

**Submission to the United Nations Special Rapporteur on Independence of Judges and Lawyers for her next thematic report on safeguarding the independence of judicial systems in the face of contemporary challenges to democracy**

**concerning the role of judges and lawyers in facilitating systematic torture in Egypt**

**Submitted 31 January 2024**

**About the Submitting Organization**

DIGNITY is an independent human rights and development organization. Our vision is a world free of torture and other cruel, inhuman, or degrading treatment.

Founded in 1982, DIGNITY is one of the world’s first anti-torture NGOs and specialized treatment centres for torture survivors. For 40 years, DIGNITY has been a leading civil society force in the global fight against torture and today our programming spans the health, legal and political sectors.

DIGNITY is headquartered in Copenhagen, Denmark, has country offices in Jordan and Tunisia, and currently employs around 140 staff globally. We have active partnerships with more than 30 local and international NGOs and research institutions around the world.

DIGNITY operates in more than 20 countries in Africa, the Middle East, Asia, Eastern Europe, and Central America, where we work in close partnerships with human rights defenders, civil society organizations and, where possible, government authorities. DIGNITY is a member of the World Health Organization’s Violence Prevention Alliance and the UN Sub-Committee on Prevention of Torture.

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1. **Introduction**
2. The following submission is intended to provide information regarding the context in Egypt where democratic voices are systematically subjected to torture and other cruel, inhuman, or degrading treatment only made possible by pervasive impunity facilitated by Egypt’s prosecutors and judges.
3. **Systematic Torture and Ill-Treatment in Egypt is Facilitated by Overlapping and Reinforcing Structures of Impunity**
4. Put plainly, Egyptian legislation, judicial corruption and overall institutional capture by authoritarians work in concert to ensure a decade-long practice of politically motivated arbitrary arrests, enforced disappearances, torture, imprisonment under squalid conditions, and other ill-treatment. The goal of which is to silence democratic opposition.
5. Comprehensive statistics and data regarding the breadth and pervasiveness of torture in Egypt are impossible to obtain, owing to the Egyptian authorities’ refusal to collect and publish disaggregated data. However, Egypt holds the dubious distinction of being the only country to have been the subject of two Article 20 inquiries by the Committee against Torture following receipt by the Committee of reliable information indicating that torture was being systematically practiced in the country. Both concluded, in 1996 and 2017, that the practice of torture was widespread and systematic.[[1]](#footnote-1)
6. Such breadth and impunity evince a deeply intertwined system of complicity between the political authorities and different arms of the criminal justice system, including the police, prosecutors, and judges. This situation has been enabled by long periods of state of emergency and anti-terrorism frameworks. Despite a clear prohibition on all forms of torture in Egypt’s 2014 constitution, trials, and convictions of security officials for torture or deaths in custody are extremely rare.[[2]](#footnote-2) Claims of torture are virtually never investigated, procedural hurdles prevent victims bring bringing cases or appealing prosecutors’ decisions,[[3]](#footnote-3) and the judiciary has increasingly lost its independence. In the words of the Committee against Torture: “prosecutors, judges and prison officials also facilitate torture by failing to curb practices of torture, arbitrary detention and ill-treatment or to act on complaints.”[[4]](#footnote-4)
7. More recently, in February 2023, the Human Rights Committee, expressed deep concern for “the reportedly systematic use of torture and cruel, inhuman or degrading treatment at the hands of law enforcement personnel.”[[5]](#footnote-5) Likewise, the Committee was:

…equally concerned about the general lack of investigations into such practices and punishment of those responsible, reprisals against victims who denounce torture and the lack of reparation for victims, as well as the reported absence of meaningful oversight by the judiciary and public prosecution, including with regard to the use of evidence obtained under torture and the disregarding of medical examinations and complaints of torture.[[6]](#footnote-6)

