

**Legislative shortcomings of the crime of torture**

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Torture is one of the most heinous violations of human rights, as it affects the right to life and personal integrity, the right to personal liberty and its reflection on the victim's mental health. Torture is also a crime against humanity if it is systematically practised against a particular population. The United Nations has therefore paid particular attention to combating the crime of torture since the beginning of the Universal Declaration of Human Rights, article 5 of which stipulates that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" and article 7 of the International Covenant on Civil and Political Rights stipulates that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected to any medical or scientific experiment without his\her free consent. "

In 1975, in a response to strong NGOs activities, the General Assembly adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. During the 1980s and 1990s, progress was made in setting standards and legal instruments and in enforcing the prohibition of torture. The General Assembly established the United Nations Voluntary Fund for Victims of Torture in 1981 to fund organizations providing assistance to victims of torture and their families.

This is not all the case but the United Nations issued in 1984 the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and then issued an Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In 1985, the Commission on Human Rights appointed the first Special Rapporteur on torture, an independent expert charged with reporting on the state of torture in the world, and in December 1997, the General Assembly declared June 26 as the United Nations International Day in Support of Victims of Torture.

At the level of national legislation, the Egyptian legislature devoted chapter VI of book II of the Penal Code, entitled “Coercion and ill-treatment of employees to individual people”, to combat the crime of torture. Egypt's current Constitution had also witnessed a breakthrough in the fight against the crime of torture, with three new provisions contributing to the fight against the crime of torture in articles 52 and 99 of the Constitution.<sup>1</sup>

- The first provision is that torture is a non-statutory offence.
- The second provision is that the victim has the right to initiate criminal proceedings directly.
- The third provision gives the right to the National Council for Human Rights to inform the Public Prosecution of any violation, and to allow it to join the civil lawsuit joining the injured party.

Given the heinousness of the crime, it was necessary for the Egyptian State, when launching its first national human rights strategy<sup>2</sup>, to devote a large part of the strategy's outcomes for the sake of helping to combat or eliminate torture. These outcomes include:

1. Continuing the fight against torture in all its forms and forms, the investigation of relevant allegations and the protection of victims' rights consistent with international constitutions and commitments of Egypt".

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<sup>1</sup> Article 52 of the Egyptian Constitution states: "Torture in all its forms and types shall be a statutory offence." Article 99 of the Egyptian Constitution stipulates that: "Any violation of the personal liberty or inviolability of the private life of citizens and other public rights and freedoms guaranteed by the Constitution, is a crime. The criminal or civil lawsuit arising from it is not subject to statute of limitations, and the aggrieved party has the right to file a criminal lawsuit directly. The state guarantees A fair compensation for those who were attacked, and the National Council for Human Rights has the right to inform the Public Prosecution of any violation of these rights, and it has the right to intervene in the civil lawsuit joining the aggrieved party at his\her request, and all of this is in the manner indicated by the law.

<sup>2</sup> The National Human Rights Strategy was prepared by the Ministry of Foreign Affairs and was launched in the presence of the President of the Republic in September 2021.

2. Limiting any form of individual practices that constitute violations of the inviolability of the body, whether in public or private entities or places.
3. Strengthen the protection of inmates of social care homes, orphanages, nursing homes, psychiatric clinics and addiction clinics in order to prevent any violations of their right to a safe life, the inviolability and integrity of their bodies and the referral of violators to the competent investigative authorities.
4. Legislative regulation of the principle that criminal and civil lawsuits do not fall under the statute of limitations for all forms of assault on personal freedom, in the event that the offender is a public employee or assigned to a public service and commits his crime because of, on occasion, or by abusing his position
5. Acknowledgment of the right of the victim of crimes of assault on personal freedom to file a criminal case for it through direct prosecution, and to ensure fair compensation for those whose personal freedom has been assaulted.<sup>3</sup>
6. Continuing to build the capabilities and training of members of the police force in the area of adherence to internationally recognized human rights values and principles.
7. Strengthening and building the capacities of those in charge of prisons and places of detention in accordance with the provisions of the law and the prison regulations, and benefiting from the best international practices in this regard.

