

EGYPT UPDATE No. 25

7 December 2013

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CHRONICLES OF THE CONTINUED EGYPTIAN REVOLUTION OF 25 JANUARY 2011



Figure 1 Rally of students at Cairo University. (Photo credit Pressphoto Agency).

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□ “Those who make peaceful revolution impossible will
make violent revolution inevitable.”

John F. Kennedy, President of the United States of
America. Address on the first Anniversary of the Alliance
for Progress, reception for the diplomatic corps of Latin
American Republics, 1962.

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Summary Analysis

1. To a large extent, the situation throughout the country is stable. The security forces and the army have succeeded in establishing their control across the country. But, demonstrations and protests continue. The confrontation between the regime and the MB is active and ongoing. The MB are skilled in their protests and demonstrations and know how to provoke the security forces who actually do not need much provocation to react violently to demonstrators and protestors.
2. The security forces continue to engage in excessive use of force, which is due in part to the fact that most of their rank and file consists of young conscripts with a very low level of education and training (most of them have barely finished grade school). The officers who are graduates of the police academy are also insufficiently trained and not under proper command and control. Over and above these factors, there is historical animosity between the MB and the security forces and the latter have also consistently abused their authority and exceeded in the use of force knowing that they will benefit from impunity. Violence and disrespect for basic human rights has been a part of police culture for decades and it must be corrected. The present regime however does not appear to be inclined to do so, even though this has nothing to do with the present political situation. This is about an absence of professionalism and accountability.
3. All of that adds to the strengthening of the already strong polarization and radicalization that exists between MB and security forces, but also in general throughout Egyptian society. Reconciliation is not only at a standstill, but it seems that neither side is genuinely interested in it. The confrontation has all of the appearance of both sides wanting to deal the other a final blow that would tip the political scales in favor of one or the other.
4. In their strategy of confrontation, the MB have tried to resort to peaceful demonstrations and protests as a way of showing not only to Egyptians but to the international community that they are engaging in the reasonable exercise of the right to freedom of expression and assembly. But, that is not always the case. And, since there is no neutral and impartial monitoring of what is happening in different incidents, it is impossible to know how things started, how they escalated, and who did what to whom, when, and how. The MB have capitalized on that by using their international network to support their claims outside Egypt that they are the victims of a repressive military dictatorship. They have also started a campaign in Europe to bring a complaint against General Abdel Fattah El-Sisi and others before the International Criminal Court (ICC) and with a number of countries who are signatories to the Convention Against Torture (CAT) because of the obligation of state parties to enforce the Convention if the person accused is found on their territory. They probably took their cue from the campaign that was launched against General Augusto Pinochet in the 1980s as well as subsequently against others including Ariel Sharon of Israel which sought the arrest of such persons in European countries in the event they went there. No matter how successful or unsuccessful that tactic may be, it attracts the support of human rights organizations and media attention. So far, the campaign has had an impact within international civil society and the regime has not been able to respond to the allegations made against it, particularly because it refuses to have an independent fact-finding process to investigate the events of June 30 to August 30, which have resulted in an estimated 1,000 killed and 3,000 injured.
5. In connection with the Roadmap, which was discussed in Update 23, section IX, stages 1 and 2 have been completed. The Committee of Ten has made changes to the constitution, the Committee of Fifty has added 42 new articles to an already extensive constitution, which now has 247 articles (probably the longest and most detailed constitution in the world). This excessively detailed text seems to have satisfied every constituency in Egypt, more particularly, the military constituency which has consolidated

its position of total independence from any control by the civilian organs of the state. One new article states that the SCAF has to approve the selection of the Minister of Defense for the next eight years. Another provision allows for military trials of civilians accused of attacks upon the military and also gives the military courts the same status of civilian courts with far reaching jurisdiction and without a right to appeal to the Court of Cassation (thus, the military courts have only one level of appeal, which is also military, and no civilian review). The new draft constitution will be submitted to a referendum in January probably around January 15 and it is believed that it will be approved by a majority of those casting their votes (there are 54 million registered voters in Egypt). It should be noted that even though there are 9 million Egyptian expatriates out of 85 million Egyptians, thus more than 10% of the population (who have been given the right to vote in Egyptian Consulates abroad) have been intentionally disenfranchised by not being represented in the Committee of Fifty. This presumably because it was believed that those Egyptian expatriates in the Arab World would be pro-MB and that those in Europe, the Americas, Australia, and elsewhere would be too liberal. This is another way for the Regime to show that it is supportive of genuine democracy, but only of that part of democracy that allows it to have its way. Democracy is about respect for diversity and opposing views.

6. Repressive actions are not limited only to the MB. They also extend to all democratic forces. This is reflected in a new law restricting demonstrations and protests in a manner, that for all practical purposes, makes it impossible to exercise that right to freedom of assembly and expression of opinion as it is practiced in most countries of the world and guaranteed under the International Covenant on Civil and Political Rights (ICCPR) to which Egypt is a state party. These repressive actions by the security forces have resulted in the killing of some protestors and the injury of many. A large number of persons acting on the basis of their beliefs in democracy and human rights have been arrested including a large number of women. Reports about excessive violence against persons arrested whether at the time of arrest or in police stations have been reported, including the mistreatment of women. Local and international media have also reported a number of disappearances. Even if these reports are exaggerated, there are enough of them and in enough different circumstances to reveal that there is widespread and systematic policy of repression of freedom of expression and freedom of assembly, whether by persons who are deemed democratic, secular, or supportive of the MB. In none of these cases so far has there been any indication that abusive police officers have been investigated or disciplined, let alone prosecuted. There has been no known investigation by the Prosecutor General's office of any of the reported incidents of police abuses against demonstrators and protestors except in cases where deaths have resulted. And in these cases, none of them have pointed to any excessive use of force by the police. All of that is very troublesome and indicates that the future of democracy in Egypt is dim.

7. Notwithstanding the above, the US and the EU have not reacted in a negative way except for the United States' suspension of some of its foreign assistance. No one knows exactly whether some military equipment which is in the "pipeline" is still being delivered to Egypt's military. But, civilian aid has so far been suspended. There are indications that it will soon be resumed. European Commission aid has been officially suspended and some European countries have done the same but it is uncertain whether that is due to the European economic crisis or because there is a policy to suspend various forms of military and economic assistance to Egypt. The US and EU countries are essentially trying to play for time hoping that they can show progress by Egypt in the achievement of its Roadmap (discussed in Egypt Update 23 section IX).

8. Russia is exploiting the situation and has made formal overtures to Egypt to provide military and other forms of assistance. This would be in Russia's strategic interest, particularly if it can get the benefit of moving its naval bases from Syria to Egypt on the Mediterranean. It would also be a great strategic achievement to have a submarine base in one of Egypt's southern ports on the Red Sea. Russia has already managed a significant diplomatic achievement in its role as supporter of the Syrian regime and as

a mediator in trying to resolve the Syrian tragedy. It has certainly outmaneuvered and outshined the US in recent times. It is likely to play a major role in the upcoming Geneva II meetings on Syria scheduled for January 2014.

9. As a result of these and other geopolitical factors, Iran has also scored a major victory through a tentative agreement with the Permanent 5 +1 talks on halting the enrichment of uranium. It has thus gained greater credibility in the Arab region which is also likely to be reflected in the January Geneva II talks on Syria. Whether Iran has a place at the table or not at that meeting, it is well on its way in affirming itself as a major player in the Arab World, having already substantial control of Iraq and some control in Lebanon and in Syria's future. All of that has greatly preoccupied Saudi Arabia and the other Gulf States who are supportive of Egypt. While the Egyptian Regime has not taken formal positions on a number of issues involving Iran, it is substantially if not totally supportive of Saudi Arabia and the Gulf States, which have and are likely to continue to provide Egypt with economic and financial support, without such support Egypt would be bankrupt.

10. The economic situation is dire and there are no economic development plans. Egypt's economic and development indices are down in all categories. The country is literally living from hand to mouth and only because it receives economic and financial support from Saudi Arabia and the UAE. The support it had received from Turkey and Qatar has not only been cut, but the deposited funds by these countries in Egypt's Central Bank have either been withdrawn or requested to be withdrawn. The economic and social conditions of Egypt are making it a likely candidate to become a failed state, as evidenced by the decline in all major fields, particularly education, public wealth, transportation, agricultural production, reduction in water supply, and increase in common criminality. It is obvious that concerns for political stability and the struggle with the MB has overshadowed all these needs which are foundational to Egypt's future. With the prospect of a population of 100 million in 20 years, it is indispensable to have all these economic and social problems addressed with an effective recovery plan.

I. Reconciliation Efforts with the Muslim Brotherhood

1. On November 16, 2013, the National Alliance to Support Legitimacy, a pro-Morsi coalition of political groups, issued a statement calling for national dialogue, the first such call since Morsi's ouster on July 2, 2013. The call did not explicitly demand the reinstatement of Morsi as President, but stated that genuine dialogue efforts cannot occur while "arrests, bloodshed and hate speech" are ongoing.¹ Mohamed Ali Bishr, a leading member of the MB and of the Alliance, said this call for dialogue was open to all political forces in Egypt, including groups that spearheaded the June 30, 2013 demonstrations, but that it would be open only for a period of two weeks to expedite the participation of political groups. This statement marked a clear change in the policy of the Alliance. For the first time since July 3, they did not call for Morsi's reinstatement, did not urge the return of the Shura Council, which was dissolved after Morsi was arrested, and did not call for the return of the 2012 Constitution that Morsi and his political aides pushed through parliament. The Alliance did maintain, however, that what occurred on July 3 was an illegitimate military coup, and that the authorities should respect the will of the Egyptian people and the right to peaceful protest. Previous negotiation attempts by the US and the EU have failed.

2. As for government sources, messages have been mixed with respect to negotiation prospects. Deputy Prime Minister Ziad Bahaa el-Din has been one of the voices calling for reconciliation and also for moderation in Egypt's government against the MB in the midst of hardline polarization in the Egyptian government and the public, leaving him under fire from both sides. Many in the Egyptian public view his calls for reconciliation as treasonous and as sympathizing with Islamic extremism, and MB supporters view him as being coopted by the military in the repressive campaign against the MB. However, human rights activists have complained that even though Bahaa el-Din was sent the names of some of the thousands of people detained without charge or on politically motivated charges since July, they never received any response. Interim President Adly Mansour, on the other hand, stated on November 20, "The people are on one side and the [Muslim Brotherhood] and its supporters are on the other. Is it ok to reconcile with a criminal? As a state, we reject that."² These mixed messages come amid a continued crackdown on the MB (see Section II for more details in this regard).

3. Mohamed el-Baradei, who served briefly as Vice-President after the military takeover in July 2013 but resigned in protest of the excessive use of violence against pro-Morsi protesters, is also accused by some who support the crackdown on the MB as a traitor. El-Baradei has since left Egypt. Egyptian journalist Mustafa Bakri called el-Baradei's resignation as a "stab in the back of the Egyptian people." And Khaled Dawoud, a liberal Egyptian journalist who resigned from a secular coalition of political parties, the National Salvation Front, in protest of the crackdown on the MB, was stabbed several times by Islamist protesters.

4. As stated in a Reuters news report, "Moderate has become a dirty word in Egypt. Since the army ousted Islamist president Mohamed Morsi, anyone who refuses to support either side

¹ Ahram Online, *Egypt's Brotherhood alliance calls for national dialogue, for a limited time*, November 16, 2013, available at: <http://english.ahram.org.eg/NewsContent/1/64/86619/Egypt/Politics-/Egyp-Brotherhood-alliance->

² Egypt Independent, *No reconciliation with Brotherhood, president urges*, November 20, 2013, available at: <http://www.egyptindependent.com/news/no-reconciliation-brotherhood-president-urges>.

uncritically has become a traitor to both.” Emad Shahin, professor at the American University of Cairo, said to Reuters on the current political climate in Egypt, “If you're against the coup, then you're with the Brotherhood. If you're with the Brotherhood, then you're a terrorist. And if you are for democracy, then you are a fifth columnist.” This, in addition to sporadic violence by Islamists against security forces, makes the possibility for reconciliation distant, and prolongs polarization in Egyptian society.

II. The Continuing Crackdown on the Muslim Brotherhood and Others

5. On November 14, the Egyptian government lifted the state of emergency and a nighttime curfew that had been in place since two large pro-Muslim Brotherhood sit-ins were dispersed in August 2013.³ But as described in Updates 20-24, the campaign against Islamists, particularly Muslim Brotherhood (MB) leaders, members and supporters, continues with the aim of crushing the movement and preventing them from having a future in Egyptian politics. On October 30, 2013, Essam El-Erian, deputy leader of the MB's Freedom and Justice Party and one of the last remaining public figures of the MB who was still at large, was arrested in a police raid on his villa in eastern Cairo on charges of inciting violence after the military coup on July 3, 2013, particularly the murder of police officers and inciting the killing of protesters.

El-Erian had been taunting the military-backed government from places he had been hiding with video messages he released to Al-Jazeera.⁴ El-Erian



Figure 2 Essam el-Erian, the deputy leader of the Brotherhood's Freedom and Justice party was arrested on Wednesday. (Photo credit Youm 7).

started his involvement with the MB as a student in the 1970s and was elected to Parliament in 1987. As he began to build a national reputation, Hosni Mubarak had him arrested before the 1995 Parliamentary elections, and he was

³ New York Times, *Government in Egypt Eases Restrictions*, November 14, 2013, available at: <http://www.nytimes.com/2013/11/15/world/middleeast/government-in-egypt-eases-restrictions.html>.

⁴ Washington Post, *Essam el-Erian, one of remaining Muslim Brotherhood leaders, arrested in Egypt*, October 30, 2013, available at: http://www.washingtonpost.com/world/essam-el-erian-one-of-top-remaining-muslim-brotherhood-leaders-arrested-in-egypt/2013/10/30/74071bec-4160-11e3-8b74-d89d714ca4dd_story.html.

imprisoned for the next five years.⁵ After the January 25, 2011 Revolution and the MB were allowed to form their own political party, the Freedom and Justice Party. El-Erian became one of its most outspoken representatives. In December 2012, when police refused to protect Mohamed Morsi's office in the presidential palace from demonstrators, El-Erian led public calls for Brotherhood members and other Islamists to defend it themselves, by force if necessary. In a live television interview during the same month, he called on supporters of Morsi to: "Go now to *Ittihadiya* and surround the thugs and separate the real revolutionaries out for one or two nights and then we can arrest them all."⁶

6. Since the crackdown against the MB began in July 2013, security forces have arrested an estimated 2,000 high- and middle-ranking MB figures, and another 6,000 rank-and-file members are believed to be in custody, being questioned for evidence to be used against the MB leadership.⁷ Human rights lawyers are having trouble keeping track of the arrests, given the high numbers and the lack of transparency of prosecutors and security forces. Authorities have largely refrained from arresting female protesters and sympathizers with the MB, but on November 1, 2013, twenty-two female members of the MB, aged 15 to 25, were arrested on charges of disrupting traffic in protests, membership in an illegal organization, and distributing illegal leaflets at a demonstration on October 31.⁸ On November 27, 2013, fourteen of these female MB supporters, six of them minors, were sentenced to 11 years in prison for waving placards and holding balloons at the peaceful October 31 demonstration.

7. Ahmed Seif, a human rights lawyer, estimates that around 200 Brotherhood leaders could eventually end up on trial. An official from the Prosecutor's office reported to the Associated Press, on condition of anonymity, that nine or ten cases are currently being prepared on incitement and other charges, based on evidence from recordings of conversations between MB leaders plotting violence. Under Hosni Mubarak, MB members were often arrested for being members of a banned organization, which was procedurally aided by Egypt's state of emergency, but cases rarely went to trial, and arrests were used as a tool of intimidation to attempt to limit the MB's political participation in Egyptian political life. The exception to this was the high-profile military trial of MB figures in 2008 on charges of money laundering and terrorism.