1. Supplanting a statutory permissibility for enforced disappearance[[7]](#footnote-7) is an assemblage of other laws and judicial, prosecutorial, and law enforcement practices. For example, Egyptian prosecutors are empowered to visit prisons unannounced and conduct investigations; however, these powers are not effectively exercised.[[8]](#footnote-8) In fact, direct complaints from imprisoned persons to prosecutors about allegations of torture other ill-treatment largely go unheeded.[[9]](#footnote-9) Moreover, even if an investigation is made and a prosecutor pursues a case, court decisions are occasionally not implemented by the Ministry of Interior, specifically the police and prison administration.[[10]](#footnote-10)
2. From a judicial standpoint, judges overwhelmingly defer to the testimony and prerogatives of law enforcement. Courts heavily rely on the doctrine of *in flagrante delicto* to provide leeway for procedural irregularities such as not ensuring the presence of a lawyer during interrogation. In the representative case (9115/2016), the Court explained that calling in a lawyer may “take time, and evidence may be lost due to the procedures” mandated by the law – which in this case served as an overriding justification to overlook the absence of a lawyer. In some cases, especially if the accused has a political background or related to issues of national security, judges arbitrarily convict the accused persons even when they reported that their confession were made under torture.[[11]](#footnote-11)
3. Indeed, it is customary for judges and prosecutors to ignore allegations of torture during periods of enforced disappearance, before trial, or during trial sessions, despite the defendants’ assertions and descriptions to them of the method of torture used, especially in cases involving torture by National Security agents.[[12]](#footnote-12) Judges and prosecutors do not explain to defendants or their lawyers why they do not take their torture claims seriously and take action.
4. At trial, there are countless instances where courts overlook overt prosecutorial irregularities, including: periods of enforced disappearance; contradictions of witness statements; absence of evidence to prove the elements of the alleged crime; arresting officers’ lack of recognition of defendants; the invalidity of the arrest due to the absence of a case of *flagrante delicto;* the invalidity of the arrest report for dealing with the accused in a collective manner; the anonymity of sources and broadness of accusations in the seizure and investigation reports; the arbitrariness of the arrest; illegality of investigations and unknown sources of evidence received during trial; and proven torture violations.
5. In most cases, judges and prosecutors complicitly turn a blind eye towards obvious signs of torture and do not explain to defendants or their lawyers why torture claims are not properly documented and investigated. Detainees who are subjected to torture—and especially those who are disappeared—are routinely denied access to a lawyer when they are presented before the prosecution for the first time. Even when counsel is present, prosecutors frequently deny the accused’s right to report any ill-treatment to which they may have been subjected.
6. Instead, forced confessions are central to criminal justice processes, in particular in cases where national security actors are involved, and Egypt’s prosecutors collaborating hand-in-glove with the security actors—laying charges on what is clearly torture-tainted evidence, and overlooking and covering up flawed and violent methods.[[13]](#footnote-13)
7. According to a monitoring analysis of cases from 2019, a total of 212 defendants (belonging to 31 separate cases) were subjected to various forms of torture and other forms of ill-treatment.[[14]](#footnote-14) From the 212 accused, the prosecution referred only 88 defendants to forensic medicine following allegations of torture and failed to act on 124 requests for referral to forensic medicine.[[15]](#footnote-15)
8. Take as an emblematic example the case of Father Isaiah, a Christian Coptic monk who was sentenced to death based on torture-tainted confessions. During his trial, he was refused visits from his lawyer and family. When he argued that his confessions were obtained under torture, the trial judge made derogatory and mocking comments about his name and ignored his requests for further examination.[[16]](#footnote-16) He was executed on 9 May 2021.
9. In a similar case, another judge justified his reliance on a tainted confession by simply explaining that its contents conformed ‘with the truth and reality’.[[17]](#footnote-17) The Court extended to itself the prerogative to ‘rely on the witness’ statements at any stage of the investigation and trial without explaining the reason for that’ and that ‘the witness’ contradictions or inconsistencies does not deem the judgment flawed as long as the truth has led to a palatable conclusion that does not involve contradictions’.[[18]](#footnote-18) In other words, the Court decided that it was empowered to rule as it sees fit, according to the reality that it perceives, without justification.
10. In another case still, nine of the sixty-seven defendants accused of the assassination of Public Prosecutor Hisham Barakat alleged that they were tortured during the investigation phase—including beatings, electrocution and threats against them and their families. The accused informed the prosecution and the court respectively during questioning and during the trial. One of the accused stated:

All the accusations made against me were false. I said them when I was psychologically and physically under duress by the State Security officers and threats they would harm my mother and sister and father. I was forced to memorize statements written on paper and the officer told me I will go to senior people and I need to say the same statements I memorized or I will be returned to them again.[[19]](#footnote-19)