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<sup>3</sup> These five outcomes came in the first axis of civil and political rights, in the first and second items thereof

8. Implementation of advanced training programs in the field of human rights on more specialized topics in the field of women's rights, children's rights, persons with disabilities, human trafficking, and illegal immigration.
9. Incorporating codes of conduct into awareness and training programs for law enforcement officials in the police force.<sup>4</sup>

This prompted the Forum for Development and Human Rights Dialogue to present a paper dealing with the crime of torture in Egyptian law, the legislative deficiency in the law and its compatibility with the Convention against Torture, and the needs of the Egyptian legislature so that this deficiency can be remedied and compatible with international conventions.

➤ **First, Denial of the victim's right to initiate criminal proceedings directly through the prosecution.**

Although article 99 of the Egyptian Constitution grants the right of every person affected by the crime of torture to initiate criminal proceedings directly, but in fact this constitutional provision cannot be directly applied, so legislation governing this right must be enacted as this right is contrary to the provisions of the Code of Criminal Procedure Public Prosecutor's Office which limited the right to initiate proceedings committed by a public official solely to the Public Prosecutor's Office, and it expressly prohibited recourse to direct prosecution for an offence committed by a public official during his or her job.

Code of Criminal Procedure, article 63, paragraph 3 stipulated that "Apart from the offences referred to in article 123 of the Penal Code, only the Public Prosecutor, the Attorney General, or the Chief Prosecutor of the Public Prosecutor may file a

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<sup>4</sup> The strategy was not satisfied with the five outcomes. Rather, in the fourth axis of it, related to education and capacity building in the field of human rights, it stipulated four outcomes that contribute to the elimination of torture in the third item related to training members of the police force.

criminal case against an employee, a public employee, or a law enforcement officer for a felony or misdemeanor committed by him\her during or as a result of performing his\her job.

Also, article 232, paragraph 2 of the Code of Criminal Procedure stipulates that: However, the plaintiff for civil rights may not file the case with the court by assigning his opponent directly to appear before it in the following two cases:

One of them is: if the case is directed against an official, a public employee or a detainee for an offence committed in the course of his or her employment or for which it is not an offence referred to in article 123 of the Penal Code.

That is, the provisions of the aforementioned law prohibited the plaintiff with a civil right from filing a lawsuit by way of direct prosecution, in the event that the lawsuit was directed against a public employee, a public servant, or a police officer for a crime that occurred on his part during or because of his job. That is, neither the victim nor anyone else has the right to resort to direct prosecution in the crime of torture, in violation of the current constitution. In addition, the Code of Criminal Procedure does not define direct prosecution except in offenses and misdemeanors, and the crime of torture according to the Code of Criminal Procedure is considered a felony.

This shortcoming cannot be addressed except through legislative intervention, because the constitutional oversight of laws is not applied retroactively, and these two provisions referred to above were stipulated in the law before the constitution was promulgated, just as the constitutional entitlement cannot be applied directly, as long as there is an explicit conflict between it and the provisions of the law.

- What the Egyptian legislation needs
  1. Implementing the constitutional entitlement, and issuing a new article regulating direct prosecution before the Criminal Court.
  2. Amending Article 63 of the Code of Criminal Procedure to allow the National Council for Human Rights and all those injured by Article 126 and Article 129 to file a criminal case against a public employee.
  3. The application of the constitutional entitlement, and a second amendment of Article 232 of the Code of Criminal Procedure by adding Article 126 and Article 129 of the crimes that allow the claimant of civil rights to resort to direct prosecution.
- **Second: Depriving the plaintiff of civil rights from appealing against the Public Prosecution's order that there is no basis for filing a case.**

The Egyptian legislator prohibits an appeal against the order issued by the Public Prosecution stating that there is no basis for filing a lawsuit in the event that the accusation is directed against a public employee, except in a single crime stipulated in Article 123 of the Penal Code, where the first paragraph of Article 210 states that "The plaintiff for civil rights has the right to challenge the order issued by the Public Prosecution that there is no basis for filing a lawsuit unless it is issued in connection with an accusation directed against an employee, public employee, or one of the police officers for a crime committed by him during the performance of his job or because of it, unless it is one of the crimes referred to in Article 123 of the Law. Penal Code".

