

**STATEMENT IN RESPONSE TO THE EGYPTIAN STATE  
LITIGATION AUTHORITY REPORT ON THE  
EGYPTIAN COURTS & SOME RECENT CHALLENGES**

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Over the past two years, the Government of the Arab Republic of Egypt, aware that it has been the subject of widespread condemnation following its illegal seizure of power from the democratically elected Government of the Freedom and Justice Party, under the leadership of Mohamed Morsi, following the breakdown of the Rule of Law, and following what can only be described as the abject oppression of citizens that either oppose, or support those that oppose, its new authoritarian rule, has embarked upon an advocacy campaign aimed at countering what are a series of highly credible and properly documented reports of the breakdown of the Rule of Law.

The most recent instalment of this ‘advocacy’ being a report entitled ‘Egypt Courts and Some Recent Challenges’ by the Egyptian State Litigation Authority (“ESLA”). A full response seeking to address the inaccurate and manipulated position espoused by this report is in the process of being drafted and will be published accordingly. It is however appropriate to consider the ESLA’s position on a very basic level in the short term and to address the fundamentally inaccurate and deeply misleading statement as set out in its report.

The ESLA has tried to ‘whitewash’ the clear crimes committed by the Military Regime under Field Marshall Abdel Fattah Hussein Khalil el-Sisi, and sought to turn public opinion against the Freedom and Justice Party, and the Muslim Brotherhood, in an effort to portray the Military Regime as the democratic saviour of Egypt, and that the ills facing the country are solely as a consequence of terrorism.

The reality is quite different. The Military Regime under Field Marshall Sisi is not a democratic force of good. It is a brutal, autocratic regime that has imprisoned tens of thousands of civilians, it has co-opted law enforcement, intelligence and security forces, the army, and most worryingly, the judiciary, in targeting political opponents.

Part of this propaganda mission, has been the publication of what is now four expert reports, each tackling a different issue, but all ostensibly the same, in that they ignore the crimes being committed by the State or where such behaviour is acknowledged, they seek to justify it by a constant reference to domestic terrorism being committed by those that are members, or supporters, of either the Freedom and Justice Party, or the Muslim Brotherhood.

Despite the protestations to the contrary, the crack-down, and abdication from the principles of the Rule of Law, *are* happening, and are happening with frightening frequency and intensity. Further, the actions being taken by the Military Regime, are not, as the State and some commentators would argue, a consequence of the domestic situation, or a ‘necessary evil’.

As has been said many times previously, the position being adopted by the Government is one that ensures consolidation of power, and further, the eradication, or attempted eradication of those that seek to formally oppose the Military Regime, or merely exercise a contrary view.

No amount of ‘spin’ can alter the facts, and no degree of oppression or control that is being exercised over the media in Egypt can prevent the truth from emerging.

With this in mind, it is appropriate to consider the fourth report in the series commissioned by the Egyptian State Litigation Authority, entitled “*Egypt Courts and Some Recent Challenges*”.

The report is rejected in its entirety for what it is, propaganda, it is factually inaccurate, and its conclusions are baseless.

The report seeks to maintain the façade that the judiciary in Egypt is independent, despite many respected international NGOs, experts, and commentators drawing attention to evidence that indicates the stark opposite.

It highlights how Egypt has shown its commitment to fair trial proceedings given its status as signatory to a number of international treaties and ‘soft law’ provisions, such as the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights (UDR), and the African Charter on Human and Peoples Rights (the African Charter).

The fact that Egypt is a State Party to a number of relevant international treaties, is not in issue, the very clear issue is the manner in which their obligations under those treaties are simply being ignored.

It is interesting that the Report seizes on the trial of the ‘*Al Jazeera Three*’ and heralds the fact that they were acquitted on appeal as being evidence of undue influence on the judicial process being addressed by the Court of Cassation.

This is an abject mischaracterization of the position and does not address the fact that the Military Regime through its control over the Courts has enacted policies, both official and unofficial that have resulted in Egypt as being one of *the* most dangerous countries in the world for journalists to work. We need only consider the reports and statistics from numerous NGOs to see that “*Egypt was the world’s second-worst jailer of journalists in 2015, according to the Committee to Protect Journalists (CPJ), with 23 reporters behind bars as of December*”<sup>1</sup>, only behind China<sup>2</sup>.