1. These allegations were not effectively investigated and, in fact, requests were disregarded until too late. Another defendant stated:

I asked the judge to look at the signs of torture on my body, but he ignored it. When I told him I suffered psychological illnesses because of the torture, he responded, ‘Maybe you’re just possessed.’ 15 accused were executed in February 2019.[[20]](#footnote-20)

1. Even in the face of well-documented instances of torture-tainted confessions, courts often only provide perfunctory reasoning when dismissing arguments from defence lawyers to exclude such evidence. In one case that came before a military criminal court, the judge dismissed an injury caused from torture, seeing it as inflicted as ‘an incidental matter’ whilst underscoring the court’s power to:

…assess the invalidity of the defendant’s claims of being coerced into confession *without commenting on the matter*, as long as the court bases its assessment on valid reasons, especially as his confessions were in conformity with the reality and the evidence in the case documents on which the court relied in the reasoning for its ruling.[[21]](#footnote-21)

1. Prosecutors and judges sometimes respond to defendants’ allegations of torture by documenting the complaint into the case file.[[22]](#footnote-22) Often the best victims can hope for is that prosecutors themselves examine the body of an accused person and make an official notation of traces of scars. On occasion prosecutors and judges refer victims to forensic doctors, but often examinations do not take place despite reminders from defendants’ lawyers in subsequent court sessions.[[23]](#footnote-23) When examinations do occur, forensic reports are commonly inconclusive or omitted altogether from case files, or judges issue verdicts and sentences before the examination results are available.
2. Moreover, forensic procedures are usually initiated long after the torture incident. For example, in Case 9115/2016 (Criminal Court Southern Giza) a forensic report of the accused was issued on 23 August 2016 concluding that:

There are signs of healing of an injury in the right wrist and left leg. The defendant's condition has changed owing to healing over time. However, in the absence of contemporary medical papers on the date of the incident reported in the prosecutor's memorandum, it is not possible to confirm the nature of the injury, its date and the instrument used to cause it.

1. More frequent than allegations of torture being taken seriously, those complaining of ill-treatment are instead subjected to further ill-treatment. Take, for example, the emblematic case of torture and reprisal in First Salam Police Station. On 24 January 2022, the Guardian published still images (taken from two videos recorded inside the Cairo police station) showing the extent of torture and impunity inside Egypt.[[24]](#footnote-24) In one of the photos, detainees can be seen naked from the waist up, suspended from a metal grate by their arms, which are fastened behind their backs. One of the videos reportedly depicts “inmates in an overcrowded cell lining up to display injuries they say were inflicted by police officials and investigators, including open wounds on their heads and bruises across their chests and backs.”[[25]](#footnote-25) Such images of violence are corroborated by over a decade of human rights reporting showing widespread and systemic torture occurring in Egypt’s police stations and prisons. After the videos were released online “Egypt’s public prosecution claimed that the detainees had ‘inflicted injuries on themselves’, using a coin.”[[26]](#footnote-26) The torture victims seen in the videos were reportedly charged with belonging to a terrorist group, misusing the internet, spreading false information with the intent to undermine national security, and illegally receiving foreign funds.[[27]](#footnote-27) In November 2022, Egyptian courts sentenced 8 of these victim/defendants to life imprisonment, one victim/defendant to 13-15 years imprisonment, and one victim/defendant” *in absentia* to life imprisonment, and one minor (17-year-old) victim/defendant to five years imprisonment.
2. **Conclusion**
3. Egypt’s widespread and systematic practice of torture and other ill-treatment is enabled and facilitated by equally widespread and systematic complicity and impunity pervading the many different parts in Egypt’s criminal justice apparatus. Most notably of these, Egypt’s prosecutors and judges collaborate hand-in-glove with police, security officers, and prison staff with the al-Sisi regime to ensure impunity to support short-term enforced disappearances as a tool to persecute political opponents, human rights defenders, and oppositional democratic voices.
1. United Nations Committee against Torture, Annual Report 2016, U.N. Doc. A/51/44, para. 219, 9 July 1996; United Nations Committee against Torture, Annual Report 2016, U.N. Doc. A/72/44, para. 67, 2017. [↑](#footnote-ref-1)
2. Ruth Michaelson, *’We’re Next’: Prisoner’s secret filming appears to show torture in Cairo police station*, The Guardian, 24 January 2022, <https://www.theguardian.com/global-development/2022/jan/24/cairo-egypt-police-station-secret-filming-appears-to-show-torture>.