That is, the victim has no right if he\she was subjected to torture by public officials, and then an order was issued by the Public Prosecution that there is no basis for filing a criminal case to challenge this order.

- What the Egyptian legislation needs:

The civil claimant must be allowed to challenge an order that there is no grounds for filing a case without exception to this right, and this requires an amendment to the text of Article 210 of the Code of Criminal Procedure by adding the following phrase “unless it is one of the crimes referred to in Article 123, Article 126 and Article 129 of the Code Penalties”.

➤ **Third: Amending Article 126 of the Penal Code:**

The Egyptian legislator devoted Chapter Six of Book Two of the Penal Code under the title of coercion and ill-treatment by employees to individual people, to combat the crime of torture, and stipulated in Article 126<sup>5</sup> thereof the crime of torture and set a maximum prison sentence for anyone who committed the crime himself or ordered others to commit the crime, it also made the death of the victim an aggravating circumstance, bringing the penalty to the premeditated murder penalty stipulated in the law. However, this article as a whole was not deterrent and sufficient to combat torture. The most prominent shortcomings of this article are as follows:

1. No definition of torture:

Egyptian law does not stipulate a specific definition of torture, so we call on the legislator to stipulate a definition of torture in Egyptian law that is consistent with the definition contained in the Convention Against Torture.

2. Not punishing the employee responsible for their silence about torture despite their knowledge of its occurrence:

The legislator shall only be punished for the torture performed by the responsible official or the one who is ordered to do so. Thus, the legislator

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<sup>5</sup> Article 126 states that “every official or public servant who ordered the torture of an accused person or did so himself to get him to confess shall be punished with temporary hard labor or imprisonment from three to ten years.”

If the victim dies, the penalty prescribed for premeditated murder shall be imposed.



has neglected to punish the official who became aware of the occurrence of torture, and did not take any action to prevent torture despite their presence in a position of responsibility that obliges them to protect the victims. In other words, the Egyptian legislator does not acknowledge criminal responsibility for the negative act, which is the silence of the official in charge after they became aware of the torture of an accused person to force them to confess, without intervening to protect the victim.

3. Non-punishment for the torture of a person other than the accused:

Article 126 limited the criminalization of torture to the accused only, and thus the legislator neglected another form of torture, which is to torture another person from the relatives of the accused, to get him to confess, which is the most common form.

4. Moral torture:

The legislator does not define moral torture, and limits the crime to physical torture that causes injuries to the victim.

5. Limiting torture to extracting a confession only:

The legislator linked torture to extracting a confession only, without penalizing torture that is done simply to abuse or mutilate him, or as a matter of imposing his control over him.

▪ What the Egyptian legislation needs:

1. Putting a definition of the crime of torture in line with the text of Article 1 of the International Convention against Torture, which Egypt ratified in 1986, because this definition expands the scope of protection for detainees inside places of detention and widens the scope of responsibility.
2. Punish the responsible employee who knew of the occurrence of torture and did not intervene to prevent it and punish the perpetrator of torture.

3. Criminalizing the torture of a third person with the aim of forcing another to confess their crime.
4. Punishment for moral torture.
5. Adding the penalty of dismissal from office to any public employee who has been convicted of the crime of torture.

