

Maintaining security without infringing on rights: No exceptional measures needed, existing law is sufficient

Memo from the Forum of Independent Human Rights Organizations

About the Forum of Egyptian Independent Human Rights Organizations

Established in 2008 on the initiative of the Cairo Institute for Human Rights Studies (CIHRS), the Forum of Egyptian Independent Human Rights Organizations was formed to coordinate the work of human rights groups with a common aim of improving the state of human rights in Egypt. The Forum has worked jointly on numerous issues, such as the 100-day campaign to monitor the Egyptian government's implementation of the recommendations it received during the UN Universal Periodic Review. It has also worked to build a united stance against the assault on advocacy organizations over the last year. Most recently, it launched the Our Rights in 100 Days initiative to monitor the president's respect for human rights. This comes in addition to numerous joint reports and press releases.

The Forum is composed of the following organizations: CIHRS, Egyptian Association for Community Participation Enhancement, Hisham Mubarak Law Center, Egyptian Center for Economic and Social Rights, Arabic Network for Human Rights Information, Egyptian Initiative for Personal Rights, Association for Freedom of Thought and Expression, New Woman Foundation, Nazra for Feminist Studies, Egyptians Against Religious Discrimination, Center for Egyptian Women's Legal Assistance, Appropriate Communications Techniques for Development, Arab Penal Reform Organization, Human Rights Center for the Assistance of Prisoners, Human Rights Legal Aid Group, Nadim Center for the Rehabilitation of Victims of Violence, Land Center for Human Rights, HABI Center for Environmental Rights, Center for Trade Union and Workers Services, Andalus Center for Tolerance and Anti-Violence Studies, Egyptian Foundation for the Advancement of Childhood Conditions, and the Arab Foundation for Civil Society and Human Rights Support.

The Forum's response to security situation in Egypt

The security vacuum and the spread of thuggery have had a negative impact on human rights, threatening citizens' right to personal security and bodily integrity as well as their right to life. Over the past 18 months, the security vacuum has become more pronounced, affecting innocent citizens and leading some to urge the state to take more severe measures to confront this threat.

Certainly, maintaining security in the society is the responsibility of the state, which may take all legal measures to do so, including exceptional measures if ordinary measures fail. However, the last 31 years under a state of emergency, applied uninterrupted from 1981 to 2012, did not succeed in bringing about the desired security. It did, however, lead to grave human rights abuses that were one of the fundamental triggers of the January 25 Revolution.

The declaration of a state of emergency is an exceptional measure used by states to face an emergency that "threatens the life of the nation,"¹ but in Egypt it was applied continuously for 31 years, making it a permanent state rather than an emergency measure. Moreover, it was applied in numerous instances that presented no threat whatsoever to the life of the nation, including drug trafficking and thuggery. It should be remembered that the state of emergency in Egypt was largely applied through arbitrary arrests and trials, which needlessly infringed the most basic principles of justice, fairness, and human rights. For example, there was never any evidence that the Public Prosecutor had attempted to address crimes according to the ordinary laws, such as through issuing search and arrest warrants to police or through investigating or charging suspects under ordinary laws, and that these measures had proven insufficient. Thus, emergency measures were unwarranted.

How to confront thuggery without infringing on human rights?

To begin with, states do not need to declare a state of emergency to confront acts of thuggery or a lack of security, for despite their gravity, these situations cannot be considered to threaten the life of the nation, as they do not compare with civil wars or other armed conflicts which may indeed constitute a threat to the existence of the state itself.

We also believe that confronting thuggery requires no amendments to make the current law against thuggery² more stringent. However, we point out that the law requires legislative intervention to limit its negative impact on human rights, as the law expands the list of punishable actions using vague, overly broad language, such as "disturbing security or the public peace." Indeed, in Article 375(*bis*), the law criminalizes actions that fall within the purview of freedom of opinion and expression, such as calling for a sit-in or peaceful march against a court ruling. A majority in the dissolved People's Assembly adopted this understanding in order to label demonstrations in the vicinity of the Interior Ministry in February as "acts of thuggery," simply because citizens demonstrated near the ministry and despite the fact that the demonstration was peaceful, according to reports from rights organizations.

