



Egypt: National Council for Human Rights

Egypt's national human rights institution before the Global Alliance of NHRIs

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1 INTRODUCTION AND BACKGROUND

1.1 Background of the NHRI's review

The Egyptian National Council for Human Rights (NCHR) was established by Law No. 94/2003 and was reviewed by the Sub-Committee on Accreditation of the Global Alliance of NHRIs (SCA) in 2006, for its initial accreditation.

The SCA decided to recommend the NCHR be granted with status B and requested the institution to provide further, “detailed assurances of its independence”.¹ In October 2006, following new information received from the NCHR, the SCA recommended that the NCHR be accredited with status A.

In light of the internal circumstances in Egypt and the resignation of all NCHR members following the 2011 revolution, the SCA deferred the NCHR's reaccreditation for one year in October 2011.² At its November 2012 session, the SCA deferred its reaccreditation again, underlining that the envisaged amendments to the NCHR enabling law had failed to be adopted.³ The SCA made recommendations to the NCHR, citing, “concerns about the selection and appointment process, the duration of appointment of members, security of tenure, appropriately defining the grounds and process for dismissal of members, access to places of detention and confinement and a broader mandate to promote and protect human rights.”⁴

Similarly, the NCHR's reaccreditation was deferred in May 2013⁵ and in November 2015, the SCA stated that the reaccreditation would take place at its second session of 2016.⁶ In its report of March 2017, the SCA decided that its consideration on the re-accreditation of the NCHR would be deferred to its first session of 2018.⁷

In May 2018, the SCA granted the NCHR status A, despite clear signs of a lack of effective independence and impartiality of the institution from the executive.

¹ ICC, Report and Recommendations of the Sub-Committee on Accreditation, Geneva, 12 April 2006, p. 3.

² ICC, Report and Recommendations of the Sub-Committee on Accreditation, Geneva, 25-28 October 2011, 3.5.

³ ICC, Report and Recommendations of the Session of the Sub-Committee on Accreditation, Geneva, 19-23 November 2012, point 3.4.

⁴ *Ibidem*.

⁵ ICC, Report and Recommendations of the Session of the Sub-Committee on Accreditation, Geneva, 13-16 May 2013, point 3.3.

⁶ ICC, Report and Recommendations of the Session of the Sub-Committee on Accreditation, Geneva, 16-20 November 2015, point 5.1.

⁷ GANHRI, Report and Recommendations of the Session of the Sub-Committee on Accreditation, Geneva, 13-17 March 2017, point 4.1 (hereinafter “GANHRI Sub-Committee on Accreditation Report – March 2017”).

On 28 November 2018, Alkarama sent a to the GANHRI a request to initiate Special Review of Egyptian NHRI due to severe lack of compliance with the Paris Principles.

This report highlights the many shortcomings of the NHCR in terms of effective independence from the executive, which should not allow for the renewal of an already problematic A status in view of the SCA principles.

1.2 Political developments

Since May 2018, the Egyptian authorities have continued their crackdown on dissent, curbing the most fundamental rights and freedoms and severely restricting civil society and free media space in the country. At the same time, the NCHR has remained conspicuously silent on these violations, highlighting its lack of independence, impartiality and effectiveness, and thus its lack of competence to protect and promote human rights in Egypt in line with the Paris Principles.

In September 2021, Egypt launched its National Human Rights Strategy (NHRS), inaugurated with pomp and ceremony by President General Al Sissi. However, it has been characterised by the EU parliament as having brought “no substantial changes” to the human rights situation in the country.⁸ Major human rights organisations have expressed their concern at the fact the NHRS “presents a deeply misleading and at times outright false picture of the human rights situation in Egypt” and “completely overlooks patterns of ongoing or past human rights violations and fails to acknowledge the role of security forces and other state actors, including prosecutors and judges, in ordering, instigating or committing violations or in aiding, abetting or otherwise facilitating their commission or to call for an end to impunity”.⁹

Overall, the behaviour of the Egyptian NHRI shows a failure to respond adequately or in a timely manner to serious rights violations, or to maintain any form of critical distance from the state’s narrative within the NHRS, which calls into question the institution’s independence.

In its May 2018 report, the SCA highlighted that:

“NHRIs that have been accredited with A status will take the necessary steps to pursue continuous efforts at improvement and to enhance their effectiveness and

⁸ Official Journal of the European Union, P9_TA(2022)0426, Human rights situation in Egypt, European Parliament resolution of 24 November 2022 on the human rights situation in Egypt (2022/2962(RSP)), (2023/C 167/15), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022IP0426>

⁹ Amnesty International, “Egypt: ”Disconnected from reality”: Egypt’s National Human Rights Strategy covers up human rights crisis”, 21 September 2022, <https://www.amnesty.org/en/documents/mde12/6014/2022/en/>, p. 3.

independence, in line with the Paris Principles and the recommendations made by the SCA during this review.”

We submit that the since then the NCHR has shown no improvement on its effectiveness and independence, while instead endorsing uncritically the state’s narrative of human rights improvement in the context of its NHRS.

In fact, the NCHR’s lack of distance from the government is typical of what Reporter without Border has documented as [“Sisification” of Egypt’s media](#) have been brought under authoritarian control and completely reconfigured in order to better reflect the official discourse embodied by Sisi”.¹⁰

2 NHRC’S CONSTITUTIONAL AND LEGISLATIVE LEGAL BASIS

2.1 Constitutional provisions

It was only in 2012 with the adoption of a new Constitution that the NCHR was first referenced, granting it the power to inform the General Prosecution’s office of violations of constitutional rights. The NCHR retained this power with the adoption of the new Constitution in February 2014¹¹ and was constitutionally guaranteed independence under article 214.¹²

2.2 Legislative Provisions

On 2 August 2017, NCHR’s enabling Law No. 94 has been amended for the first time since its adoption in 2003. In April 2016, the head of the House of Representatives’ Human Rights Committee presented a draft to amend the NCHR’s enabling Law No. 94/2013.¹³ On 2 August

¹⁰ RSF, “Less press freedom than ever in Egypt, 10 years after revolution”, <https://rsf.org/en/less-press-freedom-ever-egypt-10-years-after-revolution>

¹¹ Article 99 of the 2014 Constitution provides that: “Any violation of personal freedom, or the sanctity of the private life of citizens, or any other public rights and freedoms which are guaranteed by the Constitution and the Law is a crime. The criminal and civil lawsuit arising of such crime shall not abate by prescription. The affected party shall have the right to bring a direct criminal action.

The State shall guarantee fair compensation for the victims of such violations. The National Council for Human Rights may file a complaint with the Public Prosecution of any violation of these rights, and it may intervene in the civil lawsuit in favour of the affected party at its request. All of the foregoing is to be applied in the manner set forth by Law” (emphasis added).

¹² Article 214 of the 2014 Constitution provides that: “The law shall specify the independent national councils, including the National Council for Human Rights, the National Council for Women, the National Council for Childhood and Motherhood, and the National Council for Disabled Persons. The law shall state the composition, mandates, and guarantees for the independence and neutrality of their respective members. Each council shall have the right to report to the competent authorities any violations pertaining to their fields of work.

These councils shall have legal personalities and shall be technically, financially, and administratively independent. They shall be consulted with respect to the bills and regulations pertaining to their affairs and fields of work.”

¹³ Parlmany, الإنسان "حقوق" استقلال قانون "حصري..", <http://www.parlmany.com/News/7/78930/%D8%AD%D8%B5%D8%B1%D9%89->

2017, following the parliamentary approval of the draft on 4 July 2017, President Al Sisi issued a decree enacting Law No. 197/2017 on the amendments of some provisions of Law No. 94/2003.

While the revision of the law was officially aimed at strengthening the NCHR's independence from the executive, the amendments did not effectively guarantee the NCHR's independence from the executive and parliament.

While the NCHR expressed satisfaction over the amending Law No. 197/2017, stating that it "helps the Council play its role in an impartial and independent manner as well as maintain its international standing",¹⁴ the new law failed to take into account all recommendations and concerns of the SCA,¹⁵ particularly over the independence of the NCHR and the means of implementing its mandate.¹⁶

Alkarama considers that despite its revision, amended Law No. 94/2003 still does not guarantee the absolute independence of the NCHR from the executive and legislative branches. On the contrary, the amendments strengthen the control of both powers on the NHRC.

With regards to the NCHR's independence from the legislative, article 1 of the law provides in its new wording that "the NCHR is an independent Council which aims to promote, develop and protect human rights and public freedoms in accordance with the provisions of the Constitution and in the light of the international conventions, covenants and covenants ratified by Egypt". However, the new law also specifies in a new article 2 *bis* (a) that the NCHR's board must be formed within 60 days by the Human Rights Committee of the House of Representatives in coordination "with other institutions, including the High Council for Universities, the High Council for Culture, the Egyptian General Federation of Trade Unions and professional syndicates".

In addition, under article 2 *bis* (a), the Parliament is also granted power to "select the President of the Council, his deputy and the members with the approval of the majority of its members". As such, the Parliament has not only been granted the authority to approve or

[%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D8%B3%D8%AA%D9%82%D9%84%D8%A7%D9%84-%D8%AD%D9%82%D9%88%D9%82-%D8%A7%D9%84%D8%A5%D9%86%D8%B3%D8%A7%D9%86-](#), 12 May 2016. (accessed on January 7, 2018)

¹⁴ Ahram Online, *Egypt's National Council for Human Rights says new law 'cements its independence'*, 8 August 2017, <http://english.ahram.org.eg/NewsContent/1/64/275002/Egypt/Politics-/Egypts-National-Council-for-Human-Rights-says-new-.aspx>. (accessed on January 7, 2018)

¹⁵ GANHRI Sub-Committee on Accreditation Report – March 2017.

¹⁶ Daily News Egypt, *NCHR files draft law demanding more freedom, facilitation in its work*, 14 May 2016, <http://www.dailynewsegypt.com/2016/05/14/nchr-files-draft-law-demanding-more-freedom-facilitation-in-its-work/>. (accessed on January 7, 2018)

reject the formation of the Council, but also to select the NCHR's President and Deputy. We therefore consider that this newly established nomination process contravenes the Paris Principles as it undermines the necessary independence of the Council and of its members.¹⁷

Moreover, with regards to the independence from the executive branch, while article 1 of the new law provides that the Council "shall enjoy technical, financial and administrative independence in the exercise of its functions, activities and competences", the NCHR, however, remains State-funded according to articles 11 and 12 of the new law.¹⁸

These provisions are contrary to what the SCA noted in its General Observations namely that "the Paris Principles require an NHRI to be independent from government in its structure, composition, decision-making and method of operation. It must be constituted and empowered to consider and determine the strategic priorities and activities of the NHRI based solely on its determination of the human rights priorities in the country, free from political interference"¹⁹.

3 MANDATE AND ATTRIBUTIONS OF THE NHRC

The SCA highlighted in its General Observations that an NHRI's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights. Specifically, the mandate should

- extend to the acts and omissions of both the public and private sectors;

¹⁷ Particularly paragraph 1 on the Composition and guarantees of independence and pluralism.

