



Commentary: EBRD DRAFT STRATEGY ON EGYPT

CIHRS SUBMISSION/COMMENTARY

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Introduction

The Cairo Institute for Human Rights Studies (CIHRS) finds it encouraging that the Executive Summary of the EBRD’s draft country strategy for Egypt begins by recognizing that *“Egypt’s commitment to and application of the political principles stated in Article 1 of the Agreement Establishing the Bank has been marked by concerns of relevant international organisations.”* In Section 3.3, the Bank also remarks that *“[s]ome CSOs expressed concerns regarding the state of economic and political transition in Egypt, including about human rights, the rule of law and the role of the Armed Forces in the economy, and noted major challenges facing civil society that limit space for meaningful community engagement.”*

The strategy also mentions some concerns related to *“regulatory uncertainty”, “uneven governance”, the “governance of State-owned enterprises”* (and the footnote dares to mention *“...including non-civilian ones under special laws”*). The text states that *“survey data suggests that corruption is still perceived as a problem in public and private institutions”,* and the data charts show that Egypt has a very low rating on *“voice & accountability”* within the EBRD’s 2019 governance indicators. Hence, **there is some recognition—albeit very diplomatically-phrased—that significant governance problems exist in Egypt and that these have a substantial connection to the weight of State-owned enterprises (including military-affiliated) in the economy. Yet it is unclear what special measures the Bank will take in consequence,** to address and to mitigate these issues in Egypt, which has been among its top two largest countries of operations in the last three years.

The Political Assessment based on Article 1 criteria, annexed to the strategy text, is clearly more carefully written than that appended to the previous Bank strategy for Egypt published in 2017; it reflects some key concerns raised in the dialogue with civil society and benefits from better consideration of, and inclusion of references to relevant UN and EU sources on the situation in Egypt. Nonetheless, **it remains lacking in three main ways.** First, it overlooks certain factual aspects entirely, including major ones (e.g. the 2018 presidential election). Second, it relies excessively on textual commentary of Egypt’s Constitution—as did the previous document published in 2017—at times overlooking the reality of State practice and legislation violating constitutional rights guarantees, on the very same criteria under discussion. Third, the sections on certain Article 1 criteria include critical references from international organizations and civil society juxtaposed with Egyptian government

rebuttals, leaving the reader with a sense of dialogue or negotiation, but no clarity on what the Bank itself has concluded about Egypt's situation with regard to those criteria.

However, **the very serious issues touched on in the Political Assessment regarding Egypt's extensive human rights, democracy and rule of law problems are not reflected in the strategy text itself**, other than the short passage of section 3.3 quoted above. Hence, it is unclear what influence the Assessment will have on the orientation and volume of future EBRD operations, whether the Bank recognizes the considerable risks involved with Egypt's sizeable and growing degree of non-compliance with Article 1 of the Agreement Establishing the Bank, whether the EBRD views this as warranting a change of approach to its operations in Egypt, and whether it intends to use its significant leverage to push for reform, or not. In a nutshell, there is a **need to clarify how the EBRD will implement its "more for more, less for less" principle in its next strategy for Egypt.**

The Political Assessment

1. Section on "Free Elections and Representative Government"

Criterion "Free, fair and competitive elections"

- This section presents fair coverage of the 2020 legislative elections, but it is missing the mention of the 2019 arbitrary arrest of the Hope Case detainees, including former parliamentarian and rights lawyer Zyad el-Elaimy, for trying to organize a democratic secular opposition alliance called the "Hope Coalition" to run in the 2020 legislative elections. Pro-government tabloids decried the "Hope Conspiracy" at the time of their arrest/enforced disappearance in 2019, showing it was indeed related to their attempt to participate in the parliamentary elections. Several of these persons have remained in arbitrary detention ever since. In spite of the October 2021 'lifting' of the state of emergency across Egypt, on 17 November 2021, [an Emergency State Security Court whose rulings cannot be appealed sentenced Mr El-Elaimy](#) to five years in prison, journalists Hisham Fouad and Hossam Moaness to four years, and other defendants to three years. The Hope Case is also missing in sections on the criteria "Multiple channels of civic & political participation" and "Freedom to form political parties & existence of organized opposition" (p.26).
- An essential missing element from all three of these sections is Egypt's 2018 presidential election; in a highly centralized, presidential system with an authoritarian mode of governance, it is even more crucial not to overlook it. The pre-campaign period and the conduct of Egypt's 2018 presidential election bore witness to the rollback of democracy and the right to participate in political affairs in the country. In 2017-18, [five would-be candidates were prevented from running for presidential election against the incumbent Al-Sisi](#) by military trial, house arrest, intimidation or harassment of their campaigners. There remained no challenger to the incumbent until finally, the quite unknown Mr Mousa Mostafa Mousa registered on the last possible day to stand for election; he [had been a member of a campaign for Al-Sisi's re-election until the day before](#). The media, democratic opposition forces and human rights defenders [faced harsh retaliation for speaking up about the sham process](#), which led to Al-Sisi officially receiving 97% of the vote.