➤ **Fourth: The weakness of the punishment for using cruelty with people:**

The Penal Code included another crime, which is the crime of using cruelty in Article 129<sup>6</sup>, in which it stipulated a penalty of imprisonment or a fine not exceeding two hundred pounds, which are penalties that are not commensurate with the level of the crime committed in these crimes, so we ask the legislator to intervene in increasing this punishment.

- What the Egyptian legislation needs:

Amending the text of Article 129 by increasing the penalty to aggravated imprisonment, with an aggravating circumstance for this crime if it is accompanied with the death of the victim, and it is another form of the crime of torture without linking it to obtaining a confession from the victim or being accused.

➤ **Fifth: Allowing the National Council for Human Rights to visit prisons upon notification:**

The Law of the National Council for Human Rights was amended in 2017 by Law No. 197 of 2017, so that Article 3<sup>7</sup> stipulates defining the competences of the

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<sup>6</sup> Article 129 states that “every public official or employee and every person entrusted with a public service who uses cruelty with people depending on his position to the extent that he breaches their honor or causes pain to their bodies shall be punished with imprisonment for a period not exceeding one year or a fine not exceeding two hundred pounds.”

<sup>7</sup> Article 3 of the law states that “Without prejudice to the provisions of the applicable laws, the Council shall, in order to achieve its objectives, have the following:

- 1- Express an opinion on draft laws and regulations related to it and its field of work.
- 2- Examining allegations of human rights violations, and presenting the necessary recommendations in this regard to the competent authorities in the State.

Council in 17 specializations, including under No. 16 visiting prisons and other places of detention and treatment and correctional institutions, and listening to prisoners and inmates in the aforementioned places and institutions to ensure their

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3- Developing a national action plan for the promotion and protection of human rights in Egypt, and proposing means to achieve this plan.

4- Submit proposals and recommendations to the competent authorities in everything that would protect and support human rights, and develop them in a better way.

5- To express the necessary opinion, proposals and recommendations regarding what is presented to it or referred to it by the competent authorities and authorities regarding issues related to the protection and promotion of human rights.

6- Receiving complaints in the field of human rights, studying them and referring what the council deems appropriate to refer them to the competent authorities and following them up, or informing the concerned parties of the legal procedures that must be followed and assisting them in taking them, or settling and resolving them with the concerned authorities.

7- Following up on the application of international conventions, covenants and covenants related to human rights that Egypt ratifies, and submit to the concerned authorities the necessary proposals, observations and recommendations in this regard.

8- Cooperating with international organizations and bodies concerned with human rights in a way that contributes to achieving the goals of the Council and developing their relations with it, in coordination with the Ministry of Foreign Affairs.

9- Contributing to the opinion in the preparation of reports that the state is committed to submit periodically to human rights committees and bodies in application of international agreements, and to respond to the inquiries of these bodies in this regard.

10- Coordinating with the state bodies concerned with human rights, and cooperating in this field with the National Council for Women, the National Council for Childhood and Motherhood, the National Council for Persons with Disabilities, and other relevant national councils, bodies and agencies.

11- Working to spread the culture of human rights and educating citizens about it, with the help of institutions and agencies specialized in education, upbringing, information and education, and assisting in preparing programs related to teaching human rights.

12- Holding conferences, seminars and panel discussions on issues related to human rights or related events.

13- Submitting the necessary proposals to support institutional and technical capabilities in the fields of human rights, including technical preparation and training to raise the efficiency of workers in state institutions related to public freedoms and economic, social and cultural rights.

14- Issuing pamphlets, magazines and publications related to human rights and the objectives and powers of the Council, in accordance with the laws regulating this.

15- Issuing reports on the situation and development of human rights.

16- Visiting prisons and other places of detention and therapeutic and correctional institutions, and listening to prisoners and inmates in the aforementioned places and institutions to ascertain their good treatment and the extent to which they enjoy their rights. Both the Attorney General and the House of Representatives.