¹⁸ Article 11 of Law 197/2017 amending Law 94/2013 on the establishment of the NCHR provides that: "The Council shall have an independent budget, which shall be in the form of the general budget of the State, including its detailed revenues and expenses. The fiscal year shall begin with the beginning and end of the fiscal year of the State and shall be subject to the control of the Central Auditing Organization."

Article 12 of Law 197/2017 amending Law 94/2013 on the establishment of the NCHR provides that:

"The Council's resources consist of the following:

1. The resources allocated to the Council in the general budget of the State.
2. Grants, donations and endowments that the Council decides to accept by a majority of its members in accordance with the laws and procedures governing it. If submitted by a foreign body, it must be approved by the majority of its members unless it has mutual obligations or is submitted in the form of an international agreement.
3. The State shall allocate grants or endowments to the Council, which shall decide upon international agreements with which it shall be directed to the fields of human rights.

A special account shall be established for the proceeds of these resources in one of the banks subject to the supervision of the Central Bank of Egypt. The surplus of this account shall be taken into account at the end of each financial year to the budget of the Council for the following fiscal year."

¹⁹ GANHRI Sub-Committee on Accreditation, General Observations of the Sub-Committee on Accreditation, (hereinafter "General Observations of the Sub-Committee on Accreditation"), Adopted by the GANHRI Bureau at its Meeting held in Geneva, Switzerland, 6 March 2017, p. 29., "G.O. 1.9 Political representatives on NHRIs".

- vest the NHRI with the competence to freely address public opinion, raise public awareness on human rights issues and carry out education and training programs;
- provide the authority to address recommendations to public authorities, to analyse the human rights situation in the country, and to obtain statements or documents in order to assess situations raising human rights issues;
- authorise unannounced and free access to inspect and examine any public premises, documents, equipment and assets without prior written notice;
- authorise the full investigation into all alleged human rights violations, including the military, police and security officers.

In this regard the Law No. 197 of 2017 details in its article 3 the attributions of the NHRC as follows²⁰:

“Without prejudice to the provisions of the applicable laws, the Council shall, in order to achieve its objectives:

1. To give an opinion on the draft laws and regulations related to its field of work;
2. Study allegations of violations of human rights and make the necessary recommendations to the competent authorities in the State;
3. Develop a national plan of action for the promotion and protection of human rights in Egypt and propose ways to achieve this plan;
4. Submit proposals and recommendations to the competent authorities in anything that might protect and support human rights and strengthen them;
5. Comment and make the necessary proposals and recommendations on matters raised by the competent authorities in respect of matters relating to the promotion and protection of human rights;
6. Receive complaints concerning human rights, studying them, and transmit what the Council considers to be referred to the competent authorities with their follow-up, give advice to those concerned about the procedures to be followed, assist them in doing so and help resolve complaints with the authorities concerned;
7. Follow up the implementation of the international conventions, covenants, and covenants related to human rights ratified by Egypt and to present to the concerned parties the proposals, observations, and recommendations necessary in this regard;
8. Cooperation with international organisations and bodies concerned with human rights in matters contributing to the achievement of the objectives of the Council and developing its relations with them, in coordination with the Ministry of Foreign Affairs;
9. Contribute with its opinion to reports which the State is obliged to submit periodically to the Human Rights Committees and Bodies in accordance with international conventions and in response to their inquiries in this regard;

²⁰ Translation provided by the author.

10. Coordinating with the state bodies concerned with human rights and cooperation in this field with the National Council for Women, the National Council for Childhood and Motherhood, the National Council for Persons with Disabilities and other relevant national councils and bodies;
11. Promote a culture of human rights in cooperation with specialised agencies in the fields of teaching, upbringing, and information and education and to assist in the preparation of human rights education programs;
12. Hold conferences, symposia and panel discussions on human rights issues or events related to them;
13. To make the necessary proposals to support institutional and technical capacities in the fields of human rights, including through technical development and training for staff working in state institutions related to public freedoms and economic, social and cultural rights;
14. Publish newsletters, magazines and other publications related to human rights and to the objectives and competence of the Council, in accordance with the relevant laws;
15. Issue reports on the situation and development of human rights;
16. Visit the prisons and other places of detention and institutions for rehabilitation or treatment, and hearing of prisoners and inmates of the places and institutions mentioned in order to ascertain their good treatment and enjoyment of their rights. The Council shall prepare a report on each visit, including the most important observations and recommendations with a view to improving the conditions of prisoners and inmates of these places and institutions. The council shall submit its reports to both the Attorney General and the House of Representatives;
17. Where the council finds that the freedoms or the rights of citizens enshrined in the constitution and law and international conventions and treaties which Egypt ratified, the Council should report it to the public prosecution based on reliable information that they have on the violation or its perpetrator, in addition to notifying the competent authorities and the council can join in a civil claim upon the request of the victim and in accordance with applicable laws.

3.1 Commenting and providing opinions on national legislation

While article 3 of the new law gives power to the NCHR to “give an opinion on the draft laws and regulations related to its field of work”, the obligation under article 214 of the Constitution to consult the NCHR for every law ‘pertaining to [its] affairs and fields of work’ has not been respected by the authorities in practice.

Alkarama stresses the crucial importance for an NHRI not only to be vested with such power but also to fully implement such an obligation to ensure promotion and effective protection of human rights.

Since 2018, a number of communications from UN mandate holders concerned laws that have been drafted or reformed since then including

- the NGO Law 149/2019 and its 2021 by-law,²¹
- Egypt's Terrorist Circuit Courts and allegations of their incompatibility with international due process guarantees,²²
- the application of the Anti-Terrorism Law, Protest Law, Association Law, and NGO law raising "serious concerns regarding increasing practices of arbitrary detention, allegations of torture, the absence of judicial oversight and procedural safeguards, restrictions on freedom of expression, the right to freedom of thought, and the right to freedom of peaceful assembly",²³
- amendments to amendments to several laws, including Law No. 92 of 2016 which "infringes upon media freedoms and on the legitimate exercise of the right to freedom of expression in general".²⁴
- "Law Governing the Treatment of Certain Senior Commanders of the Armed Forces" which "effectively establishes a blanket amnesty for the violations committed by officers designated by the President, and does not introduce exceptions in its application when the violations constitute serious crimes or other gross human rights violations."²⁵

None of the issues raised by the UN experts in each of these communications has been addressed by the NCHR. On the contrary, the national institution's reports on several periodic reviews show that it supports the government's justification of these restrictive laws and presents them as improvements in the human rights situation in the country, in line with the official narrative of the Egyptian authorities.

An analysis of the press releases published on the website shows that no critical or negative language is used regarding the actions of the authorities, despite a clear condemnation by UN independent experts and human rights NGOs. The NHRI has not taken a position on these violations despite their gravity, raising additional concerns about the existence of "red lines" that the NHRC cannot - or will not - cross.

Finally, under article 3(14) of the new law, the NCHR is granted power to "publish a newsletter, magazines and other publications related to human rights and to the objectives and competence of the Council, in accordance with the relevant laws". Alkarama, however, underlines that considering the serious restrictions on the right to freedom of expression in

²¹ JAL [EGY 6/2021](#)

²² JAL [EGY 13/2020](#)

²³ JOL [EGY 4/2020](#)

²⁴ OL [EGY 13/2018](#)

²⁵ JOL [EGY 12/2018](#)

Egypt, which have worsened since the enactment of Law No. 92/2016 on the Institutional Regulation of the Press and the Media, the impact of such restrictions on the freedom of the NHRC to criticise publicly laws and executive decisions is extremely limited.

3.2 Information and Education in Human Rights

Under article 3(11) of the new law, the NCHR is entitled to “promote a culture of human rights in cooperation with specialised agencies in the field of teaching, upbringing, information and education, and to assist in the preparation of human rights education programs”. Article 3(12) further states that it can hold “conferences, forums and seminars to discuss human rights issues or events related thereto”.

However, it does not make use of its possibility to make use of all means available (media, education and cultural affairs), as listed in article 3(11) of the new law and in the Paris Principles.²⁶ More particularly, the NHRC has failed to systematically publish and publicise the outcomes of these events and to follow up on them.

Furthermore, since 2018, numerous communications by Special Rapporteurs have been sent to the Egyptian authorities on issues ranging from, *inter alia*, denial of medical care, physical and sexual assault, and other forms of torture and ill-treatment against detained political prisoners,²⁷ harassment, enforced disappearance torture and arbitrary detention of lawyers and human rights defenders,²⁸ undue restrictions on civil society participation in the 27th Conference of the Parties to the UN Framework Convention on Climate Change (COP27),²⁹ the misuse of counterterrorism to crackdown on civil society and peaceful political opponents,³⁰ and implementation of arbitrary death sentences.³¹

The NCHR has never taken a position on these recurring serious human rights violations, except to defend itself and deny having received a complaint in the case of the death of the member of the liberal Egyptian Reform and Development Party, Pr Ayman Hadhoud, who died in the custody of the Egyptian security forces following his enforced disappearance.³²

²⁶ Paris Principles, “Competence and responsibilities”, para. 3(f) and 3(g).

²⁷ For the most recent communications : JAL [EGY 11/2022](#) ; JUA [EGY 15/2021](#) ; JUA [EGY 2/2021](#) ; JAL [EGY 16/2020](#)

²⁸ For the most recent communications : JAL [EGY 10/2022](#) ; UA [EGY 8/2022](#) ; Egypt JAL [EGY 7/2022](#); JUA [EGY 3/2022](#) ; JAL [EGY 2/2022](#)

²⁹ For the most recent communications : JAL [EGY 9/2022](#)

³⁰ For the most recent communications : JAL [EGY 1/2022](#) ; JAL [EGY 8/2021](#)

³¹ See for example: JUA [EGY 9/2021](#) ; JUA [EGY 7/2021](#) ; JAL [EGY 4/2021](#)

³² “NCHR did not receive any complaints relating to the late Dr. Ayman Hadhoud, says head of NCHR complaints committee”, 15 April 2022, <https://nchr.eg/en/news-details/477>

3.3 Cooperation with international human rights mechanisms

According to the SCA, effective engagement with the international human rights system may include:

- “- submitting parallel or shadow reports to the Universal Periodic review, Special Procedures mechanisms and Treaty Bodies;*
- making statements during debates before review bodies and the Human Rights Council;*
- assisting, facilitating and participating in country visits by United Nations experts, including special procedures mandate holders, treaty bodies, fact-finding missions and commissions of inquiry; and*
- monitoring and promoting the implementation of relevant recommendations originating from the human rights system.”³³*

Referring to Paris Principle A.3 and to its General Observation 1.4 on “Interaction with the International Human Rights System”, the SCA also highlighted that

*“while it is appropriate for governments to consult with NHRIs in the preparation of a state’s reports to human rights mechanisms, NHRIs should neither prepare the country report **nor should they report on behalf of the government. NHRIs must maintain their independence and, where they have the capacity to provide information to human rights mechanisms, do so in their own right.**”³⁴*

In this regard, it is concerning that article 3 (8) of the Law establishing the NCHR provides that the cooperation of the NHRC with international organisations and bodies concerned with human rights” must be conducted “in coordination with the Ministry of Foreign Affairs”.