Figure 3 Egyptian supporters of former president Mohamed Morsi carry an injured protester during clashes with Egyptian security forces on October 28, 2013 (Photo credit AFP File, Mohammed Abdel Moneim).

⁵ New York Times, *Prominent Muslim Brotherhood Leader Is Seized in Egypt*, October 30, 2013, available at: http://www.nytimes.com/2013/10/31/world/middleeast/high-ranking-muslim-brotherhood-leader-is-seized-in-egypt.html?_r=0.

⁶ Human Rights Watch, *Egypt: Investigate Brotherhood's Abuse of Protesters*, December 12, 2012, available at: <http://www.hrw.org/news/2012/12/12/egypt-investigate-brotherhood-s-abuse-protesters>

⁷ Associated Press, *Egypt's Muslim Brotherhood facing wave of trials*, October 19, 2013, available at: <http://news.yahoo.com/egypts-muslim-brotherhood-facing-wave-trials-064934422.html>.

⁸ Al Jazeera, *Protests in Egypt ahead of Morsi trial*, November 1, 2013, available at: <http://www.aljazeera.com/news/middleeast/2013/11/pro-morsi-protests-quelled-days-before-trial-2013111122631873107.html>.

After MB masked students held a militia-style protest in Cairo, raising concerns that the MB had restarted their “secret organization,” twenty-five MB members were sentenced to up to 10 years in prison. As described in previous Updates, the MB “secret organization” has been in place for as long as the MB have been repressed some 80 years ago. It consists of small autonomous cells (some say of five to ten, plus a leader whose word is indisputable) that are reportedly trained in guerilla tactics, including the use of explosives. On November 12, the state of emergency and night-time curfew, which had been in effect since August 14, the day pro-MB sit-ins were dispersed, were both lifted.⁹ It remains to be seen, however, whether the government will continue carrying out arbitrary arrests in the absence of a state of emergency.

8. On November 6, 2013 the MB lost an appeal to a decision on September 23, 2013 by the Cairo Court for Urgent Matters, a first-level trial court, banning its activities and seizing their assets and buildings.¹⁰ The ban was an immediate injunction based on legal proceedings initiated by the leftist *Tagammu’* Party, who accused the MB of terrorism and of exploiting religion for political gain. In the decision on September 23, the court held that the MB, since its founding in 1928, has exploited religion for political gain and has used violence as a tactic to pursue its goals. The court found the MB had “violated the rights of the citizens, who found only oppression and arrogance during their reign,” until they rose up “under the protection of the armed forces, the sword of the homeland inseparable from their people in the confrontation with an unjust regime.” The ban extends to certain MB political activities, but does not apply to their Freedom and Justice Party.¹¹ Most MB leaders were in prison and more than 1000 MB supporters had been killed at the time when the court issued this ruling. There, on November 16, Egypt’s High Administrative Court (*Al-Mahkama al-Idariyya al-‘ulia*) postponed lawsuits for the dissolution of the MB’s Freedom and Justice Party (FJP) until mid-February 2014.¹² This decision came after a panel of judges in the Court, the board of state commissioners (*Hay’at al-Mufawadeen*), issued a non-binding recommendation to dissolve the FJP because it was established on a religious basis, which violates the Constitutional Declaration issued in July 2013.

9. On November 16, Egypt’s Central Security Forces stormed the campus of Zagazig University upon the request of the university’s president and fired teargas at student demonstrators, who had blocked the gates of the Faculty of Engineering in protest of the arrests of 23 fellow students, at least five of whom are leftists and the rest MB supporters.¹³ The detained students face charges of sabotage. The same day, security forces dispersed protests by textile workers at Samanoud Fabric Company in the governorate of Gharbiya. The workers had

⁹ BBC News, *Egypt lifting state of emergency and curfew*, November 12, 2013, available at: <http://www.bbc.co.uk/news/world-middle-east-24914121>.

¹⁰ Al Jazeera, *Egypt court upholds Muslim Brotherhood ban*, November 6, 2013, available at: <http://www.aljazeera.com/news/middleeast/2013/11/egypt-court-upholds-muslim-brotherhood-ban-2013116101936365849.html>.

¹¹ Reuters, *Egypt court bans all Muslim Brotherhood activities*, September 23, 2013, <http://www.reuters.com/article/2013/09/23/us-egypt-brotherhood-urgent-idUSBRE98M0HL20130923>.

¹² Al Arabiya News, *Egypt: Ruling on Muslim Brotherhood’s Party Postponed*, November 16, 2013, available at: <http://english.alarabiya.net/en/News/middle-east/2013/11/16/Egypt-ruling-on-Muslim-Brotherhood-s-party-postponed.html>.

¹³ Ahram Online, *Police disperse student protesters at Zagazig University with teargas*, November 16, 2013, available at: <http://english.ahram.org.eg/NewsContent/1/64/86595/Egypt/Politics-/Police-disperse-student-protesters-at-Zagazig-Univ.aspx>.

been protesting delayed payments and deteriorating working conditions.¹⁴ On November 19, the anniversary of the Mohamed Mahmoud clashes that left at least 50 people dead two years ago, clashes again erupted between protesters and security forces, and the latter fired many rounds of teargas to disperse protesters. At least two people were killed in the clashes, and at least 16 were injured.¹⁵ And on November 28, prominent activist Alaa Abdel Fattah was arrested on charges of inciting a demonstration in defiance of a repressive new law on demonstrations discussed in Section IV.¹⁶ The same week, an arrest warrant was issued for Ahmed Maher, a leading member of the April 6 Movement. Maher turned himself in to authorities on November 30.¹⁷ These measures show that the above-described repressive practices by Egyptian authorities are not directed exclusively at the MB and their supporters, but also at many others who express their opposition to the military or the military-backed government.

III. The Prosecution of Former President Mohamed Morsi

10. For the second time in less than two years, an Egyptian head of state is brought to trial on charges of killing protesters. And for the first time since former President Mohamed Morsi was ousted, arrested and detained by the military on July 3, 2013, he was flown by helicopter on November 4, 2013 from his secret place of detention to a makeshift court at the police academy in Cairo. Ironically, this was the same location where Hosni Mubarak appeared in the summer of 2011. Charges were brought against former President Mohamed Morsi and 14 other co-defendants from the top leadership of the MB in connection with events that took place at *Al-Ittihadiya* Presidential Palace in Heliopolis, a suburb of Cairo, on December 6, 2012, where hundreds of anti-Morsi protesters (some of whom are believed to have been hired by remnants of the Mubarak regime) gathered to protest his rule and the 2012 Constitution that was drafted and pushed through by his political allies, alienating many non-Islamist political forces. Charges include incitement to murder and violence, and “thuggery.” Importantly, the accusation is that Morsi and 14 other MB figures called on hundreds of MB sympathizers to attack protesters camped outside the Presidential Palace. This led to clashes that left at least 11 people dead and many others injured.

¹⁴ Egypt Independent, *10 injured as police disperses Samanoud textile workers protests*, November 16, 2013, available at: <http://www.egyptindependent.com/news/10-injured-police-disperses-samanoud-textile-workers-protests>.

¹⁵ Al-Jazeera America, *One killed in Cairo clashes as riot police storm Tahrir Square*, November 19, 2013, available at: <http://america.aljazeera.com/articles/2013/11/19/egypt-tensions-centeronnewtahrirmemorial.html>.

¹⁶ New York Times, *Egypt: Prominent Activist is Arrested*, November 28, 2013, available at: <http://www.nytimes.com/2013/11/29/world/middleeast/egypt-prominent-activist-is-arrested.html>.

¹⁷ New York Times, *Leading Egyptian Activist Turns Himself In*, November 30, 2013.



Figure 4 Video broadcast on Egyptian State Television shows former President Mohammed Morsi speaking from a cage during a court hearing at a police academy compound in Cairo.

11. The first hearing took place as scheduled on November 4 before Chamber 23, Cairo Criminal Court, before a panel of three judges, chaired by Councilor Ahmed Sabry Youssef. The accused in the indictment are:

- Assad Al-Shikha (Deputy Chief of Presidential Staff, believed to be held with Mohamed Morsi in an unknown location)
- Ahmed Abdelaty (Head, President's Office, held in Tora Prison)
- Ayman Abdelraouf Ali Hodhod (Presidential Advisor, held in Tora Prison)
- Alaa Hamza Ali (reported to be an Acting Inspector in the Department of Civil Administration in Al Sharqia Governorate, held in Tora Prison)
- Gamal Saber (Activist, Hazemoon group, held in Tora Prison)
- Mohamed Al-Beltagy (General Secretary, Freedom and Justice Party, held in Tora Prison)
- Reda Mohamed (reported to be a petrol engineer, fugitive, will be tried *in absentia*)
- Lamlom Mekawy Gomaa (occupation unknown, fugitive, will be tried *in absentia*)
- Abdelhakim Ismail Abdelrahman (reported to be a teacher, fugitive, will be tried *in absentia*)
- Hani Said Tawfik Said (reported to be a "worker", fugitive, will be tried *in absentia*)
- Ahmed Almoghaier (occupation unknown, fugitive, will be tried *in absentia*)
- Abdelrahman Ezz Eldin (2011 uprising youth figure and Muslim Brotherhood sympathizer)
- Essam El-Erian (Deputy Chair, Freedom and Justice Party, reportedly arrested on 30 October)

- Wagdi Ghoneim (Muslim Brotherhood member, fugitive, will be tried *in absentia*).¹⁸

12. The charges were approved by Prosecutor-General Hisham Barakat. They are based on Articles 68, 68 bis and 68 bis(a) of the Criminal Code. In addition to these substantive provisions, Article 86 of the Criminal Code and 86 bis(a) contain aggravating penalties pertaining to the commission of the crimes defined in the provisions of Article 68 when deemed to be “terrorism.” Essentially, the charges pertain to the incitement of the killing of peaceful demonstrators in front of the *Ittihadiya* Presidential Palace. The defendants are accused of incitement to intentionally kill innocent civilians with premeditation by violent means and through the use of thugs carrying firearms and knives, daggers and swords. In addition, the said thugs resorted to the unlawful seizure of peaceful demonstrators, holding them against their will, and torturing them. The charges also include public incitement through the media to commit such crimes with the objective of breaking up peaceful demonstrations through forceful means, which included attacks upon the peaceful demonstrators, their forceful removal, the removal and burning of their tents, the use of firearms, which resulted in the death of one person, the injury of a number of persons and the unlawful imprisonment of 45 peaceful demonstrators. The penalties for these charges could be the death penalty or life imprisonment with hard labor, both of which are the penalties applicable to acts of “terrorism.”

13. At the court hearing on November 4, Morsi told judges in court that he was still the legitimate president of Egypt, that he was being forced to attend court proceedings, and that the court had no jurisdiction to try him. He also stated that what occurred on July 3 was a “criminal military coup” supported by the Egyptian judiciary, and that those responsible for it should be put on trial. He refused to be represented by Attorney Mohammed Selim El-Awwa, who also ran for president with a diatribe. During the hearing, Morsi’s co-defendants began chanting against military rule, and the journalists present began shouting for his execution. Scuffles with his lawyers then ensued. This caused the presiding judge to halt proceedings. The case resumed later that day but was adjourned until early 2014 so that defense lawyers could review documents for the case. If convicted, Morsi and his co-defendants face the death penalty for the charges laid against them. After the hearing was adjourned, Morsi was transported to a heavily guarded prison near Alexandria. On November 11, Morsi’s detention was extended for another 30 days, and on November 13, Morsi released a statement from prison through his lawyers stating that he had been kidnapped by the Republican Guard the day before the army announced his removal and detained at a naval base for four months, and that Egypt would continue to be unstable until he is reinstated as President.¹⁹

14. The facts on which this case is based derive from events that began in November 2012. After Morsi issued an authoritarian Constitutional Declaration on November 22, 2012, protests erupted across Egypt against his rule. The Declaration stipulated that no individual or government body, including the judiciary, could appeal any declaration or decree issued by the President’s office. The Declaration also came in advance of a court ruling regarding the

¹⁸ Amnesty International, *Egypt: Trial of Mohamed Morsi*, November 3, 2013, available at: <http://www.amnesty.org/en/library/asset/MDE12/064/2013/en/31d79b39-7db8-4626-b86f-91a4b654bdd5/mde120642013en.pdf>.

¹⁹ New York Times, *In Statement From Prison, Morsi Accuses Egypt’s Military Leaders of Treason*, November 13, 2013, available at: <http://www.nytimes.com/2013/11/14/world/middleeast/morsi-letter-from-prison.html>.

legitimacy of the assembly that wrote the 2012 Constitution. As protests continued, violent clashes erupted between Morsi's supporters and opponents. The worst violence occurred on the night of December 5, 2012, when both sides fought in the streets surrounding the *Ittihadiya* Presidential Palace.²⁰ The fighting began when Morsi supporters came to the site of peaceful protests against Morsi around the Presidential Palace, and broke them up violently. The two sides then fought using stones, Molotov cocktails and shotguns. Security forces failed to intervene to end the violence. Hundreds of people were injured and at least 11 people died. During the fighting, Morsi supporters also caught some of their opponents and tortured them.²¹ The next day, each side blamed the other. In a televised speech, Morsi said investigations had concluded that remnants of Hosni Mubarak's government were responsible for inciting the violence. Lawyers at the scene told Amnesty International, however, that Morsi actually made his speech before Prosecutors had finished their investigation.²²

15. The charges are on their face broad and vague. Articles 68 and 86 of the Criminal Code are also overly broad, and in my opinion violate the "principles of legality" contained in the 1971 Constitution in that they lack the necessary specificity required for criminal laws. This, with one exception, namely incitement to violence, which is a well-established crime and for which there is no question as to its legality. The question arises, however, as to the facts. Namely, whether Morsi and each and every other defendant engaged in conduct deemed to be in the nature of incitement to commit the violence described. It should be borne in mind that Egypt does not have a concept of conspiracy, as in the common law system. Therefore, each allegation of incitement must be proven independently, and with respect to each defendant. There cannot be a collective charge of incitement by a group of individuals under the traditional concept of incitement, unless there is proof of concert of action and sharing the same motive or intent. To achieve this result in the absence of a specific provision on conspiracy, the charges bring in the provisions of the Criminal Code applicable to "terrorism", which permit such an outcome in an indirect way, and which in the opinion of this writer also violates the "principles of legality." While this is not the place to discuss the technicalities of the criminal laws in question nor the merits of the facts, nor the possible justification of a sitting head of state to break up demonstrations around the Presidential Palace (including demonstrators setting up camp, erecting tents and blocking traffic, which is the type of public disruption for which forceful removal by state authorities is permissible under Egyptian law, and for that matter, under the laws of most states), it should be noted that this was precisely what the authorities claimed in their attack on the pro-MB sit-in at *Rabaa al-Adawiya* mosque on August 14. The difference in this case, however, is that the demonstrators at *Ittihadiya* were attacked by what is assumed to be members or supporters of the MB, and which the prosecutor described as thugs (*baltageya*) in the indictment, as opposed to being attacked or forcefully removed by officials of the state.

²⁰ Amnesty International, *Egypt: Trial of Mohamed Morsi*, November 3, 2013, available at: <http://www.amnesty.org/en/library/asset/MDE12/064/2013/en/31d79b39-7db8-4626-b86f-91a4b654bdd5/mde120642013en.pdf>.

²¹ Human Rights Watch, *Egypt: Investigate Brotherhood's Abuse of Protesters*, December 12, 2012, available at: <http://www.hrw.org/news/2012/12/12/egypt-investigate-brotherhood-s-abuse-protesters>.