 [↑](#footnote-ref-2)
3. Arts. 63, 162, 232 The Egyptian Code of Criminal Procedure. - No. 150 of 1950, published on 10-15-1951. Under Egyptian law, criminal cases must be initiated by the Public Prosecutor or the Chief Public Prosecutor only, in accordance with Criminal Procedures law Article 63 and Article 232. Moreover, victims of torture are not entitled to appeal the orders issued by the Public Prosecution Office or the investigative judge in the event that the accused is a public official. And despite a constitutional entitlement to remedy a violation of rights by directly filing a criminal lawsuit, the Code of Criminal Procedure does not allow direct prosecution except in the case of violations and misdemeanors, not in cases of felonies such as the crime of torture. [↑](#footnote-ref-3)
4. UN Committee against Torture 2017, Egypt, UN Doc. A/72/44, §§58-71 [↑](#footnote-ref-4)
5. United Nation Human Rights Committee, Concluding Observations of Egypt’s Fifth Periodic Review, U.N. Doc. CCPR/C/EGY/CO/5, para. 27, February 2023. [↑](#footnote-ref-5)
6. United Nation Human Rights Committee, Concluding Observations of Egypt’s Fifth Periodic Review, U.N. Doc. CCPR/C/EGY/CO/5, para. 27, February 2023. [↑](#footnote-ref-6)
7. See amended Anti-Terrorism Law, which effectively codifies enforced disappearances by allowing individuals to be arrested and held incommunicado for up to 28 days. The law has routinely been criticized UN Special Procedure Mandate Holders for being vague, overbroad, and a cudgel the regime uses to silence legitimate criticism. (Press Release, Egypt uses terrorism trials to target human rights activists, say UN experts, UN Office of the High Commissioner for Human Rights, 8 October 2020, <https://www.ohchr.org/en/press-releases/2020/10/egypt-uses-terrorism-trials-target-human-rights-activists-say-un-experts>; Press Release, Egypt’s updated terrorism law opens the door to more rights abuses, says UN expert, UN Office of the High Commissioner for Human Rights, 9 April 2020, <https://www.ohchr.org/en/press-releases/2020/04/egypts-updated-terrorism-law-opens-door-more-rights-abuses-says-un-expert>; Letter from UN Special Procedures to Egyptian Authorities concerning amendments to counter-terrorism legislation, 28 February 2020,) [↑](#footnote-ref-7)
8. Amnesty International, *‘What do I care if you die?’ Negligence and Denial of Health Care in Egyptian Prisons*, p. 59, 2021. [↑](#footnote-ref-8)
9. Amnesty International, *‘What do I care if you die?’ Negligence and Denial of Health Care in Egyptian Prisons*, p. 59, 2021. [↑](#footnote-ref-9)
10. Amnesty International, *‘What do I care if you die?’ Negligence and Denial of Health Care in Egyptian Prisons*, p. 58, 2021. [↑](#footnote-ref-10)
11. DIGNITY, Adalah, Cairo Institute for Human Rights Studies, Committee for Justice, El Nadeem, Egyptian Commission for Human Rights, Joint Submission for Egypt’s Third Cycle Universal Periodic Review, p. 7 (2019). [↑](#footnote-ref-11)
12. UN Committee against Torture, report under Art. 20, §§ 58-71, U.N. Doc. A/72/44, 2017. [↑](#footnote-ref-12)
13. G. Caracciolo, E. Cakal, the Committee for Justice, and Egyptian Commission for Rights and Freedoms, *Torture in Egypt: Systemic and Systematic*, Dignity Publication Series on Torture and Organized Violence, Praxis Paper #38, 2021, p. 22; POMED 2017, Project on Middle East Democracy (POMED) 2017, The Role of the Public Prosecution in Egypt’s Repression; Amnesty International (AI) 2016, *‘Officially you do not exist’, Disappeared and Tortured in the Name of Counter-Terrorism*, London. [↑](#footnote-ref-13)
14. *See* Joint Universal Periodic Review Submission, Egypt, Third Cycle Review by Adalah Center for Rights & Freedoms (Adalah), Cairo Institute for Human Rights Studies (CIHRS), Committee for Justice, DIGNITY – Danish Institute Against Torture, El Nadeem Center for the Rehabilitation of Victims of Violence, Egyptian Commission for Rights and Freedoms – Europe, p. 7. [↑](#footnote-ref-14)