Furthermore, an analysis of the NCHR's report to the UN human rights mechanisms and to the Human Rights Council in the context of its last UPR shows a clear lack of critical distance from the government and an endorsement of the authorities' justifications for the use of restrictive laws or explanations for the practice of enforced disappearances.

- **Report to the Human Rights Committee in the framework of the fifth periodic report of Egypt**

The NCHR's report to the HR Committee shows a clear lack of distance from the state discourse and an uncritical endorsement of the Egyptian government's National Human Rights Strategy (NHRS). In fact, the report consists mainly of a laudatory presentation of the

³³ GANHRI Sub-Committee on Accreditation Report – May 2018, p. 18

³⁴ Ibidem.

NHRS, ignoring the criticisms voiced by many international and Egyptian human rights NGOs as well as independent UN experts in recent years.

The lack of respect and implementation of human rights by state institutions seems to be attributed to the lack of adherence to human rights by Egyptian society portrayed as conservative and which is said to view human rights as “foreign”.³⁵

The lack of respect and implementation of human rights by state institutions seems to be attributed to the lack of adherence to human rights by Egyptian society, which is portrayed as conservative, and which is said to regard human rights as 'foreign'.

No critical stance is taken on the many issues raised by the Committee in its previous concluding observation or in its List of Issues.

Crackdowns on political opponents are presented as an “historical event” related to the 1952 revolution and the lack of political parties is explained by this crackdown only. It is particularly concerning to read the following in the NCHR’s report:

“The Egyptian state has recently encouraged youth to engage in the political life and join political parties. Most of such parties are still infants.”

The NCHR cannot ignore that peaceful political opponents and parties have been either banned or barred from participating in political life through the use of counter-terrorism laws and other restrictive dispositions as highlighted by civil society reports and in the HR committee’s concluding observations.

Furthermore, the NCHR affirms that:

“the launch of Egypt’s first ever national strategy for human rights on September 11, 2021, represents a paradigm shift underscoring a major leap in addressing human rights enjoyment (p 6), adding that it was drafted “in collaboration with civil society organisations; NGOs operating in the field of human rights”.³⁶

Major NGOs such as Amnesty and Human Rights Watch have highlighted that Egypt’s National Human Rights Strategy (NHRS) “presents a deeply misleading and at times outright false picture of the human rights situation in Egypt”³⁷. More importantly, the drafting of the NHRS

³⁵ The National Council for Human Rights Assessment of the Civil and Political Rights Situation in Egypt, From November 2020- September 2022, Report Presented to the 137th Session of the Human Rights Committee on the Occasion of the Discussion of Egypt’s Periodic Review in accordance with Article no.40 of the International Covenant on Civil and Political Rights (ICCPR), Geneva – February 27th – Marc 24th 2023, available online https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FNHS%2FEGY%2F51554&Lang=en , p 5.

³⁶ *Ibidem*.

³⁷ Amnesty International, “Disconnected from reality”: Egypt’s National Human Rights Strategy covers up human rights crisis, September 21, 2022, <https://www.amnesty.org/en/documents/mde12/6014/2022/en/> , p. 3.

was done by a state institution and was characterised by the “exclusion of independent human rights NGOs from the process of developing the strategy, which lacked transparency and was carried out without meaningful public or civil society engagement”.³⁸

In its report, the NCHR repeatedly refers to Egypt’s Constitution and legislation enshrining human rights guarantees in line with international human rights law and its ratification of numerous international treaties. The NHRS defends the government's record and efforts in upholding human rights in the administration of justice,³⁹ and depicts the NHRS in the following terms in its report to the HR Committee:

“NHRS was launched under the auspices of, and in the presence of the President of the Republic, demonstrating a solid commitment to adhere to international human rights standards.”⁴⁰

Such a laudatory endorsement of a governmental policy that has been widely criticised by independent Egyptians and international human rights organisations should be highlighted as unacceptable from an NHRI which enjoys an A status and should, per se, justify the downgrading of the NCHR to a B status.

Moreover, the NCHR further states that

*“the Egyptian President, on October 25th, 2021, in another positive step has announced his decision not to extend the state of emergency, underscoring the country’s stability and security, as well as the successes of the security forces in eliminating terrorism”.*⁴¹

This statement is again particularly uncritical and commendatory of the state security forces’ counterterrorism action when the NCRH cannot ignore, *inter alia*, that:

- Peaceful political opponents, journalists and human rights defenders have been prosecuted for acts falling under their right to freedom of expression and other fundamental freedoms under the anti-terrorism law and are subjected to grossly unfair trials before Egypt’s Emergency State Security Court and Terrorist Circuit Courts as well as added on “terrorist lists”⁴²;

³⁸ *Ibidem.*

³⁹ *Ibidem.*

⁴⁰ The National Council for Human Rights Assessment of the Civil and Political Rights Situation in Egypt, From November 2020- September 2022, p 6.

⁴¹ *Ibid*, p 8.

⁴² See for example: JAL [EGY 6/2022](#) ; JAL [EGY 1/2022](#)

- The use of force by Egypt military and security forces have led to multiple violations of the right to life of individuals either during counterterrorism operation or in detention following an arrest under the anti-terrorism law.⁴³
- That the anti-terrorism law has been characterised by UN experts as “inconsistent with international human rights law and standards and is contrary to the Government treaty obligations” and “raises concerns that the said legislation has contributed to the restriction and criminalisation of opinions critical of the Government”.⁴⁴

The NCHR's omission of these elements is a clear demonstration of its limitations in terms of impartiality and independence from the government.

Furthermore, the NCHR report fails to address the practice of torture by state officials and omits the fact that Egypt rejected the recommendation of the UN Committee against Torture following its investigation under Article 20 of the Convention. The NCHR report ignores the many reports of systematic torture by state officials and the lack of accountability for such acts.

The issues raised by the NCHR on "promoting the right to life and physical security" are limited to the issuance of a new law regulating medical research, while completely ignoring the issues of enforced disappearances, torture, the use of the death penalty against political opponents and deaths in custody due to wilful state negligence, which have been repeatedly raised by international and independent Egyptian NGOs as well as independent UN experts.

In other parts of the report, the NHRC praises efforts taken by the government to provide human rights training of prosecution employees,⁴⁵ police personnel, prison personnel and presenting governmental policies in building new detention centres without addressing the issue of arbitrary detention as well as torture and ill-treatment in detention.⁴⁶

Concerning the right to association, the NCHR does not mention any of the serious concerns⁴⁷ raised by independent civil society and UN independent experts on the NGOs law which according to UN experts “*limit civil society’s access to funding and enable the executive to carry out supervisory control and broad discretion to regulate and dissolve civil society organisations*”⁴⁸ . Rather the NCHR positively reports on the creation of a National Alliance for Civil and Development Work (NASDW) launched by General Al Sissi to oversee

⁴³ See for example JAL [EGY 5/2020](#)

⁴⁴ See for example AL EGY 13/2020 and JOL [EGY 4/2020](#)

⁴⁵ The National Council for Human Rights Assessment of the Civil and Political Rights Situation in Egypt, From November 2020- September 2022, p 6.

⁴⁶ *Ibid.*, pp. 12-13

⁴⁷ *Ibid.*, pp. 16

⁴⁸ JAL [EGY 6/2021](#)

development work in Egypt. No mention is made of the closing of human rights organisation and the imprisonment of civil society leaders and human rights defenders.⁴⁹

Concerning its part on “Freedom of expression, and the right to free access to information”, the NCHR’s report merely repeats governmental position that freedom of expression is guaranteed in domestic law⁵⁰ and that the NHRS aims to ensure its implementation without mentioning the widely documented use of counter-terrorism laws against journalists. Notably, according to Reporters without borders “Egypt is now one of the world’s biggest jailers of media personnel, behind only China and Saudi Arabia”.⁵¹

The only apparently “critical” part of the report is, in fact, critical of Egyptian society and NGOs which are depicted as “lacking capacity and knowledge” in human rights. Even more concerning, the NCHR calls for more regulation of “media and journalist activities” in order to “set the standards of freedom of expression without prejudice to the rights of others”.⁵² It should be highlighted that such a wording is precisely the one used by the Egyptian government to justify restriction on freedom of speech and media freedom as it can be seen in its “Replies to the list of issues” of the HR Committee.⁵³

It is therefore foreseeable that the Committee listed at the end of the review as a principal matter of concern:

*“[t]he lack of safeguards to ensure its full independence and effectiveness and the lack of information provided on the effective implementation of its recommendations, notably with regard to the onward referral of individual complaints submitted to it”.*⁵⁴

*The Committee recommended that Egypt “should continue its efforts to ensure that the National Council for Human Rights fully complies with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and is able to carry out its mandate fully, effectively and independently”.*⁵⁵

⁴⁹ The National Council for Human Rights Assessment of the Civil and Political Rights Situation in Egypt, From November 2020- September 2022, *op.cit.*, p 16.

⁵⁰ *Ibid.* p 16.

⁵¹ RSF, “Less press freedom than ever in Egypt, 10 years after revolution”, <https://rsf.org/en/less-press-freedom-ever-egypt-10-years-after-revolution>

⁵² The National Council for Human Rights Assessment of the Civil and Political Rights Situation in Egypt, From November 2020- September 2022, *op.cit.*, pp. 25-26.

⁵³ Replies to the list of issues in relation to the fifth periodic report of Egypt submitted to the Human Rights Committee, CCPR/C/EGY/RQ/5, 30 December 2022, para 93.

⁵⁴ Human Rights Committee, Concluding observations on the fifth periodic report of Egypt, CCPR/C/EGY/CO/5, 14 April 2023, para 5.

⁵⁵ *Ibid.*, para 6.

The report of the NCHR, as well as the observations made by the Committee on its inability to carry out its mandate fully, effectively and independently show that the NCHR cannot be considered as “fully compliant” with the Paris Principles.

- **The 2019 report of the NCHR to the Human Rights Council in the framework of the third cycle of the Universal Periodic Review of Egypt**

It is particularly concerning to read that in its 2019 report to the Human Rights Council in the framework of the UPR, the NCHR endorses the governmental explanation concerning the hundreds of cases of enforced disappearances in Egypt attributing them to inadequate information by sources, refusals from detainees to communicate with the outside world or simply endorsing the governmental explanation that those who disappeared fled from their families or joined terrorist groups.⁵⁶

Furthermore, the NCHR endorses the government’s justification on further restrictions on social media accounts introduced by the LAW 2018 by simply mentioning that closing of personal websites and social media accounts were limited to cases in which such web pages would be related to the “dissemination of false news, offending the state, or inciting hatred and discrimination” (*our translation*).⁵⁷

In terms of freedom of association, the NCHR praises the President General Al Sissi for its action in reforming Law No. 70 of 2017 and its “calls for dialogue”, reflecting the authorities’ official narrative.⁵⁸

No mention is made of the systematic violations of the right to life, liberty and security of political opponents, human rights defenders and other peaceful activists that have been documented consistently by independent civil society and UN experts since the previous cycle.