²² Amnesty International, *Egypt: Trial of Mohamed Morsi*, November 3, 2013, available at: <http://www.amnesty.org/en/library/asset/MDE12/064/2013/en/31d79b39-7db8-4626-b86f-91a4b654bdd5/mde120642013en.pdf>.

16. It is well-established in public opinion that the demonstrators who engaged in the sit-in at *Ittihadiya* were anti-Morsi and anti-MB, much as the demonstrators who were part of the sit-in at *Rabaa al-Adawiya* were MB or supporters of the MB in opposition to the new military-backed regime. In the first of these cases, Morsi and the MB leadership allegedly resorted to their own supporters to do the work that security forces should have done, and which security forces in fact did at *Rabaa al-Adawiya*. At the trial, the question of the role of security forces will certainly be brought up. This may include evidence about the possible refusal or failure of security forces to carry out presidential orders to remove the demonstrators who were engaged in the sit-in.

17. There are possibly additional charges that may be brought as part of this case, or more likely as part of another case, namely pertaining to statements made by Morsi and others from the MB leadership at some point between Morsi's famous speech on June 26, 2013 at the stadium and subsequent public pronouncements before and on July 3, 2013, the day Morsi was arrested. Many of these speeches and public pronouncements, which were aired on radio, television and circulated through the social media, were in the nature of incitement of violence by means of resistance to what Morsi and the MB considered as an unlawful military coup. These charges will therefore raise the question of the legitimacy of the military action taken on July 3, and whether or not resistance to it could be deemed lawful. Egypt's State Information Service reported that other separate charges against Morsi included communicating with Hamas, attacking police officers, soldiers and facilities, storming prisons, setting fire to Wadi Natroon Prison, leading prisoners to escape from prison, destroying prison records and documents, storming police stations, and "subverting" public buildings and property. These charges, however, concern other alleged actions and are not part of the current trial. Morsi was arrested and placed under preventive detention on January 28, 2011 along with other leading MB members. On January 30, 2011, a number of prisons were stormed by individuals who led and, in some cases, forced inmates out of prisons, including Morsi. A judicial inquiry has been ordered to investigate this charge, but the results of this inquiry have not been announced. Since Morsi was under preventive detention and not imprisoned because he was convicted of any crime, and because it is uncertain as to who released these detainees and no one has been charged with escaping from the prison except Morsi, the charge is highly questionable.

IV. Human Rights Conditions

18. Human rights conditions in Egypt have been deteriorating on almost all fronts. While many people are concerned with issues of political repression as described in Sections I and II above, as well as other matters relating to violations of civil and political rights, there are a number of other substantive human rights that have been implicated which also fall in the category of civil and political rights, and also in the category of economic and social rights, which are described in the attached excerpts. The ones on which particular attention should be placed are issues of food and health, water resources, education, economic degradation and corruption. What follows are some specific types of violations which fall in the category of civil rights, economic and social rights, and the international rights of refugees.

19. In early December, a new draft Egyptian Constitution was made publicly available in its entirety. The new draft takes some important steps in the direction of criminalizing torture and human trafficking and requiring that the state protect women from violence. The draft contains 247 articles, perhaps one of the longest constitutions in the world. However, members of the

Drafting Committee have already left open the issue of whether to hold elections after the ratification of the Constitution (as per the Roadmap), or to allocate the responsibility to the interim President beforehand, thereby potentially opening the door for General El-Sisi to become president. Although the new draft removes much of the religious language inserted by the MB and other Islamists in the previous draft, it does not offer new protections for religious minorities, nor does it change the relationship between the state and religion. The new draft also bans political parties based on religion.²³ A number of provisions also gives substantial power to the military, including an article that states that the SCAF has to approve the selection of the Minister of Defense for the next eight years. Another provision allows for military trials of civilians accused of attacks upon the military and gives the military courts the same status of civilian courts with far reaching jurisdiction and without a right to appeal to the Court of Cassation (thus, the military courts have only one level of appeal, which is also military, and no civilian review). The draft will be put to referendum sometime in December 2013 or January 2014.²⁴ Not surprisingly, the MB rejected the new draft as the product of “abusive coupists” attempting to “distort Egypt’s legitimate constitution.”²⁵

20. A new law, entitled the *Law on the Right to Public Meetings, Processions and Peaceful Demonstrations*, was recently promulgated by the government. The law was drafted by the Ministry of Justice and approved by the cabinet on October 10, 2013. After promising on November 12 to review the law before issuing it,²⁶ interim President Adly Mansour passed the law on November 24. The law replaces the three month state of emergency that had been imposed after the military takeover that removed Morsi in July 2013. The law bans any public gathering of over 10 persons without government approval. It requires notification of a gathering three days in advance, and outright bans demonstrations at places of worship. The law also allows security agencies the right to prohibit a gathering, demonstration or meeting if it is deemed a threat to public order. The law imposes severe penalties for violations, such as imprisonment of seven years for the use of violence in a protest, one year for covering the face during a protest, and one year for protesting outside of a place of worship.²⁷

21. Under the terms of the July 8 Constitutional Declaration, the president has full legislative powers in the absence of functioning legislative bodies. After much criticism from human rights advocates and political parties, in an October 20, 2013 interview on Egyptian television Prime Minister Hazem El-Beblawi stated his government was open to amendments to the draft law and had sent it to the National Council for Human Rights for comments. However, El-Beblawy also said that the right to assembly must not “disturb the authorities” or threaten security. In a press release, Human Rights Watch reported: “Egypt’s current protest laws, the Illegal Assembly Law of 1914, Law 10 of 1914, and Public Assembly Act No. 14 of 1923, are very restrictive and effectively allowed the police under former President Hosni Mubarak to ban public protests.” Egypt was also in a state of emergency beginning on August 14, which gave the authorities the

²³ New York Times, *In Egypt, New Rights, but No Great Change*, December 1, 2013.

²⁴ New York Times, *Factbox - Egypt’s Draft Constitution*, December 1, 2013.

²⁵ BBC News, Middle East, *Muslim Brotherhood has rejected Egypt’s new draft constitution*, December 2, 2013.

²⁶ Ahram Online, *Egypt’s Mansour to review protest law before issuing it: Presidency*, November 12, 2013, available at: <http://english.ahram.org.eg/NewsContent/1/64/86291/Egypt/Politics-/Egypts-Mansour-to-review-protest-law-before-issuin.aspx>.

²⁷ New York Times, *Egypt issues new law in crackdown on protests*, November 26, 2013.

right to ban protests even without this law being considered. The state of emergency was lifted on November 12, 2013, but with the new law in place, authorities now have another legal basis for repressive measures and policies that would violate freedom of expression and of assembly for Egyptians.

22. Another anti-terrorism law was presented by the Interior Ministry that many Egyptian human rights advocates argue would give legal cover for the re-establishment of a police state.²⁸ This proposed piece of legislation contains vague, broad definitions of acts of terrorism. Article 13 would impose a prison sentence on those who “found, establish, organize, administer, or hold a position of leadership in any association or body or organization whose purpose includes in any way calling for the impediment of the provisions of the constitution or the law or damaging national unity”.²⁹ This and other provisions, such as Article 21 which imposes a five-year prison sentence for anyone who, directly or indirectly, aids the activities of a terrorist organization, could easily be applied by Egyptian authorities to curtail freedom of expression and to harass dissenters. Domestic human rights organizations point out that the U.N. Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while countering terrorism has twice requested to conduct an official visit to Egypt, once in 2011 and then again in 2012, was ignored by the Egyptian government. The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was also not allowed to visit Egypt.

23. The two bills described above come amid the lack of any real efforts by the government to investigate major human rights abuses that have occurred since the uprising in 2011. As stated in a recent New York Times article, “Leaders have tried to wipe away histories of atrocities by foot-dragging on investigations until new bloodshed dulls memories of the old.”³⁰ At the *Rabaa al-Adawiya* mosque, where hundreds were killed in August in a pro-MB demonstration, the military built a fountain and a memorial to acknowledge “the most difficult periods in Egypt’s history.” However, there has been no government investigation, and the work has been left to the National Council for Human Rights, a body which lacks any real power to compel authorities to testify.

24. Violent attacks and silencing tactics continue against journalists in Egypt. In early November, the Egyptian Initiative for Personal Rights, the Arab Network for Human Rights Information, and the Egyptian Organization for Human Rights released separate statements raising concern over the challenges journalists in Egypt continue to face. At the trial of Mohamed Morsi on November 4, for example, many media representatives reported being attacked by Islamist protesters. And on October 31, a journalist working for MBC Egypt, Islam Fathy, following an argument with a police officer who prevented him from covering a breaking story in the city of Minya, was beaten and dragged to a police station where he was tortured using a method called the “briefcase,” whereby the victim’s hands and legs are handcuffed and left hanging on a stick. Fathy said, “I feared my hands would get cut off while I was hanging.

²⁸ Egyptian Initiative for Personal Rights, *Rights Organizations Warn that New Counter-Terrorism Law would Re-Establish Foundations of Police State and Intensify Violence and Terrorism*, November 7, 2013, available at: <http://eipr.org/en/pressrelease/2013/11/07/1865>.

²⁹ Ibid.

³⁰ New York Times, *Memory of a Mass Killing Becomes Another Casualty of Egyptian Protests*, November 13, 2013, available at: http://www.nytimes.com/2013/11/14/world/middleeast/memory-egypt-mass-killing.html?pagewanted=all&_r=0.

They beat me viciously with their legs and batons, called me an *Ikhwani* [an MB member] and insulted me because I live in Samalout, where the Brotherhood attacked a police check point there.”³¹ The next day, Fathy was released. Another journalist, Hatem Abul-Nour, was tried and sentenced to one year in prison before a military court on charges of “impersonating military personnel”.³²

25. Perhaps the case that received the most press domestically and internationally, however, was that of the TV show hosted by the satirist Bassem Youssef, *Al-Bernameg*. After a three-month-long hiatus, Bassem Youssef returned to his show in late October, but shortly before the second episode was to air on CBC Egypt, the network abruptly cancelled the episode, accusing Youssef and the show’s producer of ignoring the its editorial policy and stating that the show would continue to be suspended pending a resolution of disputes with the host. The episode that aired on October 25 had poked fun at Egypt’s military rulers and the personality cult surrounding Abdel-Fattah El-Sisi, Egypt’s Defense Minister *and de facto* leader. El-Sisi enjoys widespread support from across Egypt; the National Salvation Front, a secular coalition of dozens of political parties that united under one umbrella last year in opposition to Morsi’s increasingly authoritarian rule, announced that if El-Sisi announced his candidacy for President of Egypt, they would officially back his candidacy.³³

26. The conditions of economic and social rights in Egypt are appalling. Millions live under the poverty line and in unsanitary conditions. Socioeconomic inequality is stark, the quality of public education is abysmal, and corruption and the absence of the rule of law is hampering progress in the respect for economic and social rights. Below is some data concerning the gravity of the conditions of millions of Egyptians:

- The 85-million population is increasing at an exponential rate, and in 20 years it will be at 100 million. An indeterminate number of persons have moved from rural to urban areas, particularly Cairo, where an estimated 2 million people have been added to the already over-populated city of an estimated 16 to 18 million (the numbers publicly available appear to be uncertain).

- At present, 50% of the 85 million are under 30 years of age, and in that age group, 60% are unemployed. That is an estimated 26.5 million, among whom is an estimated 20 million at or below the poverty level.

- An estimated 25% of the population (if not more) lives at or below the poverty level, and within that group, an estimated 5 million people live below the hunger level.

³¹ Daily News Egypt, *Journalists in Egypt continue to face harassment*, November 5, 2013, available at: <http://www.dailynewsegypt.com/2013/11/05/journalists-in-egypt-continue-to-face-harassment/>.

³² Ahram Online, *Al-Watan slams Egypt’s military trial of its reporter*, October 30, 2013, available at: <http://english.ahram.org/NewsContent/1/64/85175/Egypt/Politics-/AlWatan-slams-Egypt’s-military-trial-of-its-reporter.aspx>.

³³ Washington Post, *Egypt’s secular parties hampered by disorganization, infighting*, November 12, 2013, available at: http://www.washingtonpost.com/world/middle_east/egypt-secular-parties-hampered-by-disorganization-infighting/2013/11/12/79be5e70-4b19-11e3-ac54-aa84301ced81_story.html.

-There are at least tens of thousands of street children on the streets of Egypt, mostly in Cairo and Alexandria, according to estimates by NGOs.

-An estimated 12 million people live in hundreds of slums across Egypt. They live in squalid conditions, and many of them are without legal identities. They have no sufficient municipal services, such as electricity, roads, sewage, water, public health services, and public safety, which is creating additional pressure on the city's administration and on public security.

-It is estimated that between 16,000 and 20,000 hectares of agricultural land are lost annually due to illegal building and urbanization, which further aggravates the food deficit in Egypt due to a reduction in agricultural production. Even though this is in violation of the law, the authorities (namely, police, prosecution and the judiciary) are simply unable address this situation.

27. Below are some excerpts from a Joint Submission to the Committee on Economic, Social and Cultural Rights for its Periodic Review of Egypt during its 51st Session in November 2013.³⁴ The submission was prepared by 56 Egyptian NGOs and the Center for Economic and Social Rights, and it contains data with specific figures regarding the system of Egypt's government, economic indicators, corruption, food and health issues, access to water and public education in Egypt, and how all of these affect the lives of millions of Egyptians.

28. There are currently around 300,000 Syrians in Egypt, according to the Egyptian government. Of these, UNHCR has registered over 125,000 as refugees. There are also an additional 5,000 to 6,000 Palestinians from Syria in Egypt, according to the UN Relief and Works Agency (UNRWA). Since July 8, 2013, Syrians have had to apply for visas in advance of travel to enter Egypt (which many have overstayed), after the government imposed stricter restrictions on their entry. In the midst of an increasingly polarized society, there has been in recent months a rise in xenophobia against Syrian and Palestinian refugees in Egypt. Human Rights Watch (HRW) reported on November 11 that Egypt has detained 1,500 refugees from Syria, including at least 400 Palestinians and 250 children as young as two months old, for weeks and sometimes months. Many are detained arbitrarily and in overcrowded conditions. Officials have often acknowledged that refugees will be detained indefinitely until they leave the country.³⁵ Palestinians from Syria are particularly legally vulnerable since Egyptian authorities bar them from seeking protection from the Office of the UN High Commissioner for Refugees (UNHCR), which goes against UNHCR policy. Under Article 1 of the 1951 Refugee Convention, Palestinian refugees are entitled to seek protection from UNHCR since Egypt is not in the UN Relief and Works Agency's (UNRWA) area of operations (Jordan, Lebanon, the Gaza Strip, the West Bank and Syria).³⁶ HRW reports that Egyptian authorities tell detained Palestinians from Syria that their only alternative to indefinite detention is to either go to Lebanon, where they are

³⁴ The Center for Economic and Social Rights, *Joint Submission to the Committee on Economic, Social and Cultural Rights On the occasion of the review of Egypt's 4th periodic report at the 51st Session, November 2013*, available at: https://cesr.rdssecure.org/downloads/Egypt_CESCR_Joint_report_English.pdf.

³⁵ Human Rights Watch, *Egypt: Syria Refugees Detained, Coerced to Return*, November 11, 2013, available at: <http://www.dailynewsegypt.com/2013/11/05/journalists-in-egypt-continue-to-face-harassment/>.

³⁶ The UN Relief and Works Agency for Palestine Refugees in the Near East is the UN agency mandated to protect and assist Palestinian refugees in Jordan, Lebanon, Syria, the Gaza Strip and the West Bank.

allowed to enter on a 48-hour transit visa, or return to Syria. Over 1,200 of those detained, including about 200 Palestinians, have been forced to leave Egypt, including dozens who have returned to Syria.