17- Informing the Public Prosecution of any violation of personal freedoms or the sanctity of the private life of citizens and other public rights and freedoms guaranteed by the constitution, law, international human rights agreements, covenants and covenants ratified by Egypt, based on the serious information available to the Council on the occurrence of the violation or the person who committed it. With the notification of the competent authorities, and the Council may intervene in the civil lawsuit joining the injured person based on his request in accordance with the provisions of the laws regulating this.

18- The second paragraph of Article 73 states that "members of the National Council for Human Rights may visit prisons after the approval of the Public Prosecutor, receive complaints from prisoners, prepare reports and submit them to the Assistant Minister of the Prison Service Sector and the competent Public Prosecution, in accordance with the procedures and controls specified by the internal regulations."

good treatment and the extent to which they enjoy their rights, and the Council prepares a report on each visit it makes, which includes the most important observations and recommendations with the aim of improving the conditions of prisoners and inmates in the aforementioned places and institutions, and the Council submits its report to both the Attorney General and the Council of Representatives. However, this right and the aim sought from it conflict with the text of Article 73 of the Prisons Regulation Law, which required the approval of the Public Prosecutor prior to the visit.

- What the Egyptian legislation needs:

Amending the second paragraph of Article 73 of the Prisons Regulation Law and allowing the National Council for Human Rights to visit places of detention immediately after notifying the Public Prosecutor.

➤ **Sixth: Allow civil society organizations to visit places of detention:**

Adding a new article in the Prisons Regulation Law that allows civil society organizations to visit places of detention.

➤ **Seventh: Establishing a national mechanism to combat torture:**

The need to establish a national mechanism whose mission is to reduce torture, and to discuss ways to eliminate torture, and its tasks in achieving this are:

1. Training and qualifying law enforcement officers and individuals, in a way that leads to treating people in a way that preserves their dignity.
2. Training prosecutors and forensic doctors in dealing with and detecting cases of torture.

3. Continuing to build the capabilities and training of members of the police force in the area of adherence to internationally recognized human rights values and principles.
4. Strengthening and building the capacities of those in charge of prisons and places of detention in accordance with the provisions of the law and the prison regulations, and benefiting from the best international practices in this regard.
5. Establishing a national register of torture cases, indicating what was done in them by the Public Prosecution Office, and rulings, if a ruling was issued. And study it, to find out the reasons that prompted torture.
6. Create a record of visits to places of detention, which are carried out by the Public Prosecution and the National Council for Human Rights, in which detainees' complaints are recorded, and a record is made for each place of detention.
7. Submit proposals and observations related to national legislation, and in doing so, prepare a legislative proposal for legal texts related to these crimes.
8. It is obligated to submit a report every six months to the investigation and inspection authorities in the Ministry of Interior.
9. Provide the necessary measures to eliminate torture.

➤ **Eighth: Egypt's position on the Convention against Torture and the Optional Protocol:**

Egypt ratified the Convention Against Torture in April 1986, published it in its Official Gazette and became part of its internal law, but it has not yet ratified its Optional Protocol. Although the Egyptian state was one of the first countries to accede to the Convention Against Torture, its laws still do not include the most

prominent provisions stipulated in the Convention. So far, the Egyptian legislator has not stipulated a definition of the crime of torture, nor has it included the images mentioned in the Convention. Therefore, we demand The Egyptian state to include in its laws all the provisions contained in the Convention Against Torture, and to accede to its Optional Protocol.

➤ **Concluding recommendations:**

There is no doubt that the Egyptian state is advancing with confident steps towards upholding the values of freedom, human dignity and social justice, and is on the right track to improve human rights conditions, starting with the formation of a higher committee for human rights affiliated to the Ministry of Foreign Affairs in 2018, which prepared a preliminary national strategy for human rights and it was launched in September 2021 in the presence of His Excellency the President, and His Excellency launched and allocated the year 2022 to civil society. And with this political will to improve human rights conditions, we make recommendations regarding the required legislative amendments, and required government policies, in deterring and eliminating the crime of torture, and putting some preventive measures that may help prevent crime.