Again, while comparing the NCHR’s report with the summary of stakeholder information, the absence of critical distance of the institution from the state’s narrative is striking.

Lastly, in its October 2020 report to the Committee on the Elimination of Discrimination against Women in the context of the combined eighth to tenth periodic reports of Egypt,⁵⁹ the NCHR merely presented governmental action without any critical comment or reference

⁵⁶ “تقرير المجلس القومي لحقوق الإنسان عن أوضاع حقوق الإنسان في مصر ٢٠١٩”, available in Arabic only <https://nchr.eg/ar/upr-uni/2019/4/publication> , p 2.

⁵⁷ *Ibid.* p. 4.

⁵⁸ *Ibidem.*

⁵⁹ National Council for Human Rights Report, Parallel to Report of Egypt of the Committee on Elimination of Discrimination against Women "CEDAW", 13 Oct 2020 , https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FIFL%2FEGY%2F43504&Lang=en

to failures to implement past recommendations from the Committee. Moreover, it endorsed the refusal from the Egyptian government to lift the remaining reservation to the treat while calling for it to lift a reservation that had already been lifted.⁶⁰

Again, compared with the issues raised by independent civil society organisation in their respective reports (including crackdown on women's human right defenders), the absence of distancing of the NCHR from the government is striking.

3.4 Visits to places of detention

The SCA noted that in their general attribution of analysis of the human rights situation in the country, NHRIs "should be authorised to fully investigate all alleged human rights violations, regardless of which State officials are responsible. This should include the ability to have unannounced and unimpeded access to inspect and examine any public premises, documents, equipment and assets without prior written notice. Although the authority of NHRIs to undertake such an investigation may be restricted for national security reasons, such restriction should not be unreasonably or arbitrarily applied and should be exercised under due process"⁶¹.

Under article 3(16) of the new law, the NCHR has been granted the prerogative to "visit the prisons and other places of detention and institutions for rehabilitation or treatment, and hearing of prisoners and inmates of the places and institutions mentioned in order to ascertain their good treatment and enjoyment of their rights". The Council is therefore vested with the duty to prepare reports on each visit, "including on the most important observations and recommendations with a view to improving the conditions of prisoners and inmates of these places and institutions", for submission to the Attorney General and the House of Representatives.

However, the law fails to fully implement the recommendation made by the SCA during the latest review of the NHRC namely that "the NCHR to conduct 'unannounced' visits to all places of detention within its jurisdiction as this limits opportunities for detaining authorities to hide or obscure human rights violations and facilitates greater scrutiny".⁶² The new law fails to specify whether such visits could be undertaken unannounced or whether prior authorisation has to be delivered by the Ministry of Interior.

Alkarama is also concerned by information obtained from NGOs and families of victims which reported that, the NCHR has never been independent in the choice of places of detention it

⁶⁰ National Council for Human Rights Report, "Parallel to Report of Egypt of the Committee on Elimination of Discrimination against Women "CEDAW"

⁶¹ General Observations of the Sub-Committee on Accreditation, *op.cit.*, p. 51., "G.O. 2.7 Limitation of power of NHRIs due to national security"

⁶² GANHRI Sub-Committee on Accreditation Report – March 2017, *op.cit.*, p. 34

could visit, this decision was one of the Ministry of Interior. As a consequence, some places of detention were prepared for NCHR's visits, preventing it from performing its mandate accordingly.⁶³ Furthermore, it was reported to Alkarama that a visit to Al Aqrab prison in September was authorised by the Ministry of Interior without informing all members, including those who have extensive experience in the field of human rights. The latter were thus unable to attend the visit. Other members reported that officials from the Ministry of Interior accompanied them and filmed the visit even if they were asked not to; and that they could not speak privately with prisoners. Hence, they were not able to make a proper assessment of the situation and their report was largely criticised by other local organisations that had been reporting several torture and ill-treatment cases in this prison.⁶⁴

In its May 2018 report, the SCA noted concerning visits to places of detention that ⁶⁵:

*“article 3(16) of the Law mandates the NCHR to visit prisons and all places of detention and interview inmates, as well as to submit its reports to Public Prosecutor and House of Representatives. The law is silent on whether or not prior notice is required in conducting these visits. **The NCHR confirmed that such prior notice is necessary.***

While the SCA notes that, in some circumstances, it may be necessary to provide notice for security reasons, it considers it is of the view that an NHRI should be mandated to conduct ‘unannounced’ visits to all places of detention within its jurisdiction as these limits opportunities for detaining authorities to hide or obscure human rights violations and facilitates greater scrutiny.

The SCA acknowledges the view of the NCHR that the requirement of prior notice does not impact its ability to effectively carry out its mandate to monitor places of detention. However, for the reasons stated above, the SCA considers it preferable NCHR to be mandated to conduct unannounced visits to places of detention. The SCA therefore encourages the NCHR to advocate for the explicit mandate to conduct an unannounced visit to all places of detention.

In the interim, the SCA encourages the NCHR to continue to access all places of deprivation of liberty to effectively monitor, investigate and report on the human rights situation in a timely manner.

⁶³ Al Arabiya, *Egypt prisons report: Did human rights council curry favor with govt?*, 24 September 2015, <http://english.alarabiya.net/en/perspective/analysis/2015/09/23/Egypt-prisons-report-Did-human-rights-council-curry-favor-with-govt-.html>. (accessed on January 7, 2017)

⁶⁴ Daily News Egypt, *NCHR members criticise latest Aqrab prison visit*, 2 September 2015, <http://www.dailynewsegypt.com/2015/09/02/nchr-members-criticise-latest-aqrab-prison-visit/>. (accessed on January 7, 2017).

⁶⁵ GANHRI Sub-Committee on Accreditation Report – May 2018, pp. 22-23

It further encourages the NCHR to undertake systematic follow-up activities and advocate for the consideration and implementation of its findings and recommendations in order to ensure the protection of those detained.

The SCA refers to Paris Principles A.3 and D(d) and to its General Observation 1.6 on 'Recommendations by NHRIs.'

While none of the concerns raised by the SCA has been addressed by the authorities or the NCHR, Alkarama researched the NCHR's stances and actions in this regard, noting an absence of critical appraisal of the situation in prisons and detention centres in the country and a complete endorsement of the state narrative.

- **March 2022 NCHR's visit to Badr prison**

In March 2022, the NCHR announced in a Press release featuring glossy pictures of guards presenting toys for children or jewellery (see below) having visited the Badr correctional and rehabilitation centre.⁶⁶



Pictures of the NCHR's visit to Badr prison, source NCHR

⁶⁶ NCHR members visit Badr correctional and rehabilitation centre, 31 March 2022, <https://nchr.eg/en/news-details/486>

The press release reads more like a PR operation in favour of the government than an actual independent visit to a prison facility by a supposedly impartial human rights institution.

At no moment were the violations largely documented to the UN human rights mechanism ever mentioned including large-scale arbitrary detention, lengthy pre-trial detention of political prisoners, denial of medical, torture, ill-treatment including sexual abuse and denial of communication with the outside world.

Rather, the press release merely states that “the NCHR delegations explored the development of facilities and human resources under the framework of the country’s comprehensive development of punitive policies”.

The NCHR have lauded in its press release the “advanced medical equipment” put at the disposal of female inmates in a “first of its kind” women’s health centre established by the Ministry of Interior. The NCHR limited its comments to praising the number of dialysis machines, or art and craft facilities and reported having spoken with families of detainees who have allegedly “commended the visits organisation process”.

The content of the press release in fact in line with what Human Rights Watch has documented as a PR campaign from the Egyptian state to “Whitewash” Egyptian Prison Abuses⁶⁷ with videos of prison complexes “caricature of an idyllic rehabilitative life in Egypt’s prisons covers up a deeply sinister reality of Egypt’s abusive prison system, and is a crude attempt to erase the lived trauma of thousands of prisoners and their families”.

In March 2023, Alkarama along with a dozen of Egyptian NGOs have relayed the calls of families of political prisoners in the “Badr Rehabilitation and Correction Center” also known as the “Badr Prisons Complex 1, 2, 3”. Human rights organisations that signed this statement express their grave concern about the severe violations committed by the Egyptian authorities include:

- Depriving detainees of visits for a period of up to seven years;
- Depriving detainees of "exercise" and exposure to sunlight;
- Starving detainees by providing very small amounts of food, preventing family visits, and closing the prison cafeteria;
- Exposing detainees to strong lighting 24 hours a day, which, according to psychiatric experts, may lead to damage to the nervous system, cause depression, and then suicide;
- Violation of privacy through surveillance cameras (audio and image) inside the cells;
- Frequent searches accompanied by severe beatings of detainees;
- Intentional medical negligence and denial of the right to treatment;

⁶⁷ Joe Stork, Deputy Director, Middle East and North Africa Division Video Whitewashes Egyptian Prison Abuses, 23 December 2021, <https://www.hrw.org/news/2021/12/23/video-whitewashes-egyptian-prison-abuses>

- Unjustified prolonged solitary confinement;
- Deprivation of personal hygiene items;
- Harsh, humiliating treatment that violates human dignity.⁶⁸

Since the beginning of the detention of political prisoners in Badr Prison Complex, several cases of death in detention of political prisoners have been reported, the first of which occurred in November 2022, when Alaa Mohamed Al-Salami died in Badr Prison after 60 days of hunger strike and medical negligence by the prison administration.

Several families reported that the prison administration, led by National Security Officer Yahya Zakaria, suspended negotiations with the prisoners' representatives and took several punitive measures, including stopping regular medication for heart and diabetic patients and blocking the entry of medicines sent by relatives from abroad. The administration also reduced the amount of food provided, leading to hunger inside the prison, in order to force prisoners to comply with the administration and indefinitely postpone requests for visits.⁶⁹

In the same vein, Amnesty also denounced a « PR gloss ahead of COP27» in the following terms:

“In Badr 3 Prison, located 70 kilometres to the northeast of Cairo, prisoners are held in horrific and punitive conditions comparable to or even worse than those consistently documented at Egypt’s notorious Tora Prison Complex. Detainees shiver in cold cells with fluorescent lights switched on round the clock; CCTV cameras are trained on them at all hours; and access to basic necessities such as sufficient food, clothing and books are banned. They are denied any contact with their families or lawyers and detention renewal hearings are held online. There has been at least one death in custody since the prison was opened in mid-2022.”⁷⁰

- **June 2022 NCHR’s visit to Wadi al-Natroun and false claims about Alaa Abdel Fattah’s hunger strike and health condition.**

The NCHR reported having visited the Wadi al-Natroun rehabilitation facility in June 2022 with a delegation led by NCHR President Ambassador Dr Moushira Khattab, in order to reportedly

⁶⁸ Egypt: Systematic Violations at "Badr Rehabilitation and Correction Center" - Joint Statement , 1 March 2023, <https://www.alkarama.org/en/articles/egypt-systematic-violations-badr-rehabilitation-and-correction-center-joint-statement>

⁶⁹ Egypt: Families of Badr prison inmates appeal to the international community to help protect their loved ones and allow family visits in prison 12 Mar 2023, <https://www.alkarama.org/en/articles/egypt-families-badr-prison-inmates-appeal-international-community-help-protect-their-loved>

⁷⁰ October 20, 2022

Egypt: New prison, PR gloss ahead of COP27 cannot hide human rights crisis, <https://www.amnesty.org/en/latest/news/2022/10/egypt-new-prison-pr-gloss-ahead-of-cop27-cannot-hide-human-rights-crisis/>

“ to follow up on the inmates living conditions and the implementation of the National Human Rights Strategy”.⁷¹

According to the press release of the NCHR, the visit was supervised by the Deputy Minister of Interior for Community Protection Division (the new name of the prison division of the Ministry of Interior) Maj. Gen. Tarek Marzouk. The press release simply repeats the Major General's presentation of the government's “commitments to universal standards of protection of places of detention and providing an adequate level of healthcare and nutrition, as well as the right to education, culture, exercise for inmates”.