29. With respect to civil and political rights, it seems clear that the present regime is clearly oriented towards repressing such rights in the name of securing stability, with the assumption being that the MB constitute a threat to stability as well as to peace and security, and that the only way to address that threat is to engage in repressive means which violate civil and political rights. A large percentage of the Egyptian population accepts that, and is willing to accept the costs of giving up the protection of civil and political rights in favor of political stability and public order. The assumption made by the proponents of this position, including the present regime, and more particularly those in the intelligence and security apparatus believe that this indispensable phase will no longer be needed once stability is restored and the MBs abandon their violent means.³⁷ The MB, on the other hand, insist on upholding their civil and political rights, and consider these repressions and violations of their rights as justifying their opposition, which they have tried so far to keep at a peaceful level, although that has not always been the case. Indeed, there are many manifestations of actual violence that go beyond the limits of the permissible exercise of civil and political rights. General Mohammed Farid El-Tohamy, the head of Egypt's General Intelligence, has also linked what is happening in the Sinai (see Updates 22-24) with events in Egypt proper, claiming a connection between al-Qaeda-affiliated fighters in the Sinai and the MB demonstrations in different parts of Egypt. However, there is no evidence that such a connection exists, and it is more likely that the events in the Sinai are unrelated to the MB resistance in certain parts of Egypt against the present regime.



Figure 5 A group of men from Syria held at Abu Qir police station in Alexandria in September.

30. Whether or not the present trend of restricting civil and political rights will continue is yet to be seen. Presumably, as described by spokespersons for the regime, things will change after the scheduled legislative and presidential elections. But if present measures continue, it is

³⁷ See Washington Post, *The future of Egypt's intelligence service*, November 11, 2013, available at: <http://www.washingtonpost.com/blogs/post-partisan/wp/2013/11/11/the-future-of-egypts-intelligence-service/>.

unlikely that the MB will be able to effectively exercise their civil and political rights in connection with the legislative and presidential elections. This obviously does not augur too well for democracy and freedom in Egypt, even though at this point, due to the strong polarization in Egyptian society, a large segment of the Egyptian population supports these violations of civil and political rights as a way of ensuring that the MB will not return to power and will not gain any influence in the political sphere in the foreseeable future.

31. Notwithstanding the above, it seems that no one in the regime, and for that matter in Egypt, is addressing the other human rights violations and deficiencies, which include the cruel and inhumane conditions of prisons and detention facilities described in Update 24, the resort to arbitrary arrest and detention, torture by the security forces, the deteriorated and deteriorating conditions of health services, as well as the educational system and other public services, and of course the continuing deterioration of the economic situation (as discussed in most previous Updates).

32. An understanding of this overall deteriorating human rights situation is important to assess the future prospects of Egypt's human, social, economic and political conditions. The worse off the population is, the more likely it is that the society will not progress in a positive direction, and this is likely to engender destabilization and more radicalization, leading to the increased resort to violence by disaffected groups. Progress towards well-being is the essential ingredient in every society to achieve reconciliation and unity.

V. Relations with the US, Russia and the EU

33. After EU Member States had suspended export licenses to Egypt for military technology that could be used for internal repression after Egyptian security forces used excessive force to disperse two large pro-MB sit-ins in mid-August 2013, the British government on November 3 said it would lift 27 of these licenses from suspension. A Foreign and Commonwealth Office spokesperson from the UK government stated, "We have now reviewed all export licenses for Egypt and have lifted some from suspension, as we do not judge that the goods might be used for internal repression."³⁸

34. On November 8, 2013, the following statement was released by a spokesperson from the German Foreign Ministry: "Germany has reiterated its demands to the Egyptian authorities to release President Mohammed Morsi and to stop all forms of violence. This will help calm the situation and enable a serious dialogue to start to achieve a fair reconciliation. Germany is disappointed with Egypt's interim government led by Hazem Al-Beblawi and its hard line position towards the opposition, arresting anyone with political influence. Therefore the German Foreign Ministry has decided to suspend all collaboration with Egypt's interim government."³⁹ It is unclear, however, what this suspension will entail in exact terms.

³⁸ Middle East Monitor, *Britain resumes arms sales to Egypt despite commitment to protect human rights*, November 6, 2013, available at: <http://www.middleeastmonitor.com/blogs/politics/8192-britains-resumes-arms-sales-to-egypt-despite-commitment-to-protect-human-rights>

³⁹ Middle East Monitor, *Germany suspends collaboration with Egyptian authorities*, November 8, 2013, available at: <http://www.middleeastmonitor.com/news/europe/8222-germany-suspends-collaboration-with-egyptian-authorities#sthash.Rtop2unA.dpuf>

35. John Kerry's visit on November 4, 2013 was the first high-level visit by the US government to Egypt since the military ousted Mohamed Morsi in July. Kerry called on Egyptian leaders to follow their roadmap to democracy. He stated in ambiguous terms: "I think it's important for all of us, until proven otherwise, to accept that this is the track Egypt is on and to work to help it to be able to achieve that." As mentioned in a New York Times article on November 4, Kerry did not raise the issue of Mohamed Morsi's trial, but only gave general recommendations on avoiding politically motivated arrests and ensuring due process. During his stop, Kerry met with human rights advocates, religious, labor and youth organizations.

36. The United States suspended delivery of Apache helicopters, F-16 planes, Harpoon anti-ship missiles and parts for M-1 tanks. However, it continues to support Egyptian counter-terrorism efforts, including Sinai efforts and training Egyptian military officers in the United States. Other unaffected aid programs include the delivery of spare parts for many weapons in the Egyptian military's inventory and aid for healthcare, education and the promotion of businesses in Egypt. Mr. Kerry described the suspension in weapons delivery as more of a step ordered by Congress rather than punishment by the Obama administration for the military's actions against the Muslim Brotherhood. In an interview with the Washington Post, General Mohammed Farid el-Tohamy, the director of Egypt's General Intelligence Service, stated relations between US and Egyptian intelligence agencies were unaffected and that he was "in constant contact with [Director] John Brennan at the CIA and the local station chief, more than with any other service worldwide."⁴⁰

37. As has been reported repeatedly in previous Updates, the US has either been uncertain about its policy, or it has communicated it ambiguously. Whatever the cause of this lack of clarity may be, it has resulted in causing displeasure with the US among almost all constituencies in Egypt. At first, the US was silent on the revolution, then it was supportive of Mubarak's resignation and the SCAF's taking over. This was followed by conveying the appearance that some understanding existed between the US and the military that a path towards secular democracy would be pursued. This was then followed after the legislative elections of 2011-2012, which gave the MB and the Salafists some 65% majority in parliament, with a shift towards supporting this new trend in Egyptian politics. But this was based on what appears to be an erroneous assessment that the legislative outcome was truly the product of the popular democratic will. In fact, the legislative elections represented only 54% of registered voters because many secular democrats simply stayed away from the ballot box. While this is a common phenomenon in different countries whereby the so-called "silent majority" abstains from voting, it regrettably leaves open the path for those who are not secular democrats to win elections. Why the US came to the conclusion that the legislative elections of the MB and the Salafists (which gave the former 37.5% and the latter 27.8% of seats) was representative of the popular will is a mystery. I would shudder to think that there was such a level of incomprehension, not to say incompetence, at the level of the National Security Council, Department of State (DOS), Department of Defense (DOD) and the Central Intelligence Agency (CIA). My exposure to career diplomats in the DOS has led me to believe that this could not be the case with respect to that agency, and I suspect the same with at least the CIA. The NSC,

⁴⁰ Washington Post, *The future of Egypt's intelligence service*, November 11, 2013, available at: <http://www.washingtonpost.com/blogs/post-partisan/wp/2013/11/11/the-future-of-egypts-intelligence-service/?print=1>.

however, in the Obama administration has been so dominated by national politics that it could well be the case that this body ignored the expert assessment of those in the other agencies mentioned above. But this is not the first time this has happened. The same situation repeated itself after the election of Mohamed Morsi on June 24, 2012. Once again, he obtained 13,230,131 votes, as opposed to his opponent, Ahmed Shafik who obtained 12,347,380 votes, bearing in mind that only 51.85% percent of registered voters went to vote, and that many secular democrats simply did not vote, because they did not want to vote for the MB or for someone who represented the former regime. The US policy then shifted towards accepting Morsi and the MBs as the democratically elected representatives of the people, thus conveying to the MB and their supporters a certain level of recognition of their legitimacy by the US. Then-Secretary of State Clinton visited Egypt, met with President Morsi and lauded him for his work in settling a dispute with Hamas.⁴¹ There were many other signs of support, as well as back channels between MB representatives and US officials, both in Egypt and in Washington. At the same time, there were other back channel communications between the DoD and the SCAF, and between the CIA and Egyptian General Intelligence, which seemed to have conveyed, if not a contrary message, then at least a message that this was not a shift in US strategy, but a temporary tactical position. That tactical position presumably was designed to encourage the MB to follow a more secular but certainly a democratic path. How absurdly naïve it is for anyone to believe that the MB, who since 1928 has been pursuing the same agenda and have been battling succeeding governments who have consistently repressed them, would suddenly decide to change their ideology and ultimate goal of turning Egypt into a theocracy and of linking Egyptian theocratic rule with similar rulers in other Muslim countries, particularly in the Arab region. For many in Egypt, the conclusion was that either the US didn't care about what happened to Egypt because it had a different geopolitical agenda in the region, or that it was simply duplicitous, playing both ends against the middle. The same views and all the perplexities they engender are still prevalent today. The only thing that came out of this uncertain, ambiguous, confusing and even contradictory posture of the US, is the reinforcement of the conspiracy-minded people that there has to be something behind all of this that is yet to materialize. This is what was expressed in Alexandria when Secretary Clinton visited the city in July 2012, when a group of protesters threw tomatoes and shoes at her motorcade, and some activists refused invitations to meet her. By then, it was clear that the US had alienated the pro-secular democracy constituency of Egypt, abandoned the Mubarak regime leftovers, and hypocritically supported the MB – all of that with a great unknown of what was going on behind closed doors between the US and Egyptian military and their intelligence counterparts. In short, no one in Egypt could believe that US policy was genuinely confused or genuinely naïve.

38. But this went on. When anti-MB people took to streets on June 30 to have Morsi removed, the US seemed to support them. It surely supported the military when they intervened on July 3 and arrested Morsi, leading to the feeling of betrayal by the MB. Then the military proceeded to engage in large-scale arrests of MB members and supporters, which to date include some 6,000 people. And still, the US remains supportive. The new government established by the military then proceeded to repress freedom of speech and freedom of expression (e.g. see Section IV). And more importantly, the US continued to deny that there was a military coup on

⁴¹ Mohamed Morsi had helped broker a ceasefire agreement between Israel and Hamas in November 2012, after Israel launched airstrikes against what it claimed to be terrorist targets in Gaza.

July 3, as stated in Updates 20-23. I take the position that it was a military coup, but that it had popular legitimacy, and that it did go against formal legality because Morsi had been duly elected – a position which the US supported at the time; namely, that he was the duly elected president of Egypt. But millions took to the streets on June 30, 2013 against the MB, and there was also a petition prepared by the group *Tamarrud* (the group spearheading calls for the June 30 demonstrations) allegedly signed by 22 million people for his removal from office. There was no constitution in effect, though the 2012 Constitution had been approved by a public referendum, but it never went into effect. There was no way to legally impeach or remove the president, thus the conflict between popular legitimacy expressed in the streets and in the petition and formal legality expressed in the election of Morsi in 2012. It is obvious that the administration could not support the proposition I describe above because it would have found itself having to answer questions to Congress on its adherence to the US Foreign Assistance Act that prohibits providing such assistance to countries where military coups occur. If nothing else, this internal difficulty led also to an external contradiction in US policy. The MB interpreted that as an endorsement of the military coup and of the military in general. The rest of the world came to the conclusion that when a military coup is seen as being in the best interests of the US, it will be referred to as something else; notwithstanding, as the well-known Shakespearean saying goes, “a rose by any other name would smell as sweet.” Military assistance therefore continues, but once again, the administration comes up with another one of its ambiguous formulas. It withholds delivery of F16s and Apache helicopters and other civilian assistance, pending progress on the “roadmap” to democracy, as stipulated in the July 2013 Constitutional Declaration.⁴² It is essentially a plan put forward by temporary President Adly Mansour with the support of the military, which is in the nature of a timetable that includes the following:

- A Committee of 10 legal experts representing different legal institutions to review the 2012 Constitution and to make amendments.
- The selection by the temporary president of a Committee of 50 presumably representing Egypt’s different political social and religious constituencies, though the selection excluded representation for the 9 million Egyptian expatriates.
- The holding of a public referendum on these amendments, followed by legislative elections and then by presidential elections.

So far, the Committee of 50 has not completed its work. It is clear, however, that it did a major rewrite of the 2012 Constitution that included detailed provisions that would presumably suit every constituency in the country, as if this was an exercise in writing a political platform rather than a constitution. On November 11, Committee spokesperson Mohamed Salmawy told reporters the Committee had voted to strengthen the President if he is against Parliament in appointing a Prime Minister. The largest bloc in parliament would get one chance at choosing a candidate for Prime Minister, but if it fails to win parliamentary approval, the President appoints a Prime Minister. If parliament does not approve of the President’s appointment, the President

⁴² The Carnegie Endowment for International Peace, *Full Text of the July 2013 Egyptian Constitutional Declaration*, available at: <http://egyptelections.carnegieendowment.org/2013/07/15/full-text-of-the-july-2013-egyptian-constitutional-declaration>.

may disband parliament.⁴³ The draft constitution is expected to be ready by December 3, 2013, and the public referendum would be held in late December 2013 or early January 2014, followed by legislative elections, and then presidential elections will be held on an as yet undetermined date in the summer of 2014, according to government spokesperson Mostafa Hegazy.⁴⁴

39. Why the US accepted without question that this “roadmap” is indeed a roadmap to secular democracy is difficult to understand, since it is essentially a process which does not address substance. The New York Times, in an editorial titled Mr. Kerry Fumbles in Egypt, is quoted as saying, “the roadmap is being carried out to the best of our perception.”⁴⁵ One is at a loss to understand whether the US simply accepts this process-oriented roadmap to have sufficient substance so as to be considered as leading to some type of democracy or whether those who advised Secretary Kerry simply did not understand the difference between process and substance. Alternatively, of course, as the conspiracy theorists in Egypt and elsewhere would say, the US and Secretary Kerry understood very well that the process was not necessarily leading to democracy, but to the short-term consolidation of the military in the hope that in the medium term, namely after a few years of stability, Egypt, with the support of the military, could take another step towards democracy. Such an approach is not necessarily undesirable; like any people who have lived for 60 years under an authoritarian regime, Egyptians need time to learn the processes of democracy.

40. In the wake of steps taken by the US against the military-backed regime in Egypt, the Russian Foreign and Defense Ministers made a landmark visit to Egypt on November 14 for discussions of “military and technical cooperation,” which could possibly include arms supplies to replace the U.S. and also the possibility of using a port on the Mediterranean Sea. This was the first time in over 50 years that such a high-level meeting between Russian and Egyptian Foreign and Defense Ministers took place. This came as Russian warship docked at an Egyptian base in the Red Sea, after the flagship of Russia’s Pacific Fleet, the *Varyag* missile cruiser, docked at the Mediterranean port of Alexandria, which is also unprecedented in the past 50 years.⁴⁶ These may be initial steps in the eventual negotiation of arrangements between Russia and Egypt for the Russian fleet to have access to Egyptian ports on either the Mediterranean or the Red Sea, as they used to have in the years between 1956 and 1971. This would be an important strategic goal for Russia, particularly in the event that the situation in Syria continues to deteriorate, and the arrangements between Syria and Russia on having the Russian fleet pointing in Syria on the Mediterranean. This could be the golden opportunity that Russia has been waiting for, much like what the Soviet Union did in 1956, when the U.S. Secretary of State John Foster Dulles announced he would withdraw funding for the Aswan dam, causing Egypt to turn to the Soviet

⁴³ ABC News, *Egypt’s Constituent Panel Empowers President*, November 11, 2013, available at: <http://abcnews.go.com/International/wireStory/egypt-drive-shooting-kills-soldiers-20847736>.