The reality is that the charges should not have been brought in the first instance given that the three in question were merely exercising their democratic right and professional duty to independently report events in the public interest.

Mention is made of how a conviction secured against former President Mohamed Morsi was overturned on the basis that he was denied access to his lawyer, that his lawyer had to pay to have sight` of the full case file, and that the case file was only supplied 5 days prior to the trial commencing. It is suggested that this is evidence of how there is respect of the rights of the

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<sup>1</sup> Freedom House (2016): “Egypt”, available at: <https://freedomhouse.org/report/freedom-press/2016/egypt>

<sup>2</sup> Committee to Protect Journalists (2016): “2015 prison census: 199 journalists jailed worldwide”, available at: <https://cpj.org/imprisoned/2015.php>.

accused and where there are violations of such rights, the Court of Cassation or Appellate Courts, address these wrongs.

Again, this is an example of how Egypt seeks to manipulate the facts in order to paint a more favourable image than that which is the reality.

If there is such respect for the fair trial rights of the accused, how can the ‘mass trials’ of over 300 individuals in the space of one day be allowed to occur. In such instances, not one of the accused’s fair trial rights was respected, and yet the authorities deem it appropriate to not only dispense justice in this way, but also to laud itself on the application of law and due process guarantees that are illusory and hollow before its Courts.

Reference is made to changes in the Egyptian Criminal Code, to ensure that defendants are tried without undue delay. It is of a concern therefore that the photo-journalist, Mahmoud Abu Zeid, also known as ‘Shawkan’, remains in custody, where he has been held for over three years, in a poor state of health, for simply doing his job.

Shawkan, whose detention has been ruled as ‘Arbitrary’ and in breach of international law, by the UN Working Group on Arbitrary Detention, remains in custody and without charge.

The general tenor of the section of the report that deals with fair trial rights, is that there is abundant legislation within the Criminal Code, and the Constitution, to ensure that such rights are protected. That is not in dispute. The issue, however, is that they have no practical application.

The full response to the report will address the Egyptian legislative framework in full, however, it must be highlighted that simply because such rights may be recognised in the relevant legislation, does not mean that those rights *will* be respected, and it is clear, from the plethora of evidence to hand, that those rights are being abjectly ignored.

It is not only those fair trial rights that are being ignored, it is the rights of those detained that are also seemingly deemed as being irrelevant, and capable of being ignored on the basis of threat of terrorism.

No amount of spin however can change the position that there can be no derogation from certain fundamental, absolute rights, and again, the fact that Egypt may be a State party to the ICCPR and the UDR as just two examples, is seemingly not a bar to ignoring those rights.

Egypt may suggest that it is committed to protecting the rights of those arrested, however, the UN Special Procedures Branch, and the opinions of its Rapporteurs on cases referred to it have clearly taken a different view, and a view that highlights the reality of the position in Egypt rather than the propaganda issued by the State.

Egypt is not alone in facing the threat of domestic and international terrorism. There are very few, if any states globally that can suggest that they are free from such a threat, however, the threat of terrorism and the threat of opposition are two very different things.

An individual who has a poster in his bag suggesting that citizens should vote ‘No’ when the new constitution was put to a referendum, is not a terrorist by any definition of the word, no matter how wide that definition is drawn.

That individual is a citizen exercising his democratic right to free speech, freedom of expression, and freedom of political thought.

Despite this, Egypt deems arrest appropriate on the basis that such a person is a threat to national security.

It would appear that all individuals who seek to offer an opposing view are deemed to be a threat to national security, and thus democratic space is restricted to the point that it arguably no longer exists in today’s Egypt.

The report in essence, is a collection of submissions regarding international treaties to which Egypt is a signatory, and a form of analysis of domestic laws that in principle seek to protect those basic rights and fundamental freedoms that all citizens should enjoy.

As has been alluded to above however, and as will be expanded upon in the full report responding, the fact there exists provision, is of absolutely no consequence, if those provisions are not enacted or respected.

Egypt is not a democracy, it is a dictatorship, and arguably one that has far less respect for the rights and freedoms of its citizens than even during the Mubarek Regime. No amount of ‘spin’ can change those very facts.