This is concerning given the wide reports from international and independent Egyptian human rights NGOs on the treatment of political detainees in the prison facility including blogger and activist Alaa Abdel Fattah, whose life is put at imminent risk after a seven-month hunger strike.

The NCHR alarmingly reports that Alaa Abdel Fattah's health condition was « normal » and that neither him nor any other detainee in the facility was on hunger strike.

After this statement, the press release placidly reports that “visited the facility's illiteracy classes, mosque and church as well as the kitchen”, before referring to their visit of “industrial complex which consists of wooden and metal foundation factory, a feed factory, livestock and poultry, and organic greenhouses to rehabilitate the inmates to master various crafts”.

However, the NCHR could not ignore that at the same time, Alaa Abdel Fattah's family reported that he was in a hunger strike, which he had started in April 2022, as confirmed by human rights organisations⁷², UN experts⁷³ and the EU Parliament whom all expressed their deep concern over his critical health state just few months later.

The EU parliament notably reported that

“Alaa Abdel Fattah, who has been arbitrarily detained for most of the past decade on unsubstantiated charges, interrupted his hunger strike, which he had started in April 2022, after being force-fed following a near-death experience in his prison cell; whereas since the beginning of COP27 he had also stopped drinking water; whereas Alaa still has had no consular access to UK officials and whereas his lawyer was denied

⁷¹ NCHR visits Wadi al-Natroun rehabilitation facility, , 05 June 2022, <https://nchr.eg/en/news-details/452>

⁷² Egypt: Prominent activist in critical condition: Alaa Abdel Fattah, 21 November 2022, <https://www.amnesty.org/en/documents/mde12/6235/2022/en/>

⁷³ UN experts call for immediate release of Alaa Abdel Fattah, 11 November 2022, <https://www.ohchr.org/en/press-releases/2022/11/un-experts-call-immediate-release-alaa-abdel-fattah>

*a visit; whereas Alaa's family has been sporadically allowed to visit him in the past following international pressure."*⁷⁴

- **June 2022 NCHR's visit to Al Badr prison facility**

In another concerning press release the NCHR announced having sent a delegation to visit the "Badr city reform and rehabilitation facility", again under the supervision of Major General Tarek Marzouk, Deputy Minister of Ministry of Interior for "Community Protection" "who briefed the delegation about the latest developments in the centre and the Ministry of Interior's strategy relating to centres of reform and rehabilitation development".⁷⁵

The NCHR claimed having spoken with "families of inmates, monitoring the compliance of the followed standards in the centre with the international standards" only referring to its visit of various health and recreational spaces for "music" and "craft".

However, the NCHR could not ignore at the time that Egyptian and international organisations reported numerous suicides attempts and hunger strikes among detainees' due to the lengthy period of arbitrary detention as well as torture and ill-treatment including sexual abuse.

In a November 2022 resolution on the human rights situation in Egypt, the EU Parliament described the Wadi al Natrun and Badr prison facilities in the following terms:

*Condemns the continued firmly arbitrary and pre-trial detention of tens of thousands of prisoners of conscience in Egypt, many of whom are detained in inhuman conditions without access to a fair trial or basic rights, as evidenced in Egypt's political prisons at Wadi Natroun and Badr; notes that a limited fraction of Egypt's political prisoners were released or pardoned by the Presidential Pardon Committee in April 2022, with the release of between 800 and 1 000 prisoners from arbitrary pre-trial detention; highlights that at least 1 953 Egyptians have been arbitrarily arrested and detained since then, according to Egyptian NGOs and Amnesty International;*⁷⁶

In light of this, it is clear that, far from carrying out its mandate effectively, independently and impartially during previous visits, the NCHR was effectively used as a PR tool by the government in its campaign to present a glossy image of its detention system.

It is inconceivable that an NHRI that is used by a state as a tool to cover up massive human rights violations reported by all international and independent Egyptian NGOs, UN Human Rights Mechanisms and EU parliament alike, can still be granted A status.

⁷⁴ JOINT MOTION FOR A RESOLUTION on the human rights situation in Egypt, 23.11.2022 - (2022/2962(RSP)) https://www.europarl.europa.eu/doceo/document/RC-9-2022-0505_EN.html

⁷⁵ NCHR delegation visits Badr city reform and rehabilitation facility, 14 June 2022, <https://nchr.org/en/news-details/445>

⁷⁶ European Parliament resolution of 24 November 2022 on the human rights situation in Egypt ([2022/2962\(RSP\)](https://www.europarl.europa.eu/doceo/document/RC-9-2022-0505_EN.html))

3.5 Ability to document human rights violations and receive individual complaints

Under article 99 of the 2014 Constitution, the NCHR is entitled to “file a complaint with the Public Prosecution of any violation of these rights, and it may intervene in the civil lawsuit in favour of the affected party at its request”. According to article 3(6) of the new law, the NCHR is entitled to receive and study “complaints related to the protection of human rights [...] and referring them to the concerned authorities, together with following-up to advise the parties involved about the legal actions to be taken and assisting them in taking such actions or settling and resolving the complaints with the relevant authorities”.

Hence, the NCHR, considered as a quasi-judicial body, can receive complaints and assist victims but it has not been granted with rights to investigate cases on its own and even to initiate a complaint on its own initiative, which contradicts the SCA’s General Observations. Additionally, since the law is silent about this aspect, the NCHR is not authorised to compel witnesses or to order protection measures from retaliation for victims and their relatives, which can hamper the efficiency of its work. Alkarama has also received reports from families of victims of enforced disappearance according to which they had solicited the NCHR’s intervention on their behalf but that they never received an answer.

While its enabling law does not empower the NCHR to launch inquiries into specific violations, it can issue reports about human rights. The NCHR established four fact-finding committees into the events of summer 2013 and particularly into the violent dispersal of Raba’a Al Adawiya and El Nahda Squares by the police and the army on 14 August 2013 that saw the death of thousands of individuals and hundreds of others wounded.⁷⁷ However, the report, published in March 2014, was strongly criticised by some local organisations, reporters and international NGOs as failing to effectively and impartially document the violations and notably the use of force by security services which have led to the executions.⁷⁸

It should be highlighted that the NCHR was not authorised to compel witnesses or to offer them protection measures which made it even more difficult for its members to make an independent and impartial review of the circumstances of the events. We recall the utmost need for the NCHR to be fully independent in the implementation of its mandate, particularly in the investigations into violations.

⁷⁷ Alkarama, *Egypt: Ensure accountability for crimes against humanity*, 16 August 2013, <http://en.alkarama.org/component/k2/1141-egypt-ensure-accountability-for-crimes-against-humanity>.

⁷⁸ The Cairo Post, *NCHR issues final Rabaa report, reporters doubt credibility*, 17 March 2014, <http://thecairopost.youm7.com/news/102636/news/nchr-issues-final-rabaa-report-reporters-doubt-credibility>.

See also Human Rights Watch, *All According to Plan, The Rab’a Massacre and Mass Killings of Protesters in Egypt*, 12 August 2014, <https://www.hrw.org/report/2014/08/12/all-according-plan/raba-massacre-and-mass-killings-protesters-egypt>.

In the same vein, in June 2016 the NHRC published a “Report on Enforced Disappearance in Egypt”, which attempted to explain that the numerous allegations brought forward to the Working Group on Enforced and Involuntary Disappearance were lacking accurate information or, worse still, reported by groups seeking to “internationalise” the issue.⁷⁹

This report came as on 17 June 2016, the Working Group informed the Government of general allegations it had received in May 2016 in relation to the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance.⁸⁰

According to the WGEID:

The general allegation concerned the reported increase in the number of cases of enforced disappearance since mid-2014, allegedly establishing a pattern of widespread “short-term disappearances”. Even though some cases have already been clarified, they would demonstrate that enforced disappearances are now a routine practice in Egypt.

Finally, in spite of the recommendations made by the SCA, under article 3(17) of the new law, the NCHR remains deprived of the prerogative to directly file complaints before courts and bound to refer the cases to the Public Prosecution. Indeed, under this provision, if the Council finds that the freedoms or the rights of citizens enshrined in the Constitution, the law, international conventions and treaties which Egypt ratified are violated, “The Council should report it to the public prosecution based on reliable information that they have on the violation or its perpetrator.” In addition, “The Council can join in a civil claim upon the request of the victim and in accordance with applicable laws”.

The SCA has highlighted in its general observations that when an NHRI is provided with a mandate to receive, consider and/or resolve complaints alleging violations of human rights, it should be provided with the necessary functions and powers to adequately fulfil this mandate. Such powers and functions might include inter alia the ability to commence a complaint on its own initiative as well as the ability to investigate complaints, including the power to compel the production of evidence and witnesses, and to complainants and witnesses from retaliation for having provided evidence in relation to a complaint⁸¹. None of these requirements are provided by the law which seriously hinders the possibility for the NHRC to should ensure that complaints “are dealt with fairly, transparently, efficiently, expeditiously, and with consistency”.⁸²

⁷⁹ NCHR, “Report on Enforced Disappearance in Egypt”, June 2016.

⁸⁰ General allegation, 109th session (9 – 18 May 2016), Egypt

⁸¹ General Observations of the Sub-Committee on Accreditation, *op.cit.*, p. 57, “The quasi-judicial competency of National Human Rights Institutions (complaints-handling)”.

⁸² *Ibidem*.

Alkarama notes that the Egyptian authorities failed to positively reform the law on this specific issue and encourages them to refer to the SCA's General Observation on the powers and functions of NHRIs granted with quasi-judicial competences in order to ensure the full compliance of the NCHR with the Paris Principles.

4 SELECTION AND APPOINTMENT OF MEMBERS, TERMINATION OF MEMBER'S MANDATE

Regarding the selection and appointment of NHRI members, the Paris Principles stipulate that "the composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces [...]".⁸³

In its May 2018 report⁸⁴, the SCA noted that the selection process enshrined in the previous law was "not sufficiently broad and transparent". It highlighted in particular that it does not require the advertisement of vacancies, establish clear and uniform criteria upon which all parties assess the merit of eligible applicants, and specify the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process.⁸⁵ The SCA also noted that the draft law provided that members should be selected from among public figures well known for their experience, independence of their opinion, and distinguished performance in the field of human rights.