In our opinion, confronting the security vacuum and thuggery requires neither exceptional or arbitrary measures or laws nor a state of emergency, not only because these laws have a negative impact on human rights, but also because they compromise police performance by making it easier for security forces to rely on such measures and laws instead of doing the work to investigate, collect evidence, and conduct professional interrogations that respect human rights. This is in addition to increased likelihood of abuses as a result of such laws due to the current lack of police oversight, the inability to inspect detention centers, and weak instruments to hold Interior Ministry personnel accountable for the crime of torture.

Those demanding exceptional legislation must prove that the types of crimes committed are not already criminalized in existing legislation, when in fact the contrary is true: Egypt suffers from excessive criminalization and punishment, which is unnecessary from both social and security perspectives. If legal loopholes are found to exist, ordinary laws can be developed to fill in these gaps.

Where does the cause of Egypt's current security problem lie? Does it arise from the fact that some acts are not criminalized, or that prescribed punishments do not match the severity of some crimes? Or does it lie in the slowness arrest and investigative procedures and litigation? If flaws exist, such issues can all be resolved through changes to ordinary laws while guaranteeing human rights.

1 Article 4 of the International Covenant on Civil and Political Rights.

2 Law 10/2011 with the addition of Article 375(*bis*) and 375(*bis*)(a) to the Penal Code.

In order for a case for emergency measures to be made, it must be demonstrated that police officers lack the necessary prerogatives to pursue criminals under ordinary law. In the case of *flagrante delicto*, police are already given broad prerogatives, while in other cases, police must obtain a warrant from the Public Prosecution to arrest or search suspects, and such warrants are usually issued within a brief period. Thus, there is no legal or practical justification for greater police latitude. We reiterate that in practice, emergency law in Egypt was largely applied in the past in order to justify long-term detentions without charge, investigation, or trial, which facilitated the spread of torture and mistreatment, a decline in police capacities, and the erosion of human rights. The ability to detain citizens without charge, evidence, or court orders, at the whim of the police, is something that cannot be tolerated.

Moreover, unfair trials do not only erode human rights, they also fail to achieve security and safety for society. Verdicts in such trials are seen as suspicious by the public, which undermines the deterrent effect they are presumed to have.

Police reform

Restoring security and eliminating thuggery require legislation to genuinely restructure the security sector in Egypt to allow it to perform its rightful role. It is widely known that the spread of “thuggery” began when police disappeared from the streets on January 28, 2011 and only worsened when the Interior Ministry officially went back to work while ministry personnel continued to refrain from doing their jobs. One of the best examples of this is Interior Ministry’s actions during the recent Dahshour events. Security forces disappeared and did not do their job of securing the homes and property of Christian residents of the village, leading to grave property damage followed by the dozens of Christian families fleeing the village. The ministry then carried out a campaign of random arrests, netting citizens who may have had no connection to the events, with the goal of providing suspects to mollify public opinion, rather than achieving justice.

Further examples include the rampant sexual harassment seen on public holidays and the Port Said massacre, which, according to the prosecutor’s investigations, the police played a direct role in facilitating.

Clearly the Interior Ministry needs to improve its capacities through ongoing training to confront public disturbances without resorting to live ammunition or the intensive use of tear gas. It also needs to undergo effective training on conducting investigations and bringing evidence against suspects instead of always resorting to confessions, since these confessions are frequently extracted through torture. In addition, the Interior Ministry needs to be relieved of missions that are unrelated to security, such as organizing the pilgrimage lotteries, overseeing the Civil Status Administration, electricity and transportation investigations, and more.

Finally, we believe that sacrificing basic guarantees in Egyptian laws and international human rights conventions on the pretexts of combatting terrorism, the security vacuum, or thuggery will not help the Interior Ministry to recover its vigor. Indeed, it will continue to facilitate abuse of rights by those among its ranks and will only exacerbate the pathologies left by decades of tyranny, which ultimately led to the eruption of the revolution on the occasion of “Police Day” in Egypt.