15. *See* Joint Universal Periodic Review Submission, Egypt, Third Cycle Review by Adalah Center for Rights & Freedoms (Adalah), Cairo Institute for Human Rights Studies (CIHRS), Committee for Justice, DIGNITY – Danish Institute Against Torture, El Nadeem Center for the Rehabilitation of Victims of Violence, Egyptian Commission for Rights and Freedoms – Europe, p. 7. [↑](#footnote-ref-15)
16. ECRF and Reprieve 2020, *Torture and the death penalty in Egypt: The case of a Christian Coptic monk wrongfully sentenced to death*, p.5. [↑](#footnote-ref-16)
17. Case No. 9115 for 2016, South Giza, registered under No. 4359 for 2016, Badrashin Criminal Court, and registered under No. 163 of 2016, Supreme State Security Criminal and No. 513 of 2016, Supreme State Security. [↑](#footnote-ref-17)
18. G. Caracciolo, E. Cakal, the Committee for Justice, and Egyptian Commission for Rights and Freedoms, *Torture in Egypt: Systemic and Systematic*, Dignity Publication Series on Torture and Organized Violence, Praxis Paper #38, 2021, p. 22. [↑](#footnote-ref-18)
19. G. Caracciolo, E. Cakal, the Committee for Justice, and Egyptian Commission for Rights and Freedoms, *Torture in Egypt: Systemic and Systematic*, Dignity Publication Series on Torture and Organized Violence, Praxis Paper #38, 2021, p. 22. [↑](#footnote-ref-19)
20. Press Release, Egyptian Initiative for Personal Rights (EIPR), Following Wednesday’s executions: 15 people executed in one month this year, nine executed without even notifying their next of kin, among other violations that obstruct the course of justice, 21 February 2019, [https://eipr.org/en/press/2019/02/following-wednesday’s-executions-15-people-executed-one-month-year-nine-executed](https://eipr.org/en/press/2019/02/following-wednesday%E2%80%99s-executions-15-people-executed-one-month-year-nine-executed). [↑](#footnote-ref-20)
21. Case No. 241 of 2014, Alexandria Military Criminal Court (emphasis added). [↑](#footnote-ref-21)
22. G. Caracciolo, E. Cakal, the Committee for Justice, and Egyptian Commission for Rights and Freedoms, *Torture in Egypt: Systemic and Systematic*, Dignity Publication Series on Torture and Organized Violence, Praxis Paper #38, 2021, p. 17. [↑](#footnote-ref-22)
23. G. Caracciolo, E. Cakal, the Committee for Justice, and Egyptian Commission for Rights and Freedoms, *Torture in Egypt: Systemic and Systematic*, Dignity Publication Series on Torture and Organized Violence, Praxis Paper #38, 2021, p. 17. [↑](#footnote-ref-23)
24. Ruth Michaelson, *‘We’re Next’: Prisoner’s secret filming appears to show torture in Cairo police station*, The Guardian, 24 January 2022, <https://www.theguardian.com/global-development/2022/jan/24/cairo-egypt-police-station-secret-filming-appears-to-show-torture>. [↑](#footnote-ref-24)
25. Ruth Michaelson, *‘We’re Next’: Prisoner’s secret filming appears to show torture in Cairo police station*, The Guardian, 24 January 2022, <https://www.theguardian.com/global-development/2022/jan/24/cairo-egypt-police-station-secret-filming-appears-to-show-torture>. [↑](#footnote-ref-25)
26. Ruth Michaelson, *Egyptians seen in jail ‘torture’ videos charged with spreading fake news*, The Guardian, 2 March 2022, <https://www.theguardian.com/global-development/2022/mar/02/egyptians-seen-in-jail-torture-videos-charged-with-spreading-fake-news>. [↑](#footnote-ref-26)
27. Ruth Michaelson, *Egyptians seen in jail ‘torture’ videos charged with spreading fake news*, The Guardian, 2 March 2022, <https://www.theguardian.com/global-development/2022/mar/02/egyptians-seen-in-jail-torture-videos-charged-with-spreading-fake-news>. [↑](#footnote-ref-27)