The new law raises several issues that contradict these criteria of independence transparency and fails to establish a participatory selection process by giving to the General Committee of the House of Representatives full power and discretion in the selection of members. The mere fact the body in charge of the selection process is affiliated to the legislative power is not sufficient to ensure the independence of the members as Parliaments – composed of by definition of individuals affiliated with political parties including the ones in power in the government – can also interfere in the independence of an NHRI.

The means of selecting the candidates should be further clarified and a transparent process set up in order to ensure that the process be as participatory as possible. Additionally, if the new law puts emphasis on the "expertise of candidates in the field of human rights", in particular by adding in article 2 that among candidates should be included "one of the professors of Constitutional Law of Egyptian universities", Alkarama reiterates its recommendation that the principal criterion for the selection of candidates should be their

⁸³ *Ibid.*, pp. 23-24, "G.O. 1.7 Ensuring pluralism of the NHRI"

⁸⁴ GANHRI Sub-Committee on Accreditation Report – May 2018, pp. 20-21

⁸⁵ GANHRI Sub-Committee on Accreditation Report – March 2017, p. 35.

expertise in the field of human rights and that not only this should be clearly stated but should further be fully implemented.

Regarding the NCHR's composition, article 2 of the new law brought changes with regards to the number of members, providing that "the Council is composed of a president, a vice-President and 25 members".

It should be highlighted that the members of the council are all former state officials.

4.1 Rules applicable to dismissal

The SCA stated in its General Observations that in order for members to have a stable mandate, procedural rules and grounds for their possible dismissal must be clearly stated in the enabling law to avoid any arbitrariness in this process. In this regard, in its 2017 report, the SCA noted that the NCHR draft law provided for the termination of membership, stating that should these amendments be adopted, they would address the different concerns on the issue.⁸⁶

Article 2 *bis* (d) of the new law partially addressed this issue, providing that cases of the termination of the membership of NCHR's members may include death, a judicial ruling is issued in a felony, or in a crime that violates honour or trust, resignation upon approval of the House of Representatives by a majority of its members.⁸⁷

The SCA further added during the latest review of the NHRC that "grounds for the dismissal of members of the governing body should be clearly defined and decisions undertaken by a regularly constituted court, tribunal or other bodies as appropriate". The new does not address this serious shortcoming as it appears that the new law does not clarify effectively the rules applicable to dismissal and gives power to the House of Representatives, already

⁸⁶ GANHRI Sub-Committee on Accreditation Report – March 2017, *op.cit.*, p. 36

⁸⁷ Article 2 bis (d) of Law No. 197/2017 amending Law No.94/2003 provides that:

"The membership of the President of the Council, his deputy or any of his members shall terminate in the following cases,

1. Death.

2. If one of the conditions of membership provided for in the law has been issued, and in the case a judicial ruling is issued in a felony, or in a crime that violates honor or trust, the membership shall cease from the date of final judgment and in case of final disciplinary judgment.

3. Resignation submitted to the Council, provided that the resignation is written and causable. Membership may not be terminated for such reasons except upon the approval of the House of Representatives by a majority of its members.

In all cases, the President of the Republic shall issue the decision to terminate or terminate the membership, and shall be published in the Official Gazette. The successor of the outgoing member shall be appointed in accordance with the procedures provided for in Article II bis (a) of this Law for the period of the term of office of his predecessor."

vested with the power of the nomination, to rule on the dismissal of members hindering once again the stability of the mandates of NCHR's members.

5 LACK OF GUARANTEES OF INDEPENDENCE OF THE NHRC

The SCA emphasised that the Paris Principles require an NHRI to be independent from government in its structure, composition, decision-making and method of operation. It must be constituted and empowered to consider and determine the strategic priorities and activities of the NHRI based solely on its determination of the human rights priorities in the country, free from political interference.⁸⁸

The many examples provided in this report show a clear lack of distance of the NCHR from the government, if not blind support for President General Al Sissi's policy with regard to the NHRS. In addition to the example cited in the previous section, the following points need to be highlighted.

5.1 Financial Independence

Alkarama notes with concern the continued lack of financial independence of the NCHR vis-à-vis the executive branch. While article 1 of the new law provides that the Council "shall enjoy technical, financial and administrative independence in the exercise of its functions, activities and competences", the NCHR remains, however, State-funded.⁸⁹ Indeed, while article 11 of the new law provides that the NCHR "shall have an independent budget, which shall be established in the general State budget", it also stipulates that the NCHR's fiscal year "shall be subjected to the control of the Central Auditing Organisation". Such provision raises questions with regards to the full independence of the institution.

⁸⁸ GANHRI Sub-Committee on Accreditation Report – May 2018, p. 16

⁸⁹ Article 11 of Law No. 197/2017 amending Law No. 94/2013 provides that: "The Council shall have an independent budget, which shall be in the form of the general budget of the State, including its detailed revenues and expenses. The fiscal year shall begin with the beginning and end of the fiscal year of the State and shall be subject to the control of the Central Auditing Organization."

Article 12 of Law No. 197/2017 amending Law No. 94/2013 provides that:

"The Council's resources consist of the following:

1. The resources allocated to the Council in the general budget of the State.
2. Grants, donations and endowments that the Council decides to accept by a majority of its members in accordance with the laws and procedures governing it. If submitted by a foreign body, it must be approved by the majority of its members unless it has mutual obligations or is submitted in the form of an international agreement.
3. The State shall allocate grants or endowments to the Council, which shall decide upon international agreements with which it shall be directed to the fields of human rights.

A special account shall be established for the proceeds of these resources in one of the banks subject to the supervision of the Central Bank of Egypt. The surplus of this account shall be taken into account at the end of each financial year to the budget of the Council for the following fiscal year."

In addition, in this article 12, the new law further imposes control over foreign funding. Indeed, article 12(2) provides that “donations, grants, and subsidies which the Council decides to accept by a majority of its members [...]. If submitted by a foreign party, it must be approved by the majority of the House of Representatives”.

Alkarama notes that in spite of the revision, new Law No. 197/2017 does not fully guarantee the financial independence of the NCHR. We recall the absolute necessity for an NHRI to enjoy financial independence for the good conduct of its mandate. We therefore recommend the Egyptian authorities to take the appropriate measure in order to ensure the NCHR is capable of implementing of its mandate without undue interference.

5.2 Lack of Impartiality and Independence in Addressing Human Rights Violations

As highlighted by the SCA, an NHRI’s mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments. NHRIs are expected to promote and ensure respect for all human rights, democratic principles and the strengthening of the rule of law in all circumstances, and without exception. Where serious violations of human rights are imminent, NHRIs are expected to conduct themselves with a heightened level of vigilance and independence.

In fulfilling its protection mandate, an NHRI must not only monitor, investigate and report on the human rights situation in the country, it should also undertake rigorous and systematic follow-up activities to promote and advocate for the implementation of its recommendations and findings, and the protection of those whose rights were found to be violated.

The SCA refers to Paris Principles A.1, A.2, A.3 and D(d) and to its General Observation 1.6 on ‘Recommendations by NHRIs.’⁹⁰

Furthermore, in its May 2018 report the SCA noted that

“the SCA received information which raises concerns regarding the effectiveness of the NCHR in dealing with serious human rights issues, including torture, enforced disappearances and the protection of human rights defenders. The SCA notes that the NCHR reports to undertake various actions to address serious human rights issues in Egypt, including with respect to enforced disappearances and the closure of media outlets.

The SCA encourages the NCHR to strengthen its efforts to address all human rights violations. The SCA further encourages the NCHR to ensure that its positions on these issues are publicly made available, as this will contribute to the credibility and accessibility of the institution for all people in Egypt.

⁹⁰ GANHRI Sub-Committee on Accreditation Report – May 2018, p. 18

With respect to the NCHR position on the death penalty, the SCA encourages it to promote the abolition of the death penalty in line with the requirements of the Second Optional Protocol to the International Covenant on Civil and Political Rights. The SCA further encourages the NCHR to advocate for the ratification of the Second Optional Protocol.

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The SCA refers to Paris Principles A.1, A.2, A.3 and D(d) and to its General Observation 1.6 on 'Recommendations by NHRIs.'

As shown in the previous sections, the NCHR does not distance itself from the government, its narrative in the human rights situation in the country and the NHRS.

It is worth noting that the NCHR's mission statement clearly states that the institution's mission is to "develop and implement the National Plan" - i.e. the NHRS. It is therefore not surprising that by limiting its mandate and mission to the implementation of a government plan, the NCHR becomes nothing more than another tool in the hands of the Egyptian authorities to advance its own agenda, narrative and priorities.

In such a context, there can be no genuine impartiality, independence and effectiveness of the NCHR in implementing its mandate to protect human rights.

In addition to the points raised in the previous section about the lack of critical distance from the government of the NCHR in its reporting on the UN human rights machinery and its de facto function as a spokesperson for the executive in its prison visits, the following points need to be emphasised.

- **Failure to condemn the adoption of the Law on the Treatment of Some Senior Officers of the Armed Forces**

On 16 July 2018, the Egyptian parliament approved the Law on the Treatment of Some Senior Officers of the Armed Forces. This law provides that officers chosen by the president to serve in the military indefinitely cannot be the subject of any investigation, for any act committed in their official capacity between 3 July 2013 and 10 January 2016. The authority to lift the immunity rests with the Supreme Council of the Armed Forces (SCAF), which cannot be

considered as an impartial body to rule on such matters. It is important to stress that such a law, in effect, provides immunity to senior military officials, including for violations of *jus cogens* norms.

As highlighted by the UN High Commissioner for Human Rights, “[d]espite the huge death toll, no State security personnel have ever been charged in relation to the so-called Rabaa massacre”. She added that the law “[a]ttempts to bestow immunity from prosecution for crimes allegedly committed by members of the security forces merely promotes impunity, and undermines the faith of the Egyptian people in the Government’s capacity to deliver justice for all”⁹¹.

Moreover, as the law provides the selected officers with diplomatic immunity, the text also aims at protecting them from prosecution abroad, on the basis of universal jurisdiction⁹². The High Commissioner therefore urged the Egyptian authorities to “ensure that justice will be done, according to law, in relation to any individuals – including members of the State security forces – who are suspected of committing a crime.”

Despite the severe consequences of the law on state officials’ accountability for violations to imperative rights, the NCHR did not publicly comment on the law, and did not take any critical stance on the immunity provided to the military officials.

- **Denial of violations raised by the OHCHR**

In September 2018, after 739 protesters were sentenced on charges of illegal gathering during a mass trial before the Cairo Criminal Court, UN experts condemned the verdicts, which included 75 death sentences and 47 life sentences. The High Commissioner highlighted that the verdicts were “appalling”⁹³ and “did not result from a fair trial, and the sentences, if carried out, would therefore amount to ‘a gross and irreversible miscarriage of justice’”⁹⁴. In spite of this public denunciation, the NCHR refrained from publicly condemning these acts,

⁹¹ OHCHR, *Egyptian death sentences result from unfair trial, should be reversed – Bachelet*, Geneva, 9 September 2018, available online: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23517&LangID=E>, (accessed on 28 November 2018).