⁴⁴ Ahram Online, *Egypt presidential advisor affirms commitment to roadmap*, November 11, 2013, available at: <http://english.ahram.org.eg/NewsContent/1/64/86194/Egypt/Politics-/Egypt-presidential-advisor-affirms-commitment-to-r.aspx>.

⁴⁵ New York Times, *Editorial: Mr. Kerry Fumbles in Egypt*, November 3, 2013, available at: http://www.nytimes.com/2013/11/05/opinion/mr-kerry-fumbles-in-egypt.html?_r=0.

⁴⁶ Washington Post, *Egypt hosts top Russian officials, a sign it is turning further away from alliance with U.S.*, November 14, 2013, available at: http://www.washingtonpost.com/world/middle_east/egypt-hosts-top-russian-officials-a-sign-it-is-turning-further-away-from-alliance-with-us/2013/11/14/192c605c-4d35-11e3-9890-a1e0997fb0c0_story.html.

Union for assistance. Subsequently, Egypt remained the Soviet Union's ally until 1972 when the late President ousted all Russian military and technical personnel from Egypt before embarking on the 1973 war with Israel. Surely the Obama administration is mindful of this historic lesson.

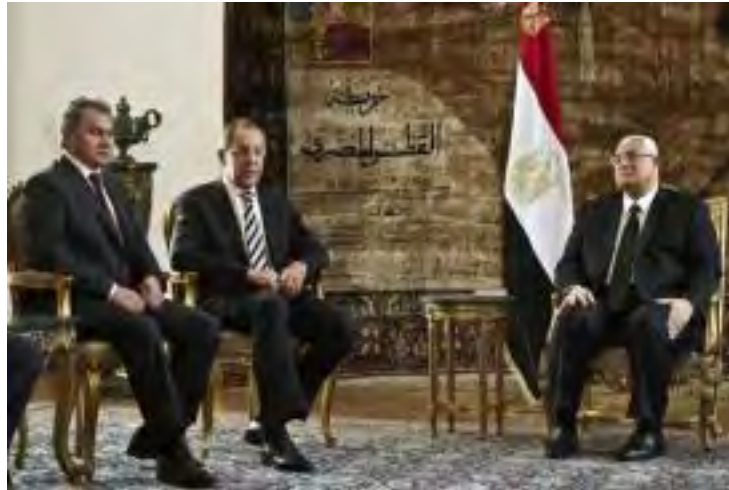


Figure 6 Egypt's temporary president Adly Mansour holds talks with Russian Foreign Minister Sergey Lavrov and Russian Defense Minister Sergei Shoigu in Cairo on November 14, 2013 (Photo credit AFP, Khaled Desouki)

VI. Conclusion

41. There is no doubt that Egyptians, for the last 60 years, have not lived in a free and democratic society. The successive Nasser, Sadat and Mubarak regimes have provided some freedoms, particularly during the Mubarak regime, under which there was substantial freedom of expression and speech. There was also a rising civil society which had started to engage in democratic processes, and succeeding governments under Mubarak were more attentive to public opinion. Even though this was a political trade-off that allowed the Mubarak oligarchy to profit from Egypt's economy, it was a phenomenon that spurred the long-time simmering desire for freedom and democracy. But there was not a historic practice in which accumulated experience could be said to strengthen democratic processes whenever these would come into place. As all democratic societies have learned, the processes and dynamics necessary to make a democracy function rests on a number of factors, which derive from experience, reflecting some degree of rationality in the political discourse, respect for opposing views, and maintaining civil discourse. These and other social characteristics cannot be taken for granted in any society, even though they are stronger in those societies with greater homogeneity than those with wider disparities in their social strata.

42. Egyptians, since the 1919 Revolution, have preserved a sense of national identity, and they have strived to achieve first independence from colonial rule, then freedom from an oppressive and corrupt monarchy, only to find themselves dominated by a military autocracy which soon transformed itself into a corrupt one. Egyptian social values ultimately prevailed in the January 25, 2011 Revolution, but as stated above and throughout previous Updates, the popular revolutionary movements that brought about the demise of the Mubarak regime were disorganized. More importantly, they were incapable of organizing themselves subsequently. This left a power vacuum that was in part filled by the military, but also, by the two main

Islamist movements, the MB and the Salafists. The sheer number of supporters of these latter groups led the military, by the end of 2011, to the conclusion that free and fair elections, no matter what their outcomes, would be better than the imposition of military rule. And, they were correct, though in this writer's estimate, they were too hasty in allowing the legislative and presidential elections to take place at a time when it was clear that the secular democratic forces were disorganized, while the Islamists were organized. Another major tactical mistake by the SCAF was to allow the legislative elections of 2011-2012 to precede the drafting of a constitution, thus leading to the inevitable outcome of the MB winning the legislative elections, and drafting the 2012 Constitution as they wanted, and also leaving the presidential elections to be after the legislative ones. In that way, the Islamist legislative majority, which was highly predictable, provided the support for the election of an MB president. And, in turn, the MB President used his powers under the 1971 Constitution, as well as his own presidential decrees, to protect the legislative actions of the MB-dominated legislature. The military learned that lesson on July 3, 2013, after deposing and arresting the elected President, after which they proceeded to redraft the 2012 Constitution before going on to legislative elections, and then presidential ones, as stipulated in the roadmap outlined in the July 3 Constitution Declaration.⁴⁷ This series of events evidenced without question that the secular democratic forces were not organized and were not capable of organizing themselves to win either legislative or presidential elections. It also showed that the *fulool* (remnants of the Mubarak regime) were still exercising a great deal of influence that appeared to be supported by the SCAF, that the military was hostile to the Islamists, and that the Egyptian voter in general did not have a civic background strong enough to make him/her an effective participant in the evolving dynamic situation that existed. As a result, the MB dominated. But they also revealed the weaknesses of their system, which is understandable in an organization whose last 80 years or so was mainly concerned with survival, both political as well as the survival of their own members, and who never had an opportunity to work out in the open. They were ill-equipped in their way of thinking, and their leadership simply lacked the capacity and the competencies to carry out the functions of government. It did not help that the remnants of the Mubarak regime and the secular democrats were mostly negative to them and did not make their task easier. The MB's response was to turn more towards a future theocracy with a clear indication that democracy, as most Egyptians wanted, would not be achieved. The democratic movement lacked not only unity but leadership. The public discourse was more about personalities than programs, and the military was more concerned about securing their continued autonomy from the executive branch, and the control

⁴⁷ The Carnegie Endowment for International Peace, *Full Text of the July 2013 Egyptian Constitutional Declaration*, available at: <http://egyptelections.carnegieendowment.org/2013/07/15/full-text-of-the-july-2013-egyptian-constitutional-declaration>.

of their military-industrial complex without accountability (see Update 19 for an in-depth discussion of Egypt's Military-Industrial Complex). During the year 2012 and the beginning of 2013, one heard very little in the public discourse about Egyptian unity and a course towards democracy and freedom. One heard much less about social and economic problems that needed to be resolved, and which, since January 2011, had not only accumulated, but also increased significantly. As the economy weakened with strong impact on a large segment of society, and security failed as crime increased, it was inevitable that people would react as they did on June 30, 2013 and ask for military intervention, preferring to give up, at least in the immediate, the hopes for democracy and freedom in exchange for peace and stability.

43. But as the roadmap is reaching the stage of legislative elections and eventually presidential elections, it is clear that the Egyptian electorate will be no more ready in early 2014 than it was in late 2011. But this time, security forces and the military are ensuring through the repression of the MB that the latter highly organized group will not be likely to secure more than a small percentage of the seats in the People's Assembly, and will also not be able to elect a President.

44. Essentially, not much has changed in terms of progress towards democracy. The difference is that the political weight of the MB was dominant in 2011 up to June 2013, and now it is the military establishment, the remnants of the Mubarak regime and a larger portion of the Egyptian population who support them in opposition to the MB. But, as in all elections, outcomes, at least if they are fair, are difficult to predict. What can be expected is that a larger number of pro-democracy, as well as secular democracy candidates will be elected to the legislature in the 2014 legislative elections, and this is likely to influence the selection of the next President.

45. Notwithstanding the above, substantive social, economic and political problems faced by the country will need to be addressed, and the sooner the better. That will require a significant focus of attention on a national strategy whose success will depend on the degree of unity that will need to be evidenced in the new parliament, as well as in the relationship between that parliament, the presidency, and the military. This is where the Egyptian people will have to learn how to exercise respect for opposing views, acceptance of majority decisions, and exercising political and social discourse in a civil and constructive way. All of this is necessarily based on a culture of respect for one another, which is the foundation of human rights. The primary values of individual and collective human rights exercised and protected within the rule of law



Figure 7 An Egyptian woman kisses a poster of General Abdel Fattah al-Sisi as she arrives in Cairo's Tahrir Square on October 6, 2013 (Photo credit AFP File, Khaled Desouki).

will be indispensable to the future of Egypt. And while there is much demand for that, whether it can be achieved through these new institutional processes is yet to be determined.

Appendix

46. Excerpts from a *Joint Submission to the Committee on Economic, Social and Cultural Rights*⁴⁸

The Political Situation

“Egypt has witnessed a period of immense political upheaval over the past three years. On January 25, 2011, Egyptians joined the wave of so-called Arab Spring uprisings against autocratic regimes and socio-economic injustices. Millions of protestors all over Egypt demanded their political, civil, as well as social and economic freedoms. Although the motto of the Egyptian Revolution was “Bread, Freedom, Social Justice,” successive transitional governments have failed to realize any notable improvement in the livelihoods of the citizens; the cycle of protests and demonstrations has continued as the people vent their disappointment and frustration.

The country’s worsening political turmoil has been a major challenge facing Egypt in realizing the social and economic demands of the Egyptian people. Since January 2011, legislative power has shifted six times. With the fall of ex-president Mubarak, parliament was dissolved and legislative authority shifted to the Supreme Council of the Armed Forces (SCAF) which ran the country during this first transitional period. In November 2011, parliamentary elections were finally held and legislative authority shifted from the SCAF and to the lower house of parliament. However, in June 2012 the Supreme Constitutional Court (SCC) declared that the electoral law, under which the parliamentary elections were held, was invalid. Thus, parliament was dissolved and legislative authority returned to the SCAF. In June 2012, Mohammad Morsi became the first democratically elected president of Egypt. He assumed legislative power in August 2012, until December 2012 when it shifted to the Shura Council, the upper house of parliament. After the fall of Mohammed Morsi on 3 July 2013, the Shura Council was dissolved and legislative power shifted to Adly Mansour, as President of the interim administration. Morsi’s year in power saw an increasing number of protests. One group of opposition activists launched an anti-Morsi signature campaign called “*Tamarrod*” (Rebellion), collecting 22 million signatures on a petition opposing him and calling for early presidential elections. The campaign also called for nationwide demonstrations to mark Morsi’s first anniversary in office and millions took to the streets on June 30, 2013. After giving 48-hours notice to reach an agreement, the Minister of Defense and Commander-in-Chief of the Egyptian Armed Forces, General Abdel Fatah Al-Sissi, issued an official statement on July 3 ousting President Morsi. The statement also set out a “road-map”, which included appointing the Head of the Supreme Constitutional Court, Adly Mansour, as acting president. In this transitional period, legislative power moves from the Shura Council to the acting president, until the lower house of parliament is elected.

⁴⁸ The Center for Economic and Social Rights, *Joint Submission to the Committee on Economic, Social and Cultural Rights On the occasion of the review of Egypt’s 4th periodic report at the 51st Session*, November 2013, available at: https://cesr.rdssecure.org/downloads/Egypt_CESCR_Joint_report_English.pdf.

The removal of Mohammed Morsi exacerbated Egypt's political turmoil. Many pro-Morsi protests broke out after July 3, resulting in many violent clashes between protestors on the one hand, the army and the police on the other. These clashes escalated when Egyptian security forces used force to disperse pro-Morsi sit-ins on August 14, which left hundreds dead and thousands more injured. In response, members and supporters of the Muslim Brotherhood attempted to storm several government facilities and police stations, resulting in some officers being killed. There were also reported attacks against churches in Upper Egypt and Sinai, several of which were torched and destroyed.⁴⁹ The interim administration has declared a state of emergency, imposing a curfew in Cairo and several other cities.

Despite the ongoing clashes, the interim administration seems determined to move forward with the road map without delay articulating that the controversial dispersal of the pro-Morsi sit-ins were “necessary and inevitable” as they hindered the progress of the political roadmap.⁵⁰ In light of such a tumultuous political situation, it has proven difficult for the state to take any strong action to improve social, economic, and cultural rights in Egypt, for example by repealing unfair laws and enacting legislation to protect the basic social and economic entitlements of the people. At the same time, the failure of any administration to address the root causes of the 2011 revolution is what is exacerbating instability. In this stalemate, the cleft between the people and their concerns and the political elites and their priorities continues to grow.

While acknowledging that political instability can pose great challenges to the State party's ability to fulfill its obligations under the Covenant, the State party has the primary responsibility to protect its citizens with respect to the rule of law and human rights. The state party should provide for an inclusive reconciliation process as part of the transitional road map, aimed at reaching a genuine political consensus in order to achieve political stability and allow for the effective fulfillment of rights.”⁵¹

...

“Egypt has a weak legal framework for human rights protection

Egypt signed and ratified the International Covenant on Economic, Social and Cultural Rights in 1982. However, it has not effectively translated the provisions of the Covenant into domestic legislation, nor has it indicated any intention to ratify the Optional Protocol to the Covenant. In the absence of robust domestic laws protecting human rights, and without genuine commitment to respect human rights, many laws were passed that had negative impacts on human rights. The political instability, discussed above, has hindered efforts to improve the legal framework in a way to protect the rights of the Egyptian people.”⁵²

...

⁴⁹ Egyptian Initiative for Personal Rights (EIPR) and others, ‘Non-peaceful assembly does not justify collective punishment’, *Joint Press Release* (August 15, 2013).

⁵⁰ ‘Pro-Morsi sit-ins were obstacles to roadmap: Egypt's PM’, *Ahram Online* (August 28, 2013).

⁵¹ The Center for Economic and Social Rights, *Joint Submission to the Committee on Economic, Social and Cultural Rights On the occasion of the review of Egypt's 4th periodic report at the 51st Session*, p. 3-4.

⁵² The Center for Economic and Social Rights, *Joint Submission to the Committee on Economic, Social and Cultural Rights On the occasion of the review of Egypt's 4th periodic report at the 51st Session*, p. 6.

“The lack of transparency and accountability in decision-making was also clear in the “selective” approach successive administrations have demonstrated towards civil society. Under the former regime and during the tenure of the Supreme Council for the Armed Forces (SCAF) following the revolution in 2011, decision-makers in Egypt commonly excluded human rights groups from discussions about pressing issues and political decisions. But the fact that the marginalization of civil society continued following the election of the first post-revolution president came as a surprise to many groups. The most important example of the ongoing marginalization of civil society and political parties is the first 2012 constitution, which was drafted exclusively by members of the ruling Freedom and Justice party. This resulted in a constitution full of shortcomings, which violated the rights of citizens in many cases. Other examples include the complementary constitutional declaration issued by President Morsi. This could be considered a violation of Article 13 of the United Nations Convention Against Corruption, ratified by Egypt in 2005, which stipulates a major role for civil society and NGOs in ensuring accountability.

