



The Tahrir Institute
for Middle East Policy



Right to Due Process In Egypt



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Summary

- Mass trials, politicized death sentences, civilian trials in military courts, prolonged pretrial detention, and forced disappearances are all common violations of due process that occur in Egypt. The government has been notably emboldened in its infringement on due process in the period after the official announcement of President Abdel-Fattah El Sisi's second term, with the unjust detentions and trials of high-profile activists, researchers, and journalists.
- It is estimated that three to four people were forcibly disappeared every day on average in 2017 and the first three months of 2018, based on documentation from El Nadeem Center for Rehabilitation of Victims of Violence and Torture.
- The use of such tactics undermines the rule of law in the country and faith in the independence and integrity of the judicial process, which is of particular concern given an increased number of executions carried out since the end of 2017.

Overall Situation

The most common violations of the right to due process in Egypt are civilian trials in military courts, mass trials, mass death sentences, the widespread use of prolonged pretrial detention, and forced disappearances. Often, though not always, these violations occur in combination, and at times they appear to be politicized, raising serious questions about the political independence of Egypt's judiciary. Since the April announcement that Sisi had officially secured a second presidential term, the government appears even increasingly emboldened, with flagrant due process infringements against high-profile activists, researchers, and bloggers. The [American](#), [Ger-](#)

man, Turkish, and British governments have expressed concern over Egypt's politicized judiciary, sentiments which the United Nations Office of the High Commissioner for Human Rights and the U.N. secretary-general have echoed.

Background

State of Emergency

Some violations of due process committed today are similar in nature (if not in intensity) to what occurred under former President Hosni Mubarak with his use of the Emergency Law, which was in place for over 30 years. The state of emergency allowed security services to arrest and detain people indefinitely without charges. Following the 2011 uprisings against Mubarak, the state of emergency was lifted in 2012, only to be reinstated in April 2017 after a series of terrorist attacks.¹ Although the instatement of the state of emergency is constitutionally limited to three months, this provision has been avoided by allowing the state of emergency to “expire” for a brief period in October and for a new state of emergency to be declared immediately after, effectively allowing it to remain continually in place. The government most recently extended the state of emergency in April 2018.

Military Trials for Civilians

Article 204 of the 2014 Egyptian Constitution allows for civilians to be tried before military tribunals under exceptional circumstances of “direct assault” against military facilities; when facing military tribunals, civilians have limited access to lawyers, are unable to call upon witnesses, and have no opportunity for appeal. Military trials for civilians is an issue with roots in the 2011 Egyptian revolution, a year in which almost 12,000 civilians were arrested and tried before military tribunals. The use of military trials for civilians was officially approved in December 2013, when the 50-member committee tasked with drafting the constitution decided to approve the “conditional” trial of civilians before military courts. President Sisi issued a decree on October 27, 2014, that deemed crimes committed against the state’s public and “vital” facilities as offenses that may be tried before a military judiciary. Under the scope of the law, both schools and universities are regarded as vital facilities, so any crimes committed “against” them result in a military trial.

Various notable Egyptian activists have been arrested for protesting military trials for civilians, including Alaa Abdel Fattah, Ahmed Maher, Ahmed Douma, and Muhammad Adel. Human Rights Watch estimates that at least 7,420 Egyptians were tried before military courts between 2014 and 2016. In one of the higher-profile cases, scholar and journalist Ismail Iskanderani, who served as a visiting fellow at the Wilson Center, was sentenced to 10 years in military prison in May 2018 because of his work on the Sinai Peninsula, where Egypt is currently engaged in a years-long counter-insurgency battle.

Pretrial Detention

Lengthy pretrial detentions violate Article 9 of the International Covenant on Civil and Political Rights, to which Egypt is a party. As of May 2016, it was confirmed that at least 1,464 people in four governorates were being held in pretrial detention beyond the legally mandated two-year limit. The Egyptian Initiative for Personal Rights described the use of prolonged pretrial as a “tool for political punishment” being used as a replacement for the repealed state of emergency.

Mass Sentencing

The practice of mass sentences within Egypt’s judiciary came under close scrutiny in 2014, after two mass death sentences were issued by a single judge in Minya. In a particularly high-profile case, the

¹ The state of emergency was reinstated in North Sinai in October 2014 and renewed consistently, but its purview was limited to certain areas of that province.

supreme guide of the Muslim Brotherhood, Muhammad Badie, was sentenced to death along with 682 other defendants. Condemning the verdict, Amnesty International [argued](#) that mass sentences “expose how arbitrary and selective Egypt’s criminal justice system has become.” The Egyptian Foreign Ministry [hit back](#) against criticism from the United States and European Union over 230 life sentences issued in February 2015, calling such criticism “unacceptable.” The yearly number of death penalties handed down [peaked](#) in 2015 at 538 before decreasing in 2016, yet Egypt has seen another spike in recent months. In late 2017 and early 2018, executions were conducted so regularly that rights activists began [referring](#) to Tuesday as “Execution Day.”

Forced Disappearance

A spate of high-profile arrests and disappearances in April and May 2018 has drawn attention to the practice of forced disappearance, which have been on the rise in Egypt [since](#) the appointment of Interior Minister Magdy Abdel Ghaffar in March 2015. A report from Amnesty International [called](#) the trend “unprecedented,” for its use of violence and extensive number of cases; El Nadeem estimates that three to four people were disappeared per day by security forces during 2017 and the first three months of 2018. Cases documented by Amnesty and other rights organizations show how Egyptian citizens are being abducted, tortured, and held for months without access to a lawyer or the ability to contact their families. This pressure is often used to [coerce](#) the victims into confessing to crimes they did not commit. Despite these reports, the government has shown no serious steps to rein in the practice. In August 2016, the deputy minister for legal affairs in the Interior Ministry [told](#) a parliamentary committee that claims of forced disappearances are false and spread by the Muslim Brotherhood.

Analysis and Areas of Concern

Since 2011, the Egyptian judiciary has worked alongside the state to curb political dissent and exert control over the population and public space, applying justice arbitrarily and submitting to the influence of political context, rather than protecting citizens’ rights and freedoms despite it. The sentencing of civilians before military courts, mass sentences, mass death sentences, and extended pretrial detention have served as tools to this end.

The recent increase in forced disappearances is particularly worrying, and signals that the practice is used as a matter of routine by Egyptian Homeland Security and the military. Moreover, the return of the state of emergency has empowered the security apparatus to operate without checks on its authority. Following the official announcement that Sisi had secured a second term in April 2018 the regime has further attempted to assert control by force. With a series of disappearances and harsh sentences for internationally recognized activists, journalists, and researchers, the government has indicated that no amount of global renown can protect an individual from the state.

The use of these tactics undermines the rule of law in the country as well as faith in the independence and integrity of the judicial process, and the increasingly expanding web of counter-terrorism laws and other provisions supporting such actions are used in worrying combination with blanket state denial of the existence of such problems. Such violations of due process are compounded with the increasing number of executions, which many rights groups have called for halting until improvement is seen in the respect of due process rights and for the rule of law.

TIMEP Coverage

- In April 2018, Nonresident Fellow Sherif Azer [wrote](#) an article describing the process of forced disappearances in Egypt and how they are conducted by security officials.
- In November 2017, Nonresident Fellow Mai El-Sadany [co-authored](#) an article with Nathan Brown on the normalization of the state of emergency in Egypt.
- In March 2017, TIMEP [condemned](#) the continuation of Egyptian case no. 173, which has violated the constitutionally guaranteed due process of several Egyptian nongovernmental organization workers.



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