Criterion "Separation of powers and checks and balances"

- This section quotes the constitutional powers (in theory) of the Parliament to act as a check on the Executive branch of government but includes no comment whatsoever on the effective exercise of that power. Indeed, the parliament is actually comprised of an overwhelming supermajority of pro-

government members: the main electoral lists announced for the 2020 Senate elections were under control of security bodies, [according to an investigation by MadaMasr](#); the lists for the People’s Assembly elections were already under control of the security bodies since the previous (2015) election [as reported by MadaMasr](#). [Freedom House confirms that](#) in 2020 in Egypt,

“Tightly controlled parliamentary elections took place over several months... The polls were marred by low turnout, claims of fraud, vote buying, severe interference by security apparatuses, and detention and intimidation of individuals who criticized the process. No credible domestic or international groups were allowed to monitor the elections, **which delivered control both chambers of the parliament to the ruling regime.**”

- The text of this section makes no explicit connection between the question of the Parliament’s real ability to act as a counter-power to the Executive, and this passage from the preceding section, on the same page, which does give indications that the parliamentary elections were not free and fair:

“Different groups boycotted the elections, alleging lack of fair competition. Some candidates alleged irregularities as well as paying voters for their votes, and filed complaints to the National Election Authority, comprised of judges, which supervised the election and referenda. (...) Several relevant domestic and international interlocutors charged that the authorities exerted influence on the composition of party lists. The elections were undertaken under state of emergency and during the COVID pandemic.”

- The section is also missing discussion of the role of the judiciary in Egypt with respect to the criterion of separation of powers and of checks and balances. The text does mention the 2019 constitutional referendum in Egypt and reports how the amendments extended al-Sisi’s possible time in power and increased the military’s powers. However, it neglects a relevant aspect for this section: the amendments also further undermined what remained of judicial independence—and therefore, the judiciary’s already very limited ability to act as check against the power of the Executive, as explained by the [International Commission of Jurists \(ICJ\) and Human Rights Watch \(HRW\)](#), and by [Egyptian independent rights groups](#).
- Regarding the constitutional amendments, this section fails to mention the extremely repressive climate in which they were adopted by referendum, [summarized by ICJ and HRW](#) at the time:

“On April 17, the National Election Authority said a public referendum was set for April 19-22. The official draft amendments were only published in the official Gazette on April 18. The vote takes place amid ongoing mass arrests and a relentless crackdown on fundamental freedoms, including currently targeting those calling for boycotting or rejecting the amendments. Given the ongoing repression, and that political opposition in Egypt has dwindled to a nominal presence, a free and fair vote will be impossible.”

It is indeed difficult to imagine a free and fair a referendum vote whose subject—the text of the amendments—was published the day before the vote, news reporting on it was banned in the previous two months, [“no” vote supporters were harassed and threatened](#), and seven [“no” campaign web sites were blocked](#) inside the country.