The continued lack of inclusion in decision-making processes and the restrictions on channels for meaningful participation and voice meant that the two years and a half following the Egyptian Revolution witnessed an unprecedented number of social protests. In 2012, almost 4000 social protests occurred, which is almost double the number of protests witnessed in 2011. Of these, 2757 occurred after electing Morsi in June. The number of protests continued to increase, reaching 5094 social protests in the first half of 2013 alone.⁵³ All of these protests were calling for basic social rights, such as access to clean drinking water, access to electricity, good-quality education, better health services, better wages and salaries, and many other entitlements.

The response of successive administrations towards the different protestors and striking workers reflected a continuation of the Mubarak regime’s policies of repression, on the one hand, and ignoring the popular demands of the people, on the other. It is worth noting that the transfer of power since the January Revolution demonstrated the degree to which successive authorities were similar to Mubarak's regime, especially in relation to the lack of respect of human rights and the state's neglect of its role in protecting its citizens, especially protecting their access to economic and social rights. For instance, more than 200 protesting workers were arbitrarily fired during the first three months after President Morsi came into power and more than one hundred workers were detained after they were arrested while demonstrating peacefully.⁵⁴ Notably, aggression and arbitrariness towards workers’ protests, whether from the state security apparatus or employers, continues under the interim administration. The use of violence in dispersing strikers at the Suez Steel Company in August 2013 and other incidents, resulting in many injuries among workers, indicate that the interim administration has continued with the violent, repressive methods of prior governments and continues to disregard the essential elements of establishing a robust rights regime, such as transparency, accountability and to deny essential rights such as the right to peaceful assembly. Employers and businessmen also bear responsibility for the repression of those involved in protests. Protesters reportedly faced "dismissal, suspension, transfers outside or inside headquarters,

⁵³ ECESR, ‘Protest Mapping Database’, online at <http://esep.info/node/646> [Arabic only].

⁵⁴ CTUWS, ‘The Condition of Egyptian Workers one year after the Brotherhood’s rule: One year of Trade Union Freedom Violations During Morsi’s Regime’ (September 25, 2013).

detention, beatings and lynching, pay cuts, investigation by administrative or general prosecution, threats and terror, assault by thugs at the incitement of business owners, and threatening or actually closing down companies.”⁵⁵ The redrafting of the constitution is one essential area for open and accountable decision-making. However, the process has been neither transparent nor inclusive. The expert panel which was mandated with amending the 2012 constitution did not include representatives from lawyers’ associations or human rights organizations. Additionally, the meetings it held were not open to the public or CSOs, and no external contributions were accepted. While the 50-person panel purports to represent all the different sectors of society, religion, professions and living standards, no criteria for choosing its members were set, other than the specification that it include no less than 10 women and youth.

The current situation in Egypt speaks to the interim administration’s exclusionary and intolerant attitude towards opposition parties and the Muslim Brotherhood and Islamists in particular. Policies that hindered genuine participation and increased polarization were among the factors contributing to the Morsi government’s unpopularity. They will continue to hinder political stability in Egypt unless genuine, inclusive participation and reconciliation are sought between different parties.”⁵⁶

...

“Women’s rights activists and women human rights defenders have increasingly been victims of rape, sexual assault and abduction, especially after February 2011.”⁵⁷ The State party has persistently failed to prosecute perpetrators of these crimes. For example:

Various human rights organizations documented serious violations against women human rights defenders while SCAF was in power, most notably the virginity tests conducted in March 2011 and the violent attacks on female protestors in December 2011.⁵⁸ All crimes related to the armed forces and its members fall within the jurisdiction of the military courts.⁵⁹ Accordingly, in October 2012 the prosecutor-general forwarded all complaints⁶⁰ filed against Field Marshall Hussein Tantawi and Sami Anan, Chief of Staff of the Egyptian Army, and any former members of the SCAF to the jurisdiction of the military courts. However, there have been no known proceedings against Tantawi or Anan. The lack of independence and lack of transparency in the military judicial system fosters impunity for human rights violations committed by military personnel.

⁵⁵ G. Wael, ‘Ordinary Fols versus Politicians’, *Ahram Online* (February 7, 2013).

⁵⁶ The Center for Economic and Social Rights, *Joint Submission to the Committee on Economic, Social and Cultural Rights On the occasion of the review of Egypt’s 4th periodic report at the 51st Session*, p. 9-10.

⁵⁷ Nazra for Feminist Studies, ‘The President, his Group, and the Government Must Cease their Policy of Targeting Female Activists and Excluding Women from the Public Sphere’, *Joint Statement* (December 2012).

⁵⁸ For more information on violations under the SCAF’s rule, see Nazra for Feminist Studies, ‘Year of Impunity: violations committed against human rights defenders in Egypt from August to December 2011’ (September 2012).

⁵⁹ This continues to be the case under Article 19 of the 2013 constitutional decree.

⁶⁰ The complaints against Tantawi and Anan are for their responsibility, as leaders of the ruling SCAF, for the killing of hundreds of protesters during the transitional period between the ouster of Mubarak in February 2011 and the election of Mohamed Morsi in June 2012.

On December 5, 2012, El-Ethadiyya Palace (the presidential palace) witnessed violent clashes. President Morsi's supporters targeted female activists, who were sexually harassed.⁶¹ The day before the protests, Dr. Hisham Qandil, Egypt's Prime Minister at the time, stated the protestors at El-Ethadiyya Palace "are responsible for protecting themselves".⁶²

During the demonstrations on January 25, 2013, assaults on women human rights defenders and women generally reached an unprecedented level. Nineteen cases of gang rape were reported in Tahrir Square and its surroundings, including two cases of rape using sharp tools.⁶³ The authorities' only reaction was a statement by the Human Rights Committee of the Shura Council, which condemned the women for "choosing to go to areas where there is a lot of prostitution."⁶⁴ It is noteworthy that the Shura Council was in control of legislative authority at the time, which makes such statements even more alarming.

The attacks against women human rights defenders and women in general reached unprecedented levels in mid 2013; 186 cases of sexual assault, including some cases of rape with sharp objects, were registered in Tahrir Square alone between June 28 and July 7, 2013. The assaults reached a peak on June 30, witnessing 46 cases, and the night of 3 July and early morning of 4 July, with 80 cases. The Muslim Brotherhood blamed the women for their own assaults and made comparison between the protest in Tahrir Square calling for the overthrow of the Muslim Brotherhood regime and the pro-Muslim Brotherhood protest in Rabaa al-Adawiya Square, in an attempt to defame the Tahrir protestors, instead of calling on the state to carry out its responsibility in addressing those attacks.⁶⁵

In its continued inaction, the State party has clearly abandoned its commitment to protect women from assault. This amounts to complicity in targeting female demonstrators, in order to intimidate women from protesting. On March 24, 2013, following the rape and sexual assaults cases that occurred in Tahrir Square on the second anniversary of the revolution, the Morsi government formed an initiative to support Egyptian women's rights and freedoms. The initiative discussed issues including sexual harassment and women's social and economic rights.⁶⁶ However, the initiative did not produce any positive results, as the recommendations that have been announced were vague and non-binding, using restrictive terms, and focusing on Egyptian "cultural specificity" without defining what it is.

In May 2013, a new unit was established to combat crimes of violence against women, which includes women psychologists, psychiatrists, neurologists, and police officers. However, the mechanics of this unit are still unknown. During the signing of the protocol with the National Council of Women, Ambassador Mervat Tellawi stated that security is not just the

⁶¹ Nazra for Feminist Studies, *Joint Statement*, above n 30.

⁶² S. Surour, 'Qandil: Itihadeya Protestors Responsible for own safety, there will be no dictator in Egypt', *Al-Masry Al-Youm* (December 4, 2012) [Arabic only].

⁶³ Nazra for Feminist Studies, 'Sexual Violence against women and the high rates of mass rape in Tahrir Square and surrounding areas', *Research Paper* (February 4, 2013). Available at: <http://nazra.org/node/196> [Arabic only].

⁶⁴ M. Gharib, 'Human Rights in the Shura Council: females participating in demonstrations contribute 100% to their rape', *AlMasry AlYoun* (July 11, 2013). Available at: <http://www.almasryalyoum.com/node/1463626> [Arabic only].

⁶⁵ Nazra for Feminist Studies, 'Brutal Sexual Assaults in the Vicinity of Tahrir Square and an Unprecedentedly Shameful Reaction from the Egyptian Authorities', *Joint Statement* (July 3, 2013).

⁶⁶ A. Anwar, 'Egyptian President's Morsi Initiative to Support Women's Rights', *Washington Times Communities* (April 8, 2013).

responsibility of the Ministry of Interior, which indicates a continuing pattern of the state downplaying its responsibility in addressing crimes of violence against women.

The State party must take steps to prosecute individuals responsible for harassing and assaulting women protesters and women human rights defenders.

The State party should introduce further legislative amendments to eliminate all forms of discrimination and violence against women in private as well as in public spheres. It should adopt temporary special measures aimed at reducing the wage gap between men and women. The State party should take more stringent and effective legal and practical measures, including through the use of the media and education, to address the historical discrimination and inequality, cultural barriers and patriarchal attitudes in order to counter inequality between the sexes and discrimination and violence against women.”⁶⁷

...

“In 2013 the Shura Council revised Law 84/2002 on the regulation of non-governmental organizations, despite strong opposition. However, with the shift of legislative power from the Shura Council to the interim administration, the status of the law remains unknown. The draft law severely constrains the activities of civil society organizations and gives a great deal of power to the government in monitoring and restricting the activity of CSOs when it sees fit.”⁶⁸ In June 2013, 43 civil society workers were arrested and four non-governmental organizations were closed based on allegations they used foreign funds without a license. This crackdown reflects a trend of narrowing the space of engagement for CSOs.

On a similar note, Law no. 35 of 1967, which regulates syndicate activity, has seen many attempts for reform in the past couple of years. This law was previously criticized by independent syndicates and trade unions for giving too much power to the government in regulating and controlling independent syndicates. After a series of failed attempts to amend it, the former Minister of Manpower and Immigration made unilateral decisions to amend the law. However, he added a number of clauses that further stifle syndicate activity; including a condition that syndicates must be officially registered with the Ministry, which means that the 1000+ independent syndicates that have been formed since the revolution will not be legally entitled to the rights of syndicates which are registered with the Ministry.⁶⁹

Additionally, Law 34/2011 criminalizes participating in a strike or any activity that can delay or stop work during times of "emergency". In November 2012, President Morsi enacted Law No. 96/2012 for “the protection of the revolution”, which rearticulated that emergency law will apply to cases of “attack on the right to work”.⁷⁰ While the status of Law 96/2012 remains unclear, the current legislative framework remains short of protecting the right to

⁶⁷ The Center for Economic and Social Rights, *Joint Submission to the Committee on Economic, Social and Cultural Rights On the occasion of the review of Egypt's 4th periodic report at the 51st Session*, p. 15-16.

⁶⁸ Human Rights Watch, ‘Egypt: New Draft Law an Assault on Independent Groups’, *Statement* (May 30, 2013).

⁶⁹ N. Rafaat, ‘The Independents Open Fire on Al-Azhary’, *Al-Ahram Masaay* (October 28, 2012). Available at: <http://digital.ahram.org.eg/articles.aspx?Serial=1077523&eid=1953> [Arabic only].

⁷⁰ CTUWS, ‘The Condition of Egyptian Workers one year after’, above n 17.

strike, with Law 34/2011 remaining in power at times of emergency.⁷¹ It is noteworthy that the Emergency Law was activated in August 2013, following the dispersal of the Pro-Morsi sit-ins. This means that whichever institution has legislative powers still retains the right to activate the Emergency Law when it sees fit, which in turn threatens the right to strike.”⁷²

Economic Conditions

“Egypt’s economic crisis is worsening existing patterns of poverty and inequality

Egypt is facing a severe economic crisis. After an extended period of slow growth, the country’s political turmoil has resulted in a steep drop in foreign investment and tourism, compounded by the enduring economic crisis in Egypt’s Southern European export markets. Capital flight has soared, with an estimated \$5bn leaving the country in 2012.⁷³ By July 2013, the Egyptian pound had lost more than 12% of its value, a record low since 2004, while Egypt’s foreign currency reserves in turn dropped from \$36bn in January 2011 to \$14.4bn in April 2013, below the “critical level” set by the Central Bank of Egypt at \$15bn.⁷⁴ Unsurprisingly, the budget deficit in Egypt continued to increase from 10.8% of GDP in 2012 to 11.5% in 2013.⁷⁵ This is just the latest illustration of growing public financing woes which are aggravated by volatile prices in the global food market, especially in wheat, of which Egypt is the world’s top importer.⁷⁶

The economic crisis hits an already vulnerable population. According to the Central Agency for Public Mobilization and Statistics (CAPMAS), a quarter of the population (25.2%) lived in poverty in 2010/11, an increase from approximately 20% in 2008/2009. The poverty rate in rural areas, where over half the population lives, is even higher; figures from 2010/11 indicate that 34.2% of the rural population lives in poverty, compared to 30% in 2008/9. In Upper Egypt, the percentage is even higher, with around half the rural population living in poverty. The real growth rates the country experienced throughout the 2000s, for example, did not translate into increased per capita consumption, which has stagnated or declined, according to UNDP data. According to UNICEF, 23% percent of children under age 15 years in Egypt were living in income poverty in 2009, a rate higher than 1996 levels. Poverty among children is concentrated in rural areas and is higher in Upper Egypt. Children living in rural Upper Egypt are most vulnerable to income poverty—in 2009 the poverty rate among these children was 45.3%, twice that of urban households (at 21%). This is in comparison to poverty rates of 7.9% percent in urban households with children and 17.6% for rural

⁷¹ CTUWS, ‘Egyptian Draft constitution: a step forward, a step backwards’ (26 August 2013). Available at: <http://www.ctuws.com/default.aspx?item=1300> [Arabic only].

⁷² The Center for Economic and Social Rights, *Joint Submission to the Committee on Economic, Social and Cultural Rights On the occasion of the review of Egypt’s 4th periodic report at the 51st Session*, p. 17.

⁷³ EIPR, ‘The Illusion Dispelled: Egypt’s Economic Crisis – causes, alternatives, remedies’ (May 2013), at p 2.

⁷⁴ ‘Egypt pound strengthens at central bank currency sale’, *Ahram Online* (July 8, 2013).

⁷⁵ ‘Investment Minister: Budget deficit 11.5% of GDP for the 2012-2013 fiscal year’, *Daily News Egypt* (May 11, 2013).

⁷⁶ ‘Egypt Weighs Burden of IMF Austerity’, *Financial Times* (March 11, 2013).

households with child in Lower Egypt.⁷⁷ Similarly, CAPMAS statistics from 2012 showed that 27% of youth aged 18-29 are poor, while another 24.3% are close to the poverty line.

The effects on Egypt's poor can be seen in the soaring cost of living that has resulted from the Egyptian Pound's devaluation; consumer prices for food and beverages increased by 13.9% between July 2012 and July 2013, for example (CAMPAS). The Egyptian Food Observatory, a quarterly survey of approximately 1500 vulnerable households, indicated that respondents spent an average of 66.1% on food and beverages, compared to 40.6% in an average household in early 2013.⁷⁸ The percentage of vulnerable households that claim that their income does not cover their monthly expenditures increased from 78.9% in September 2011, to 86% in September 2012, and to 88.9% in March 2013.

The State party should strengthen its efforts to combat poverty and social exclusion, particularly among children. The state party is obligated, even under severe resource constraints, to protect vulnerable groups of society, as stated in paragraph 12 of the Committee's general comment No.3 (1990).⁷⁹

...