▪ **Preventive measures:**

1. Prepare a study on the treatment of persons deprived of their liberty in places of detention to enhance their protection from torture and cruel, inhuman or degrading treatment or punishment.
2. Specialists conduct confidential interviews with detainees, without the law's enforcers, and do not disclose interviewees in the framework of developing a strategy for better treatment of victims.
3. The existence of a direct means of communication with detainees.

4. Develop recommendations for law enforcement officers and investigative authorities.
5. To urge periodically in the various media the risks of torture in particular and to disseminate the culture of human rights in general.

▪ **Legislative measures:**

1. The implementation of the constitutional entitlements provided for in the present Constitution by amending the Code of Procedure so that there is no conflict between the Constitution and the Code of Criminal Procedure. The provisions of the law do not impede their implementation.
2. Addition of a new article of the Code of Criminal Procedure, which regulates direct prosecution before the Criminal Court.
3. Amend article 63 of the Code of Criminal Procedure by allowing the National Council for Human Rights to bring criminal proceedings against a public official, in accordance with article 126 and article 129.
4. Second amendment of article 232 of the Code of Criminal Procedure by adding article 126 and article 129 of the Code of Criminal Procedure, which permits the Civil Rights Prosecutor's recourse to direct prosecution.
5. Amend article 210 of the Code of Criminal Procedure by adding the words "unless they are offences referred to in articles 123, 126 and 129 of the Criminal Code". The plaintiff should be allowed to appeal against an order that there should be no prosecution for torture offences.
6. The addition of a new article to the Penal Code establishing a specific definition of the crime of torture consistent with the Convention against Torture's definition of torture.
7. Amend article 126 of the Penal Code to include all forms of torture provided for in the Convention against Torture.
8. Increased penalties under article 129 of the Penal Code.

9. The addition of a new article in the Penal Code stipulating the penalty for the dismissal of any official found guilty of torture.
10. Amend article 73, paragraph 2, of the Prisons Regulation Act and allow the National Council for Human Rights to visit places of detention immediately after notification by the Attorney-General, and add a new paragraph allowing community organizations to visit places of detention.
11. The addition of a new article enabling victims of torture to obtain just compensation commensurate with the harm suffered, including all kinds of damage to them and their families, including rehabilitation.
12. Addition of a new article on the confidentiality of victims' and witnesses' statements in torture cases.

▪ **Implementation measures:**

1. Signature and ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
2. The need for the Public Prosecutor's Office to periodically inspect police stations, stations and places of detention in order to identify the legal conditions of detainees.
3. Allow the National Council for Human Rights and civil society organizations to visit places of detention and hear detainees' complaints.
4. Conduct an administrative investigation and discipline of police officers who commit legal offences against citizens in police stations and establish a hotline to receive complaints of torture.
5. Allocate 24-hour direct means of communication between detainees and inspection at the Ministry of the Interior.
6. Establish a permanent independent investigative mechanism involving judges, lawyers and doctors that examines all allegations of torture occurring in police stations and police stations and bring those responsible to trial. The



authority to enter all detention centres and to access the information and data needed by all persons who wish to be heard shall be vested.

7. Establish specific controls to monitor police officers' performance.

▪ **Cultural measures:**

1. Preparation of educational and training courses for police officers on how to deal with detainees within police stations and stations to ensure respect for citizens' dignity and fundamental freedoms guaranteed by the Constitution
2. Attention to the subject of human rights in the curriculum of the Police Academy and the teaching institutes and schools in which the professional preparation of police officers, especially the institutes of police secretaries and delegates, are carried out.
3. The authorities should cooperate with human rights organizations, investigate their communications to the Attorney-General and the Minister of the Interior, provide information on the results of investigations and enable their delegates to inspect prison conditions and various detention centres and visit police stations.