⁹² Maged Mandour, “The Military’s Immunity in Egypt”, *SADA, Carnegie Endowment for International Peace*, 24 July 2018, available online <https://carnegieendowment.org/sada/76904>, (accessed on 28 November 2018).

⁹³ *Egypt: UN experts call for Human Rights Council response to “appalling” verdicts against protesters*, Geneva, 17 September 2018, available online: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23572&LangID=E>, (accessed on 28 November 2018).

⁹⁴ OHCHR, *Egyptian death sentences result from unfair trial, should be reversed – Bachelet*, Geneva, 9 September 2018, op.cit.

even considering clear evidence presented by the UN experts of severe violations of international human rights law.

The NCHR's failure to condemn these serious violations shows its lack of independence from the Egyptian authorities, in direct contravention of the Paris Principles. On 12 September 2018, the NCHR issued a press release in reply to the High Commissioner's statement dated 9 September 2018⁹⁵ on the imposition of the death penalty and heavy sentences following mass trials against protesters. Instead of calling on the government to implement the recommendations of the OHCHR to respect fair trial principles and refrain from prosecuting civilians by military courts, the NCHR denied these violations. The press release further stated that "the right of the defence was respected, which constituted the reason for prolonged trial period".⁹⁶

This worrying declaration shows that despite the recommendations of the SCA to ensure its impartiality, the NCHR has not taken any steps in this direction. Some of the defendants in the mass trial to which the NCHR refers were the subject of Opinions of the UN Working Group on Arbitrary Detention, including Opinion No. 41/2016 concerning Mahmoud Abdel Shakour Abou Zeid Attitallah, which clearly highlighted serious violations to fair trial guarantees, including the right of the defence⁹⁷.

We recall that this is not the first time the NCHR has been known to actively support the government's blanket denial of human rights violations. A striking example of this is Chairman of the NCHR, Mohamed Fayeeg, stating on 7 September 2017 that "there are no cases of torture recorded inside Egyptian prisons or places of detention".⁹⁸ This statement followed the publication of a report by Human Rights Watch (HRW) addressing Egypt's "torture epidemic". Fayeeg urged HRW "to pay attention and accuracy to its reports on this matter", going on to say that "the NCHR did not receive any complaints of torture".⁹⁹ The NCHR's denial that torture occurs in Egypt is especially concerning considering an inquiry by the United

⁹⁵ OHCHR, Egyptian death sentences result from unfair trial, should be reversed – Bachelet, Geneva, 9 September 2018, op.cit.

⁹⁶ NCHR, القومي لحقوق الإنسان يوضح الحقائق بخصوص أحكام رابعة, (NHRC clarifies the facts regarding Rabaa decisions) 12 September 2018, available online: <http://nchregypt.org/index.php/ar/about-us/council-members/11-2010-02-08-20-15-08/news/2046-national-human-rights-clarifies-the-facts-regarding-rabaa-provisions.html>, (last access 28 November 2018). Also available as printed page in the appendix to this request.

⁹⁷ Working Group on Arbitrary Detention, Opinion No. 41/2016 concerning Mahmoud Abdel Shakour Abou Zeid Attitallah (Egypt), A/HRC/WGAD/2016, 21 October 2016.

⁹⁸ Egypt State Information Service, *There are no cases of torture inside Egyptian prisons, says NCHR chairman*, 8 September 2017, <http://www.sis.gov.eg/Story/117496?lang=en-us>, (accessed on 28 November 2018).

⁹⁹ Human Rights Watch, *"We Do Unreasonable Things Here" Torture and National Security in al-Sisi's Egypt* 5 September 2017, <https://www.hrw.org/report/2017/09/05/we-do-unreasonable-things-here/torture-and-national-security-al-sisis-egypt>, (accessed on 28 November 2018).

Nations Committee against Torture which found that torture is “habitual, widespread and deliberate” in Egypt¹⁰⁰.

- **Failure to condemn the arrest of a lawyer and former member of the NHRI**

Since the military takeover of July 2013, a number of international organisations and UN experts have repeatedly raised concern over the authorities’ use of practices including arbitrary detention,¹⁰¹ enforced disappearance,¹⁰² and extrajudicial execution¹⁰³ within the context of its brutal crackdown on dissent. In August 2018, Amnesty International stated that the country was in the midst of an “unprecedented human rights crisis”.¹⁰⁴

However, in an interview published in March 2018 in *Egypt Today*, Mohamed Fayege merely stated that “Egypt faces some problems regarding human rights, but we are seeing progress being made all the time”, going on to criticise human rights organisations, which he said, “are flawed in that they are selective and employ double standards”.¹⁰⁵ With regards to the presidential elections taking place at the time, Fayege stated that “[t]he high turnout of Egyptians during the presidential election abroad was a clear message that Egyptians support their president and the state’s stability”, ignoring the repression that took place in the run-up to the election.¹⁰⁶ President Abdel Fatah al-Sisi won 97.08% of votes in the election after the authorities prevented five potential opponents from running.¹⁰⁷

¹⁰⁰ Committee against Torture, Report of the Seventy-second Session, Supplement No. 44A/72/44, 12 May 2017, paras. 58-71.

¹⁰¹ OHCHR, Spokesperson for the UN High Commissioner for Human Rights Ravina Shamdasani, *Press briefing note on Egypt, United States and Ethiopia*, Geneva, Date: 5 June 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23174> (last access 28 November 2018).

¹⁰² Amnesty International, *Egypt: Hundreds disappeared and tortured amid wave of brutal repression*, 13 July 2016, available online: <https://www.amnesty.org/en/latest/news/2016/07/egypt-hundreds-disappeared-and-tortured-amid-wave-of-brutal-repression/>, (last access 28 November 2018).

¹⁰³ Human Rights Watch, *All According to Plan : The Rab’a Massacre and Mass Killings of Protesters in Egypt*, 12 August 2014, available online: <https://www.hrw.org/report/2014/08/12/all-according-plan/raba-massacre-and-mass-killings-protesters-egypt>, (last access 28 November 2018).

¹⁰⁴ Amnesty International, *Egypt: Five years after Rabaa Massacre, impunity continues to fuel unprecedented rights crises*, 14 August 2018, available online: <https://www.amnesty.org/en/latest/news/2018/08/egypt-rabaa/>, (last access 28 November 2018).

¹⁰⁵ Khaled Mohamed, “Interview: Great progress achieved in combating torture”, *Egypt today*, 21 March 2018, available online: <http://www.egypttoday.com/Article/2/45804/Interview-Great-progress-achieved-in-combating-torture>, (last access 28 November 2018).

¹⁰⁶ Human Rights Watch, *Egypt: Planned Presidential Vote Neither Free Nor Fair. EU, US Should Speak Out*, 13 February 2018, available online: <https://www.hrw.org/news/2018/02/13/egypt-planned-presidential-vote-neither-free-nor-fair>, (last access 28 November 2018).

¹⁰⁷ Ruth Michaelson, “Sisi wins landslide victory in Egypt election”, *The Guardian*, 2 April 2018, available online: <https://www.theguardian.com/world/2018/apr/02/sisi-poised-to-declare-landslide-victory-in-egypt-election>, (last access 28 November 2018).

It is in this context that the NCHR has failed to call upon the authorities to reveal the fate and whereabouts and to release a 60-year-old human rights lawyer and former NCHR member Hoda Abdel Moneim Aziz. Ms Hoda Abdel Moneim Aziz was arrested by members of the state security forces from her house located in Nasr City, Cairo, without any mandate, at around 1 a.m. on 31 October 2018. Her arrest took place amidst a new wave of arrests that began in late October 2018, which targeted human rights lawyers and activists.¹⁰⁸ Despite the fact that the victim is a prominent human rights lawyer and former member of the NCHR, the institution has not taken any stance, nor has it reported on her arrest and subsequent enforced disappearance as reprisals for her work.

It is not the first instance in which the NCHR has remained silent on the arrest of human rights defenders and other peaceful activists. Earlier in September, several UN experts raised their concerns over Egypt's "systematic targeting" of human rights defenders, citing violations against Amal Fathy, Shadi al-Ghazali Harb, Mohamed Ibrahim Radwan, Wael Abbas, and Haytham Mohamadein.¹⁰⁹ In spite of this public call from UN experts, the NCHR did not take any step with the government to remedy the situation of human rights defenders, most of whom remain in detention to date.

- **Absence of critical appraisal of the Presidential Pardon Committee**

In its statements on the follow-up to the actions of the Presidential Amnesty Committee, the NCHR has shown a particular bias toward the government, not only by justifying the Committee's refusal to release individuals arbitrarily detained for acts falling under the freedom of expression, assembly or association, but also by placing the responsibility for the violations on the victims themselves.

We recall that the EU Parliament has described the Presidential Pardon Committee in the following terms:

*"whereas in April 2022, the Egyptian Presidential Pardon Committee was launched, which is tasked with conducting civil society organisation investigations into cases of prisoners whose situation does not comply with international human rights standards; whereas **the committee has overlooked grave past and ongoing human***

¹⁰⁸ Euro Med Rights, *Arrest of human rights lawyers and activists in Egypt*, 2 November 2018, available at <https://euomedrights.org/publication/arrest-of-human-rights-lawyers-and-activists-in-egypt/>, and Human Rights Watch, *Egypt: Mass Arrests of Lawyers, Activists. Most Held in Incommunicado Detention*, 18 November 2018, available at <https://www.hrw.org/news/2018/11/18/egypt-mass-arrests-lawyers-activists> (last access 28 November 2018).

¹⁰⁹ OHCHR, *Egypt: UN experts condemn "systematic targeting" of human rights defenders*, 28 September 2018 available <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23658&LangID=E>, (accessed on 28 November 2018).

rights violations and there have been no substantial changes one year after the launch of the national human rights strategy and Egypt's national dialogue."¹¹⁰

As highlighted by UN experts, Egypt's counterterrorism law equates criticism of the government as a form of threat to national security with terrorism, and arbitrarily lists political parties and civil society organisations as "terrorist" organisations, the state's explanation for the arbitrary detention of political opponents and human rights defenders under the counterterrorism law is that these are not peaceful opponents but rather threats to national security and unity.

As such, the Presidential Pardon Committee has stressed in public statements "that it refuses the release of any prisoner who poses a threat" applying to this effect two criteria to release any detainee – "not being affiliated to any terrorist organisation" nor "involved in acts of violence".¹¹¹ In practice, given the natures of the charges brought against peaceful activists, human rights defenders and political opponents currently arbitrarily detained, none of these political detainees could pretend to a presidential pardon.

In its statements the NCHR also endorses the governmental position that affiliated or a supposed affiliation to the Muslim Brotherhood is in itself a reason to keep an individual in arbitrary detention under the Egyptian anti-terrorism Law.

In contrast, it is worth noting that in the statement dated 25 April 2022, the NCHR's officials have lauded the action of the government in the release of individual in pre-trial detention while taking a defiant tone toward Egyptian civil society in the following terms:

The NCHR urges political groups and released detainees to take advantage of this move and the positive signs and adhere to the legal rules of practising freedom of expression to ensure refraining from aiding extremist groups – deliberately or unintentionally- in achieving their goals. Furthermore, the council hopes that the concerned judicial and security authorities would adopt more flexible moves to revisit other pre-trial detainees cases.