“Conditionality of assistance skews policy priorities

In the absence of political consensus on how best to reform the economy, to date “quick fix” measures to prop up the economy through international assistance have been prioritized. It is well-known that the neoliberal economic reforms pursued by the Mubarak regime over the past three decades, which came hand in hand with cronyism and corruption to the benefit of a small elite, were promoted through the conditional assistance provided by the International Monetary Fund and other international financial institutions.⁸⁰ In light of this, the successive administrations' willingness to follow the recommendations of international financial institutions to continue to pursue austerity measures based on a minimal government role in the provision of services—despite such resounding demands for social justice during the 2011 revolution—surprised and angered many sectors of the Egyptian people.

Egypt has been negotiating for a \$4.8bn loan with the International Monetary Fund (IMF), on-and-off since May 2011. The objective of this loan is to lessen the state's budget deficit and facilitate a significant inflow of foreign loans and direct investment from bilateral and multilateral partners. The loan will be conditional on reforms to the state's subsidies and taxation policies. Specifically, the IMF has asked the government to decrease expensive subsidies on fuel (which exceeded \$17.2bn in 2012/2013, a fifth of budget expenditures) and food, and to increase state revenue through tax reforms.

⁷⁷ UNICEF, *Child Poverty and Disparities in Egypt: building the social infrastructure for Egypt's future* (February 2010), at p.11.

⁷⁸ Vulnerable Households are determined according to the HIECS. Families are excluded if the head or member of the household is in private school; works in or is a contractor to the public sector or in the contractors sectors; owns agricultural holdings has an income or expenditure value of over 300 EGP (i.e. per capita).

⁷⁹ The Center for Economic and Social Rights, *Joint Submission to the Committee on Economic, Social and Cultural Rights On the occasion of the review of Egypt's 4th periodic report at the 51st Session*, p. 4-5.

⁸⁰ M. Amin et al, *After the Spring: economic transitions in the Arab World* (2012), p. 38.

The State party's major policy changes have targeted these two key sectors in response. However, the reforms in these sectors were planned in a regressive manner and continued to burden the poor and those with low incomes. The subsidy cuts, especially on food, fuel and electricity, as well as the tax reforms aimed at collecting more revenue through indirect taxation on goods and commodities by introducing a regressive VAT, have caused a lot of dissatisfaction on the ground, because of their negative impact on the livelihoods of the already impoverished population. Many of these reforms were passed during the year of Morsi's rule, most importantly the increase in electricity and gas prices for household use;⁸¹ several others are planned and expected to be passed in the coming year, primarily related to removing fuel subsidies. Although the interim administration has not indicated definitively whether it will continue to pursue the negotiations with the IMF, it seems likely, at some point, especially given the profile of key members of the administration's cabinet. The IMF Managing Director has reportedly declared the Fund's willingness to support Egypt, on condition that the interim administration gains international recognition, a goal they are progressively achieving through keeping on track with the political road map. In the meantime, loans from Saudi Arabia, Kuwait, and the United Arab Emirates reached up to \$12bn at the end of July 2013. The loans have been used to support the servicing of local and foreign debt and to combat the deficit in petroleum products.⁸²

There is a real risk that in the rush to secure international assistance to buttress dwindling reserves, policy makers in Egypt, donor countries including Kuwait, the IMF and the IMF members states (including Belgium, Austria and Norway) may pay insufficient attention or ignore the State party's Egyptian government's human rights obligations under the Covenant and the economic and social rights impacts on the welfare of a population already suffering from increasing levels of poverty, inequality and deprivation. Temporary measures to meet short-term deficit pressures may be prioritized over investments in the social and productive sectors of the economy that would help solve its structural deficiencies, preventing economic, social and cultural rights fulfillment.

5. The State party must respect its obligations in relation to economic, social and cultural rights when making decisions on offers of bilateral loans and official development assistance, including by international financial institutions.”⁸³

...

Corruption

“Impunity for corruption has been allowed

Corruption is deeply entwined in Egypt's governmental entities. Egypt ranked 118 out of a total of 176 countries on Transparency International's 2012 Corruption Perception Index. There is problematic culture of corruption in the country, at both a low-level and grand scale. Though there is little reliable data on the exact scope and scale of corruption in Egypt, most

⁸¹ M. Hussein, 'Egyptian households see energy prices increase', *Ahram Online* (March 31, 2013).

⁸² The Official Gazette, Issue No. 26 (*bis.*, B), 30 June 2013, 56th year, (issued July 20, 2013).

⁸³ The Center for Economic and Social Rights, *Joint Submission to the Committee on Economic, Social and Cultural Rights On the occasion of the review of Egypt's 4th periodic report at the 51st Session*, p. 7-8.

people perceive corruption to be widespread and part of daily life. In a 2009 public perception survey, corruption was associated with the discretionary use of authority by public officials, with local government cited as the most frequent demander of bribes. Interestingly, only 10% of individuals had direct experience with corruption, though people in urban areas had twice as much experience as those in rural areas.

Nevertheless, corruption presents a major obstacle to doing business in Egypt. Around 40% of small and medium enterprises surveyed in 2009 indicated that they have been obliged to offer illegal payments or gifts to obtain their business licenses. One third paid bribes during the course of the operation of their business. An overwhelming majority regarded such payments as something normal, ‘something everybody does’.

At a grand scale, the unregulated and non-transparent privatization process under the Mubarak regime fuelled systemic nepotism and corruption. High-ranking government members and the economic elite were enriched through a conflation of politics and business under the guise of privatization, which allowed them to purchase state-owned assets for much less than their market value, or monopolize rents from sources such as tourism and foreign aid.⁸⁴ A 2011 Global Financial Integrity report claimed that crime and corruption cost Egypt approximately US \$6bn annually and US \$57.2bn in total between 2000-2008. Much of this money was driven out by personal tax evasion, in addition to corruption and crime, the report noted.

Given the above, clear and well-delineated laws and regulations are imperative in encouraging people to resist corruption. Increased oversight is also important in preventing abuse of discretionary powers by government officials given the dominance of corruption within the public sector. Although Egypt has ratified relevant anti-corruption treaties, enacted laws and established anti-corruption bodies, according to a 2010 US State Department Report, these laws are not consistently and effectively implemented. The World Bank Worldwide Governance Indicators ranked Egypt in the bottom 30% of countries for its ability to control corruption in 2011. Worryingly, recent actions have further problematized anti-corruption efforts. Law No.4 of 2012 authorizes the General Authority for Free Zones and Investment (GAFI) to settle cases of investment fraud, theft and corruption outside the criminal court, nullifying criminal procedures against investors.⁸⁵ This law was passed under SCAF, and was not repealed by any of the successive legislative powers; including the Lower House of Parliament, President Morsi or the Shura Council.

The state party must intensify its efforts to fight corruption and ensure transparency among governmental agencies, with a view to preventing the diversion of public resources and bringing those responsible to justice. In particular the state party should repeal Law No.4 of 2012 and ensure the strict enforcement of anti-corruption laws.

⁸⁴ See e.g. M. Termini, ‘Mounting Scandals involving Mahmoud Moheidlin Betary Patter’, *Government Accountability Project Blog* (August 22, 2011).

⁸⁵ M. Hyde & N. Marroushi, ‘SCAF’s Investment Law Offers Impunity in Corruption Cases’, *Egypt Independent* (March 15, 2012).

It should address the glaring lack of data by making regular efforts to measure corruption and by imposing a positive obligation upon public bodies to provide, to publish and disseminate information about their policies, activities, and budgets.”⁸⁶

Food and Health Issues

“Food Security

Egypt is listed as one of FAO’s “Low-Income Food-Deficit Countries (LIFDC)” for 2013.⁸⁷ Relying on government data from 2009, the World Food Program (WFP) estimated that roughly a quarter of Egyptians are suffering from deficiencies in iron (21.6%), zinc (23%) and Vitamin A (26.5%). It has also calculated a child malnutrition index, based on data from the 2008 demographic health survey, which indicates that 16.4% of children in urban areas and 16.9% of children in rural areas suffer from malnutrition. A 2009 study by FAO showed that child malnutrition is very costly to the Egyptian Economy, reaching about EGP 20.3bn in health care, which is equal to 1.9% of the country’s GDP. The same study estimated that lost working hours due to malnutrition amounted to EGP 20.3bn in 2009, which was around 1.03% of the GDP in 2009. These rates are likely to be even higher now. An overwhelming majority (86%) of the most vulnerable households surveyed by the Egyptian Food Observatory in early 2013 indicated that they are unable to meet their food needs. In Qalyubia, Matrouh, and Cairo this figure is even higher: 100%, 98.7%, and 98.1% respectively.

State policies have exacerbated the food crisis in Egypt over the past 50 years. In particular, so-called agricultural restructuring from the late 1980s onwards led to the destruction of small-scale agriculture, employed by most peasants, in favor of intensive agriculture on a handful of large farms. First, the State party lifted subsidies on various agricultural materials, like seeds, fertilizers, pesticides, machinery, feed, and veterinary vaccines and serums. Second, it increased the cost of renting agricultural land, doubling land tax and raising interest rates on agricultural loans. The state also monopolized trade on farm products, such as crops, by the state and the private sector, in order to curb the prices of agricultural crops. This weakened peasants’ returns from farming to a level that is insufficient for a decent life and gainful employment, which prompted massive numbers of small farmers to sell their land and migrate from rural areas. The real impact of agrarian reform has been to turn vast tracts of agricultural land into property for development for investors. Specifically, the Law on Agricultural Rents (96/1992) raised the cost of renting agricultural lands to levels that forced many to retire from farming and ad-hoc courts were formed to force farmers to leave their land. The introduction of foreign companies to the agricultural sector has also brought many changes. These companies apply methods of mass agriculture. Chemical fertilizers and pesticides replaced organic means of agriculture and attempts to find water-saving, disease preventing, sustainable agriculture were ignored. Furthermore, projects aimed at the

⁸⁶ The Center for Economic and Social Rights, *Joint Submission to the Committee on Economic, Social and Cultural Rights On the occasion of the review of Egypt’s 4th periodic report at the 51st Session*, p. 10-12.

⁸⁷ Criteria for this classification include the net (i.e. gross imports less gross exports) food trade position of a country. Trade volumes for a broad basket of basic foodstuffs (cereals, roots and tubers, pulses, oilseeds and oils other than tree crop oils, meat and dairy products) are converted and aggregated by the calorie content of individual commodities.

reclamation of desert areas were neglected, and the few examples of land that actually was reclaimed were poorly distributed and mainly given to foreign investors and wealthy farmers.

Such policies have led to widespread deprivations of the right to food, mainly due to a lack of economic access. The spike in inflation in the past three years has had a hugely negative impact in this regard, given Egypt's reliance on imported food. The Egyptian Food Observatory reports that food and non-alcoholic beverage prices increased by 13.8% between June 2012 and June 2013, with particular spikes in prices for specific items such as vegetables (21.3%) and breads and cereals (16.3%). The 15.54% increase in the price of locally produced wheat is particularly notable, given the decline in imported wheat in the country. In 2010, Egypt imported 59.5% of its wheat; this decreased to 51.9% in 2011 and was expected to decrease to 35% in 2012-13.⁸⁸ While urban areas remain more expensive for the majority of crops (67.1% of urban prices are higher), the gap in prices is decreasing, a reflection of the removal of subsidies in rural areas. Although these statistics on the right to food are useful, they do not shed light on the root causes of the country's food crisis, nor the barriers to addressing it.

The government has traditionally kept food prices down through subsidies, which have accounted for 1–2% of GDP over the past decade (by comparison, fuel subsidies accounted for 5–7%). There are two components to Egypt's food subsidies. The first component is subsidized bread, which accounts for 61% of Egypt's food subsidies.⁸⁹ The entitlement to subsidized bread is not restricted and distribution takes place on a first-come-first-served basis. Specifically, state-sponsored bakeries had been provided with subsidized flour. However, in March 2013 the Morsi Government decided to cut flour subsidies, increasing the prices paid by bakeries for a 100-kilogram bag of flour from EGP 16 to EGP 286, i.e. around 18 times the original price. While the government promised to buy bread at production prices and to resell to consumers in need at subsidized prices, this plan risks making citizens' access to subsidized bread more limited and harder to regulate. There have already been bread shortages in several Egyptian governorates in 2012; many citizens are unable to access subsidized bread since state-sponsored bakeries "remain uncommon in many rural areas".⁹⁰

The second component is a system of ration cards that allow households to buy set quotas of commodities at subsidized prices from specific outlets. Approximately 80% of Egyptians benefit from these ration cards and they make up 39% of the country's food subsidies. However, there are concerns the ration card system suffers from poor and limited targeting; 73% of the households it covers are considered non-poor, while a fifth of the most vulnerable households are excluded.⁹¹ For example, in 10 of the governorates sampled by the Food Observatory, on average 23.3% of vulnerable households do not hold a ration card for subsidized food. These numbers are even higher in the governorates of the Red Sea (47%), Cairo (31%) and Alexandria (28%). The Observatory also indicates that quantities of

⁸⁸ 'Wheat Production in Egypt, realities and numbers: An Infographic', *Al-Masry Al-Youm* (May 23, 2013). Available at: <http://www.almasryalyoum.com/node/1773861> [Arabic Only].

⁸⁹ IFPRI, WFP and CAPMAS, 'Tackling Egypt's Rising Food Insecurity in a Time of Transition', *Policy Note* (May 2013), p.2.

⁹⁰ M. Hussein, 'Egypt Bakeries Protest Planned Reduction of Flour Subsidies', *Ahram Online* (March 17, 2013).

⁹¹ IFPRI, *Policy Note*, above n 71, at p.3.

rationed foodstuffs are insufficient for a large number of households and need to be supplemented.

The WFP estimates that removing food subsidies could push national poverty estimates from 25.2% percent to about 34%. It recommends instead increasing efficiencies in the subsidy system, which can lead to savings that could be invested in more targeted food security and nutrition interventions as well as job-creating initiatives in poorer areas.^{92,93}

...

“Egypt, like many developing countries faces a persistent though diminishing communicable disease burden and a large and rapidly growing non-communicable disease burden, including mental health-related diseases.⁹⁴ Although Egypt’s health indicators are on par with regional averages overall, there has been stagnation and backsliding in some. According to CAMPAS estimates, the country’s maternal mortality ratio increased from 39 deaths per 100,000 live births in 2009 to 46 in 2011, for example. In addition, large discrepancies between regions remain. The 2008 DHS showed that women in the Bani Swaif governorate were almost three times more likely to die during child birth compared to women in Kafr El Sheikh.

Egypt has a complex and fragmented healthcare system—involving many public, parastatal (quasi-governmental) and private providers and financers. As a result not all people receive care when they need it and coverage of some services is dropping. For example, World Bank data shows that the number of children receiving vaccination dropped from 96.7% in 2010 to 94.2% in 2011 and that Egypt has the lowest coverage of prenatal care among low-middle income countries in the region. Again, there are disparities; only 72% of rural women gave birth with the assistance of qualified health professionals compared to 90% of urban women, according to the 2008 DHS.

The distribution of healthcare services in Egypt is greatly imbalanced—between urban and rural areas, in particular, as well as between the north and south of the country—raising questions about the accessibility of services. Although more than half the population lives in rural areas, Ministry of Health data indicates that in 2008 only 3.6% of all health units were located there (3,164 compared to an estimated 87,000 in the country). There is also a large disparity in the distribution of human resources; only 19.6% of public sector physicians cover rural areas.

