of arbitrariness goes beyond mere compliance with national law and “must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality”.⁶⁰

⁵⁷ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 6.

⁵⁸ The Egyptian Initiative for Personal Rights’ Position on the Death Penalty, <https://eipr.org/en/publications/egyptian-initiative-personal-rights%E2%80%99-position-death-penalty>

⁵⁹ Para. 14, General Comment No. 35.

⁶⁰ Para. 12, General Comment No. 35.

In General Comment No. 35, the Committee also affirmed that even under regimes of derogation in situations of emergency, States must demonstrate that detentions do not last longer than absolutely necessary and that the overall length of possible detention is limited.⁶¹

The fact that the current SoE law excludes any challenge of the lawfulness of detention before an independent and impartial court, including on the broader question of arbitrariness set out above, allowing instead a review conducted by the ESSC, is also inconsistent with articles 4 and 9(4) of the ICCPR as the ESSC itself lacks independence and impartiality including due to the legal provisions explicitly allowing interference by the President,. As was mentioned above, the Human Rights Committee has repeatedly affirmed that even in situations of properly-declared emergency, "the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant."⁶²

The authorities in Egypt have not offered any specific justification of the entry into force of the exceptional measures in relation to deprivation of liberty authorized by the SoE law, as those provisions are automatically triggered by the mere declaration of any SoE. Without additional explanation from the authorities, several aspects of the derogation, including the extension of periods of detention without criminal charge on authorization from a prosecutor, appear to be in violation of Egypt's obligations under the ICCPR. Furthermore, the many respects in which the ESSC fails to enjoy independence from the executive and applies procedures that are unfair, as was described above, further renders the detention regime under the SoE law inconsistent with international human rights law and standards.

III. Recommendations

The ICJ calls on the relevant authorities in Egypt to amend the regime established by the Constitution and the 1958 law:

- 1. To set out clear and precise conditions in which measures derogating from human rights under SoEs can be declared; to ensure that each such measure is strictly limited and proportionate to the exigencies of the specific emergency (and therefore ending the automatic entry into force of all provisions of the 1958 law whenever a state of emergency is declared); to exclude some rights from derogation in any circumstances; and to incorporate all other elements necessary to ensure such measures comply with Egypt's international human rights obligations;**
- 2. To reinforce effective parliamentary oversight and review of derogating measures under SoEs, including that parliament must publicly set out the reasoning for its approval or refusal of the declaration and the measures it approves within the declaration;**
- 3. To explicitly prohibit any derogation in any circumstances, including during SoEs, of any of the rights set out in article 4(2) of the ICCPR as well as those further identified by the Human Rights Committee as precluded from derogation;**

⁶¹ Paras 66 and 15, General Comment No. 35.

⁶² Para. 16, General Comment no 29; Para 67 General Comment no 35. See also Principles 4 and 6 and Guidelines 3 and 4 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, adopted by the Working Group on Arbitrary Detention, UN Doc A/HRC/30/37 (2015).

- 4. To ensure that any declaration of derogating measures under SoEs must include an explicit stipulation of the geographical coverage and material scope of the SoE and any derogations of rights that are made as a result of the emergency, as well as an explanation of how such derogations are strictly required by the exigencies of the situation;**
- 5. To abolish and preclude any future establishment of any type of ESSC, including by repealing relevant provisions of the SoE law and repealing Decree No. 2165/2017 by the Prime Minister and ensuring respect for Article 97 of the Constitution. Any existing proceedings before the ESSC should be either nullified or transferred to the ordinary courts;**
- 6. To ensure that all civilians arrested or charged during SoEs are tried only before ordinary, independent and impartial courts in proceedings that meet international standards of fairness, including the right to appeal a conviction and sentence before a higher independent and impartial tribunal;**
- 7. To explicitly prohibit arbitrary arrests, enforced disappearances and torture and other ill-treatment;**
- 8. To end the possibility of indefinite or otherwise arbitrary detention without charge, trial or legal recourse, by ensuring that the detention system under the SoE law complies with Article 9 of the ICCPR, including by ensuring that all individuals deprived of their liberty on security grounds or criminal charges are:**
 - a. Granted confidential access to and the assistance of a lawyer of choice from the outset of the deprivation of liberty;**
 - b. Entitled to notify or have notified family members of his or her arrest, detention or imprisonment and any transfers;**
 - c. Brought promptly before an independent and impartial court;**
 - d. Informed immediately of the reasons for arrest and promptly informed of any charges against him or her;**
 - e. Entitled to trial within a reasonable period of time or to release; and**
 - f. Entitled to challenge at any time the lawfulness of the detention before an independent and impartial civilian court.**

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