We believe that in the context of the massive crackdown on freedom of expression and other fundamental freedoms, and given the excessive use of pre-trial detention in cruel, inhuman and degrading conditions to punish dissent, such a statement is nothing short of re-victimisation and a form of victim-blaming of political prisoners.

¹¹⁰ European Parliament resolution of 24 November 2022 on the human rights situation in Egypt (2022/2962(RSP))

(2023/C 167/15), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022IP0426>

¹¹¹ <https://english.aawsat.com/home/article/4228861/egypts-presidential-pardon-committee-releases-30-new-detainees>

This is all the more worrying as, in the following paragraphs, the NCHR "stresses" its commitment, "to translate the call of the Egyptian president to establish a political and community dialogue in line with the new desired republic".

Furthermore, the press release ends with a statement by Ambassador Dr Moushira Khattab, President of the NCHR, who "stressed that the National Council for Human Rights, values the call of the Egyptian president to establish a comprehensive community dialogue".

Such statements cannot be taken as evidence of the NCHR's impartiality from the government and can only cause distrust among the families of victims of arbitrary detention, enforced disappearance and torture in Egypt toward the institution.

5.3 Lack of engagement with civil society

Ever since its creation, many concerns have been raised with regards to the independence of the NCHR members vis-à-vis the Egyptian authorities, particularly in its reaction to critical reports from civil society.

In September 2017, the publication of a Human Rights Watch report¹¹² describing the torture of political prisoners in Egypt as a "crime against humanity" was slammed by the Egyptian authorities, which denounced a "politicised and factually incorrect" report. It was further added that such report was published to "incite hatred against Egypt, tarnish its reputation abroad and hold back development efforts".¹¹³ While it is not the first time, the Egyptian authorities deny the practice of torture, these comments were all the more disturbing that they were supported and confirmed by Mr Mohamed Fayek, head of the NCHR, who assured me that all allegations of the report were unfounded as "there is no torture in Egyptian prisons".¹¹⁴ NCHR President Fayek continued, stating that the "NCHR is now in constant contact with the Ministry of Interior to make sure that police officers observe human rights and that there is no torture at all in Egyptian prisons."¹¹⁵

Alkarama emphasises that on 23 June 2017, after a four-year-long investigation,¹¹⁶ the members of the Committee against Torture issued their conclusions based on a wide range

¹¹² Human Rights Watch, "We Do Unreasonable Things Here", Torture and National Security in al-Sisi's Egypt, 5 September 2017, <https://www.hrw.org/report/2017/09/05/we-do-unreasonable-things-here/torture-and-national-security-al-sisis-egypt>.

¹¹³ Egypt Independent, UN High Commissioner for Human Rights slams Egypt, 12 September 2017, <http://www.egyptindependent.com/un-high-commissioner-human-rights-slams-egypt/>.

¹¹⁴ Middle East Monitor, Egypt slams torture report, questions HRW's funding, 13 September 2017, <https://www.middleeastmonitor.com/20170913-egypt-slams-torture-report-questions-hrws-funding/>.

¹¹⁵ Ibidem.

¹¹⁶ Alkarama, *Egypt: UN Committee Against Torture concludes that torture in Egypt is systematic following an inquiry requested by Alkarama*, 10 September 2017, <https://www.alkarama.org/en/articles/un-committee-against-torture-concludes-torture-egypt-systematic-following-inquiry>.

of cases submitted between 2012 and 2016.¹¹⁷ The UN experts concluded that the practice of torture is “habitual, widespread and deliberate”.¹¹⁸ The Egyptian authorities responded to the Committee on 1 June 2016, stating that the committee was wrong to conclude that the practice of torture was “systematic” in Egypt.

In view of such statements, Alkarama raises with serious concern the question of independence of the members of the NCHR. It is indeed, extremely concerning that the President of an NHRI, who should be denouncing the widespread torture, denies on the contrary such practice in the current and particularly alarming human rights situation in the country.

Alkarama notes that the NCHR has continuously failed to act and react to the major human rights violations occurring in the country and that the remarks of the NCHR President show an apparent lack of impartiality and independence of the institution. Such a situation further raises concern on the willingness of the NCHR to efficiently implement its mandate.

Alkarama encourages the Egyptian authorities to take the necessary measures to guarantee the absolute independence of the NCHR members, in order for them to better protect and promote human rights in the country.

Another example of this distrusting stance of the NHRC toward human rights organisation is the treatment by the NCHR of the death in detention of political opponents and economist Ayman Hadhoud.

We recall that the 48-year-old political opponent died after being subjected to an enforced disappearance on 5 February 2022. It was only under international pressure from human rights NGOs that the NCHR issued its first statement on the suspicious death and the lack of an independent, impartial and effective investigation into his death, issuing a press release denying that it had received any information or complaint about the political opponent's enforced disappearance and calling on civil society to “double-check the accuracy of the facts stated in their statement and correct the claims therein”.¹¹⁹ The statement does not contain any condemnation or, at the very least expression of concern, at the sudden and suspicious death of the political opponents after his enforced disappearance.

¹¹⁷ Conclusions of the Committee against torture on the practice of torture in Egypt – Article 20 procedure (2017), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f72%2f44&Lang=en.

¹¹⁸ Alkarama, *Egypt: UN Committee against torture concludes that torture in Egypt is systematic following an inquiry requested by Alkarama*, 10 September 2017, <https://www.alkarama.org/en/articles/un-committee-against-torture-concludes-torture-egypt-systematic-following-inquiry>.

¹¹⁹ NCHR did not receive any complaints relating to the late Dr. Ayman Hadhoud, says head of NCHR complaints committee, 11 April 2022, <https://nchr.eg/en/news-details/477>

Despite a later statement that “NCHR closely following Public Prosecution’s investigation concerning DrAyman Hadhoud’s death”,¹²⁰ the organisation did not publish any follow-up to its investigation or comment on the authorities' decision to close the investigation, stating through vague and contradictory statements that he had died of "natural causes".

In light of this information, it is clear that the NHRC does not enjoy the image of an impartial or independent institution from the government, which is understandable given the tone and nature of the NHRC's statement described above.

In this regard, we would like to point out that status A also gives the NHRC access to forums normally reserved for civil society, which in turn may either expose members of civil society to the risk of reprisals or create an atmosphere of self-censorship.

6 Conclusions and recommendations

6.1 Conclusions

In its 2018 report, the SCA highlighted “its expectation that NHRIs that has been accredited with A status will take the necessary steps to pursue continuous efforts at improvement and to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during this review”.

Since then, it does not appear that the Egyptian authorities have addressed the issues raised in the 2018 review. Given the lack of progress highlighted by both independent UN experts and the EU Parliament, we propose that the NHRC be downgraded to B status.

We emphasise that a decision to retain an A status would mean endorsing NHRIs that are not effectively independent from the executive and granting them the privileges that such a status implies in terms of participation in state review processes on an equal footing with independent civil society and the credibility of reports.

As such, the content of the NHRC's reports to the UN human rights mechanisms, and in itself, testifies to the danger of granting an A status to an NHRC that is not effectively independent and impartial.

The work of the NHRC, as exemplified in its public statements and reports to UN human rights mechanisms, clearly demonstrates that the institution has become a "showcase" for a government PR campaign rather than an impartial and independent human rights institution.

¹²⁰ NCHR closely following Public Prosecution’s investigation concerning Dr.Ayman Hadhoud’s death, 11 April 2022

We stress that, as with any independent institution, the appearance of impartiality is crucial to the effective independence of any state body.

Re-granting an A status to what is today in effect, a body that engages in state-sanctioned propaganda, as documented by all major independent international and Egyptian civil society organisations, would be effectively condoning such practices on the part of the SCA. This would have a major impact on the SCA's credibility with Egyptian and international human rights and civil society organisations.

As noted by the GANHRI, “[e]ffective NHRIs are an important link between government and civil society, in so far as they help bridge the 'protection gap' between the rights of individuals and the responsibilities of the State”.¹²¹

NHRIs must carry out their work independently from the government to ensure they have the freedom to report on serious human rights abuses and to take steps to hold the government accountable.

It is against this background that we submit to you that the NCHR currently falls far short of the criteria of autonomy and independence required for an NHRI to be fully compliant with the Paris Principles. In the context of what has been described as an "unprecedented human rights crisis" in the country, we believe that allowing the NCHR to retain its A status would be a great disservice to the people of Egypt and would undermine the credibility of the SCA's review process.

The NCHR has not been able to uphold to its role of promotion and protection of human rights. Its lack of independence from the executive and henceforth the legislative, its limited mandate made it an inefficient body and in any case, a body that does not meet the requirements set out in the Paris Principles.

Furthermore, the lack of independence and autonomy from the executive as well as different governmental bodies – including the political majority on the Parliament – has direct consequences on the perception of the NHRC has a biased institution in favour of the executive and the ruling party. It is concerning that in this context of defiance from a large part of civil society and families of victims, members of the NHRI make public statements criticising reports from international NGOs and treaty bodies highlighting the systematic practice of torture by security services.

¹²¹ GANHRI, “Roles and types of NHRIs”, <https://nhri.ohchr.org/EN/AboutUs/Pages/RolesTypesNHRIs.aspx> , (last access 28 November 2018).

In light of the above, we consider that the NHRC does not comply with the necessary requirement in order to be granted with a status A and should instead be granted status B until the above-mentioned serious shortcoming are effectively addressed.

6.2 Recommendations to the National Council for Human Rights

In order to ensure its complete conformity with the Paris Principles, the NCHR should seek its effective and practical independence from any governmental, legislative and judicial interference and uphold its mandate in order to effectively promote and protect human rights in Egypt. In addition to our observations listed throughout this report, we thus recommend the NCHR to:

- Advocate for the adoption of a new enabling law in line with the Paris Principles and in particular that would guarantee a transparent, pluralist and participatory selection and appointment process of its members; to increase the term of office of its members and guarantee the security of their tenure;
- Increase its activities of commenting on draft legislation and propose new human rights oriented laws and programs;
- Strengthen its collaboration with civil society as well as with international bodies, in particular UN Special Procedures and Treaty Bodies;
- Advocate for the submission of Egypt's overdue periodic reports to the UN Treaty Bodies and submit its own individual reports when applicable;
- Effectively monitor the human rights situation and follow-up on recommendations made to authorities;
- Be empowered to carry unannounced visits to all places of deprivation of liberty without any interference whatsoever; to submit complaints before courts and to seek enforcement of their decisions;
- Be provided with the possibility of compelling witnesses under protection measures to avoid retaliation measures; to obtain all documents required to conduct its investigations effectively;
- Effectively answer and act upon complaints submitted by victims and their relatives and follow-up on their situation until they obtain remedies and, when applicable, compensation;

- Be empowered to commence independent inquiries and to publish the outcomes of these investigations;
- **And, above all, to maintain a critical distance from the government and its NHRS in order to ensure that it follows its own priorities, which are determined solely by the reality of the human rights situation in the country, without any discrimination or bias.**