The health sector has also been subject to growing privatization. Public hospitals are struggling in the face of huge demand and the government’s failure to keep up with escalating costs, financial shortages, inefficient use of resources, and ineffective management. The poor quality of public hospitals, in turn, has led to a lack of public confidence with people turning to the private sector.⁹⁵ CAMPAS statistics indicate that in 2001 private health units constituted about 47% of units nationwide; this grew to more than 66% in 2011. This

⁹² Above, at p.4.

⁹³ The Center for Economic and Social Rights, *Joint Submission to the Committee on Economic, Social and Cultural Rights On the occasion of the review of Egypt’s 4th periodic report at the 51st Session*, p. 26-28.

⁹⁴ WHO, ‘Country Cooperation Strategy for WHO and Egypt: 2010 – 2014’ (2010), p.14.

⁹⁵ WHO, ‘Country Cooperation Strategy’, above n 97, at p.20.

has burdened Egyptians with more expenses and has also deprived services to those who cannot afford them. Spending on healthcare services by families, especially on medicines, reached 72% in 2008/2009, according to the National Health Accounts, rising from 62% in 2001/2002; the regional average is 45.4%. Of that 72%, 97.7% goes to direct out-of-pocket payments (the remaining 0.3% goes to private insurance premiums).

Healthcare costs have been further affected by rising inflation in the past two years. The health care price index increased 14.8% between July 2011 and July 2013. Price increases are expected to be even higher in rural areas, especially considering the limited accessibility of healthcare services and given the higher poverty rates among rural populations. This increase in the cost of healthcare services poses a threat to the right to health of many vulnerable families, who can no longer afford healthcare services. Similarly the cost of health care increased significantly as a percentage of family expenses, from 6.5% in 2008/2009 to 9.6% in 2010/2011, according to CAMPAS statistics.

According to the NHA, just over half of the population had health insurance in 2008, mostly through the government's Health Insurance Organization (HIO). Although this represents a gradual increase over the last decade, it is still well below regional norms; Tunisia (99%), Iran (98%), and Jordan (83%) all have significantly higher rates of health insurance coverage. Those without health insurance are largely workers in the informal sector, self-employed, farmers, rural residents, and women.

The latest proposal for a universal health insurance scheme, presented by the Ministry of Health to the Shura Council in the first quarter of 2013, continues to exclude workers in the informal sector.⁹⁶ The draft law has been criticized for many technical reasons regarding implementation and for its reliance on the collection of additional premiums from the population.⁹⁷ A committee for the new health insurance law has been recently created, with debatable results. There are no clear signs that this draft law will be enacted any time soon or that, if passed, it would be a genuine step forward towards achieving universal health coverage.

Nevertheless, even those who are insured rarely resort to the public sector when in need of healthcare services, particularly for outpatient services due to the poor quality of public hospitals in the country. Further, there are no complaints mechanisms for cases of clinical malpractice or infringements of patients' rights, with the exception of the general criminal proceedings and an informal medical ethics pact created by the Egyptian Medical Syndicate. Patients who attempt to litigate violations of their rights rarely achieve satisfactory outcomes.

The neglect of the public healthcare sector is clearly visible in the decrease of public spending on health, which dropped from 46% of total health expenditure in 1995, 42.2% in 2008 to 40.5% in 2011 according to CAPMAS. Egypt continues to spend less on healthcare compared to other countries of the same socioeconomic level and remains very far from the commitment made by African countries in the 2000 Abuja Declaration to allocate 15% of its annual budget, at least, to improve health. According to Egypt's National Health Accounts

⁹⁶ I. Abu Khatwa, 'New Health Insurance Law violates right to health and opens doors to corruption' (June 6, 2013).

⁹⁷ K. Ali-Hassan and I. al-Tayyeb, 'Shura Health: The Government did not Provide the Framework', *Al-Masri Al-Youm* (February 1, 2013). Available at: <http://www.almasryalyoum.com/node/1438571> [Arabic only].

(NHA), health spending made up just 4.3% of the total government budget in 2009, half of the regional average of 8.6%. It remains around the same level today: 4.7% in 2012/2013 and 4.7% for 2013/2014.”⁹⁸

Water Resources

“Water and Sanitation

Egypt's reliance on the Nile as the main resource for water has proven to be problematic; the 55bn cubic meters it provides annually are becoming more inadequate, resulting in a stark water crisis. Average per capita fresh water availability in Egypt is on a steady decline, going from about 1893 cubic meters per year in 1959 to about 900 cubic meters in 2000, to 700 cubic meters in 2012.⁹⁹ It is estimated that this will continue to decline further to 670 cubic meters by 2017 and 600 cubic meters by 2025.¹⁰⁰

The majority of the population (98%) has access to an ‘improved water source for drinking water’ according to the 2008 Demographic and Health Survey. Similarly, the UN Joint Monitoring Programme for Water Supply and Sanitation (JMP) estimates that overall access to an improved water source for drinking water increased from 93% to 99% between 1990 and 2011, with urban areas enjoying 100% access and rural areas 99% in 2011. According to the 2006 census, 85% of the population has access to drinking water in their homes. For urban areas this number increases to 92.9%, compared to only 81% in rural areas, and there are wide disparities between governorates.

Access to ‘improved sanitation’ is slightly lower: at 91.9% of the total population, according to the 2008 Demographic Health Survey (DHS). However, there are some disparities, with 97.7% access for urban households and 88.5% for rural households.¹⁰¹ The JMP estimates that overall access to improved sanitation increased from 72% to 95% between 1990 and 2011, with 97% urban access and 93% rural access in 2011. Yet, according the 2006 census, 44% of the population was connected to the national sanitation network, while 44% had to manually install tanks for collecting waste. Such tanks are later emptied into the Nile or on the ground, causing environmental and health problems. CAPMAS statistics show that only 24.7% of the rural population was connected to the sewerage system in 2010/2011, compared to 88% in urban areas, with disparities between governorates again.

Regular access to clean, quality water also remains very problematic. About 95.5% of the population drank their water untreated. About 21.2% of water produced nationwide in 2009/2010 was non-refined. In addition, a great deal of the refined water produced by the different governorates remains contaminated with harmful micro-organisms and is not suitable for drinking. Lab tests showed the percentage of ammonia in the water to be 180

⁹⁸ The Center for Economic and Social Rights, *Joint Submission to the Committee on Economic, Social and Cultural Rights On the occasion of the review of Egypt's 4th periodic report at the 51st Session*, p. 34-36.

⁹⁹ K. Al Sheikh, ‘Could Egypt run out of water by 2025?’, *Global Post* (April 9, 2012).

¹⁰⁰ A.E. Abdin and I. Gaafar, ‘Rational water use in Egypt’, in El Moujabber et al (eds.), *Technological perspectives for rational use of water resources in the Mediterranean region* (2009), pp. 11-27.

¹⁰¹ The household is considered to have improved sanitation facilities if the household has sole use of a modern or traditional flush toilet that empties into a public sewer, Bayara (vault) or septic system.

times more than the accepted rate in July 2012.¹⁰² For example, the poor who cannot afford bottled water are most severely affected, as evidenced by the repeated cases of water poisoning that affect villages, especially by the contaminated Rosetta Branch. The recent poisoning of 5,000 Sansaft villagers, in the Munufeya governorate, is one of many examples.¹⁰³ A 2008 WHO report indicates that 5.1% of all deaths and 6.5% of all disabilities (disease and injury) in a year in Egypt are attributable to unsafe drinking water, inadequate sanitation, insufficient hygiene and an inadequate management of water resources. Diarrhea and Schistosomiasis, the diseases that most commonly accompany water, sanitation and hygiene problems, are both are very common in Egypt.¹⁰⁴ Humans are not the only victims of water poisoning; thousands of tons of fish die annually as a result of to the contaminated water of the Rosetta Branch of the Nile, according to official statistics.¹⁰⁵ A bulk of Egypt's disease burden could therefore be alleviated by improving drinking water, sanitation, hygiene and water management.

The state has largely relied on the private sector and international projects to manage wastewater treatment. While water production remains state-owned, several projects have been planned since the mid 2000s to alleviate the burden of water production from the state in a time when Egypt's political situation is not making it an attractive place for investors. The water law bill, proposed before the revolution, aims to encourage the private sector to invest in the water sector.¹⁰⁶ Although it has not been enacted yet, this draft law is not the first of its kind; a presidential decree issued in 2004 (No. 135) gave the right to procuring bodies to involve private companies in controlling and selling water.

In that same year, the price of a cubic meter of water increased from EGP 0.12 to EGP 0.23 as ordered in the presidential decree. Unsurprisingly, there are some disparities in this price, as a cubic meter of water can be sold at EGP 1.10 in rural areas.¹⁰⁷ Additionally, the water bill collection system was amended from 3 months, then to 2 months, then to 1 month, leading to additional financial burdens on citizens, who have to pay fees and taxes monthly, reaching 50% of the value of the bill in some cases.¹⁰⁸

The state budget for water and sanitation services remains very low despite tax increases. In the Service Sector Budget of 2011/2012 and 2012/2013 respectively, the allocation of state

¹⁰² M. Shehab, 'Opinions and Official Statements around the deaths of fish resources in the Rosetta Branch'. Available online at: <http://kenanaonline.com/users/hatmheet/posts/434725> [Arabic only].

¹⁰³ See A. Al-Masry, 'Number of Poisoned Climbs to 5,000, Say Monufiya Residents', *Egypt Independent* (August 22, 2012); A. Al-Masry, 'Troubled Waters: Mounufiya's Contaminated Water and Low Supply', *Egypt Independent* (August 30, 2012).

¹⁰⁴ WHO, *Safer Water, Better Health: Costs, Benefits and Sustainability, of Interventions to Protect and Promote Health* (2009).

¹⁰⁵ M. Shehab, op cit n78.

¹⁰⁶ USAID, 'A Legal Paper Which Serves as the Basis for the New Egyptian Water Law', *Water Policy and Regulatory Reform Project* (January 2012), p.29.

¹⁰⁷ A. Khedr, 'Drinking water in Egypt: a necessary right for man's existence', *Hoqook* (August 2, 2010) [Arabic].

¹⁰⁸ M.M Ismail, M.S. El Hayesha, 'The impact of privatization on the Arab World', *Alukah Network* (2011) [Arabic].

funds for water services makes up only about 1.9% (in both years) of funds allocated to general services.^{109,110}

Education

“Egypt’s literacy rate has only increased marginally over the past decade. World Bank data shows that the total youth literacy rate (15-24) rose from 85% in 2005 to 87% in 2010, while literacy amongst adults rose from 71.4% in 2005 to 72% in 2010. Nevertheless, CAMPAS data shows that illiteracy is markedly higher among the rural populations; it was 30.7% in 2012, compared to 17.7% among urban populations.

Overall, trends in school attendance have been improving. The country’s net primary school enrollment has reached an impressive 95.4% according to UNICEF data. Unsurprisingly, however, there are disparities depending on gender, residence and wealth. For instance, the 2009 SYPE showed that more than five times as many females (22.1%) than males (4%) have never attended school in rural Upper Egypt. The annual non-attendance rate has also increased, symptomatic of a high drop-out rate in secondary years. Between 2005 and 2010, the number of students abandoning studies almost doubled, from 267,087 in 2005 to 644,717 in 2010 according to UNICEF data. In regards to children with disabilities, of the two million school-age children with disabilities, only 37,000 are enrolled in school (in around 882 schools). Furthermore, these schools are only able to accept children with mental, hearing, and sight disabilities while there are no schools available for children with disabilities of any other sort.¹¹¹

Academic achievement is another indicator that is impacted by socio-economic status. The 2009 SYPE found that children from poor households constituted only 3-5% of achievers in primary education and in the preparatory stage, and only 0.5% of achievers in the general secondary education stage. This may reflect their inability to afford private schooling and private tutoring. The quality of public education remains a major challenge that hinders the capacity of children to develop to their full potential. UNICEF estimates that approximately one in five school buildings are not fit for use and lack functional water and sanitation facilities. Less than 10% of schools meet the national standards for quality education, according to UNICEF. According to statistics from the Ministry of Education, there were 18,298,786 students across Egypt in all of the different age groups in 2010/11 and around 453,719 classrooms, meaning that there around 40 students on average for each classroom – a number that can act as an obstacle to quality education – with expected imbalance between different statuses.

Students suffer from rigid conventional teaching techniques in which participation is not encouraged and corporal punishment is common. The Egyptian Center for Human Rights documented 7 cases of death, 18 cases of extreme physical assault, 48 cases of sexual

¹⁰⁹ Own calculations based on The Ministry of Finance, *General State Budget 2012-2013— The Services Sector: Expenditures*.

¹¹⁰ The Center for Economic and Social Rights, *Joint Submission to the Committee on Economic, Social and Cultural Rights On the occasion of the review of Egypt’s 4th periodic report at the 51st Session*, p. 29-30.

¹¹¹ Ministry of Education, ‘Strategic Plan for the Development of pre-university education, 2007-2008/2011-2012’. Available at: <http://moe.gov.eg/Citizens/StudentsAbroad/Documents/arabicpoints.pdf> [Arabic only].

harassment, 3 cases of sexual assault, 25 cases of other forms of violence, and 2 cases of religious discrimination in schools in 2012.¹¹² The state has recognized the high rate of violence in classrooms, but the Ministry of Education has not presented a plan to prevent it. In one case, former Minister of Education, Ahmed Zaki Badr, claimed that passing a legislation that would ban corporal punishment would leave teachers "vulnerable to attack" from their students.¹¹³

The state has been slowly decreasing its role in the education sector in Egypt and is passing it on to the private and informal sectors. The government's retreat from its role and the increased dependence on private and informal education can be seen from an average family's expenditure. According to the 2010/2011 HIECS, tuition and school fees made up around 38% of a family's total expenditure on education, while private lessons made up 42%. Furthermore, Egyptian schools are constrained when attempting to improve quality of education due to their lack of access to adequate funding. Law No. 27 of 2012 allows the Ministry of Finance to control the expenses of public schools to a large extent and stifles the schools' freedom for spending on simple services to improve the quality of education.¹¹⁴ This has been reflected in the percentage decrease in the State budget allocated to education annually. The percentage of the budget allocated to education decreased from 16-17% of total state expenditure in the early 2000s to 10-12% in the past five years.¹¹⁵ This number has not been impacted by the revolution; it is expected to decrease to around 11.7% in the 2013-14 budget proposal, compared to 12.8% in 2009-2010.

In attempt to increase the salaries for teachers, and to call for a larger budget for the education sector, several trade unions were formed, following a Ministerial Decree in 2011 giving teachers in Egypt the right to organize. During this period, teachers' salaries were increased, but remained below what the unions and syndicates had requested.¹¹⁶ However, loopholes in the decree were found to curtail the activity of the syndicates and many syndicates were attacked by the ministry as being illegitimate.¹¹⁷

¹¹² Al-Wafd, 'Human Rights: Violence in Schools Jeopardizes Social Peace'.

¹¹³ A. Selim, 'Across Egypt, teacher-student violence', *Egypt Independent* (March 3, 2010).

¹¹⁴ Al-Masryoon, 'Ministry of Finance: 20% of Special Funds and Special Losses monthly to the General Treasury' Available at: <http://www.almesryoon.com/permalink/16416.html> [Arabic only].

¹¹⁵ Ministry of Finance, 'Budget Proposal and Enacted Budget Data'. Available at: <http://www.mof.gov.eg/MOFGallerySource/Arabic> [Arabic only].

¹¹⁶ Ahewar, Independent Union of Teachers: A Declaration. Available at: <http://www.ahewar.org/debat/show.art.asp?aid=261760> [Arabic only].

¹¹⁷ The Center for Economic and Social Rights, *Joint Submission to the Committee on Economic, Social and Cultural Rights On the occasion of the review of Egypt's 4th periodic report at the 51st Session*, p. 37-38.