2. Civil Society, Media and Participation

Criterion “Scale and independence of civil society”

- This section provides a fair overview of many of the concerns raised by international rights experts and civil society about closing civic space and the repressive legal framework for civil society in Egypt.
- **One key source is missing** (likely due to the drafting of this Political Assessment months before its publication): [the 8 July 2021 UN Special Procedures Communication to the Egyptian authorities on Egypt’s legal framework for NGOs](#), with a thorough analysis and concerns that include the following:
 - “the Law 149/2019 and its 2021 by-law (or regulations)... enable the Executive to carry out supervisory control and broad discretion to regulate and dissolve civil society organisations.”
 - “We are very concerned that the impact of the Law and the by-law would be in direct contradiction to its stated goal of genuinely serving the public interest and could be detrimental to civic space in Egypt. Instead of regulating CSOs according to international human rights obligations, it appears that it hinders their activity. We are worried that the NGO Law drastically narrows possible fields of action for

NGOs, that registrations can be denied discretionally without a time limit, and makes it extremely difficult for NGOs to receive funds from foreign entities. (...) Moreover, we are concerned about the potential for NGOs or their members to be easily linked to terrorist groups.”

The UN experts added:

“While the NGO Law is the only piece of legislation specifically governing civil society work in Egypt, numerous other laws hamper the work of civil society organisations. These laws include the Anti-Cyber and Information Technology Crimes Law (Law 175 of 2018), the Terrorist Entities Law (Law 8 of 2015), the Anti-Terrorism Law (Law 94 of 2015) and the Right to Public Meetings, Processions and Peaceful Demonstrations Law (Law 107 of 2013). We previously expressed concern about the very broad definitions of terrorism-related legislation in EGY 4/2020.”

- Key Egyptian independent CSOs risk closure if they fail to comply with the compulsory registration deadline of 11 January 2022.
 - In this section of the Assessment, the passage “*Egyptian labor unions and professional syndicates have for decades been prominent civil society actors with strong contributions to the political and socio-economic agendas. The elections of their leaderships receive major public attention*” is misleading. It creates an inaccurate impression of the space for independent labor union organizing and of the situation of workers’ rights in Egypt in the period under assessment (2017-21). This has actually been a harsh time for workers’ rights and independent professional syndicate organizers.
 - Regarding legislation, the [2019 speech of human rights defender Ms Rahma Refaat](#) from the independent NGO CTUWS (Center for Trade Union and Workers’ Services) details how the 2019 amendments to the Trade Union Law, no. 213/2017, are unconstitutional and the law still does not allow independent workers’ unions or independent professional syndicates to register and function.
 - Regarding restriction of rights to organize in practice, Human Rights Watch’s [2019 annual report chapter on Egypt](#) states:

“In June, the International Labour Organization [placed Egypt](#) on its list of countries that abuse workers and do not respect their right to organize and unionize. Egypt was on this list 5 times in the last 15 years and was removed only briefly in 2018.”

The [2020 Egypt chapter](#) of Amnesty International’s annual report stated also:

“A June verdict by the Court of Cassation sanctioned the dismissal of workers at state-owned companies who had been convicted of protest-related charges, even if acquitted by higher courts.”
 - In 2020, [Human Rights Watch reported](#) repression of the Doctors’ syndicate’s attempt to denounce State repression of medical professionals in connection with the COVID-19 pandemic:

“In late June, Interior Ministry forces besieged the doctors’ syndicate building and forced its members to cancel a press conference to address government harassment of doctors in connection with Covid-19.”
 - The [2021 LORD International case, documented by Amnesty International](#), provides a recent example of the frequent failure of both the state-affiliated trade union federation ETUF and the Ministry of Manpower, to support workers striking for their rights stipulated by law or to protect them from reprisals for doing so.
 - State authorities have also played a direct repressive role, [reports Amnesty International \(AI\)](#):

“Since President Abdel Fattah al-Sisi came to power, Egyptian authorities have subjected dozens of workers and trade unionists to **unfair trials – some in military courts – arbitrary arrest, dismissal from work, and other disciplinary measures solely for exercising their right to strike and form independent trade unions**. In September (2021), the authorities arbitrarily detained three Universal Company workers for two days pending investigations on terrorism-related charges solely for exercising their right to strike and peaceful protest.”
- Amnesty provided specific examples in [the Egypt chapter of its 2020 annual report](#):

“Following the COVID-19 outbreak, tens of thousands of private sector workers were dismissed, forced to accept reduced wages, work without protective equipment or take open-ended unpaid leave. The authorities failed to provide workers who lost their livelihoods as a result of the economic impact of COVID-19 with sufficient social protection measures, including unemployment benefits.
The authorities arbitrarily detained tens of workers and trade unionists solely for exercising their right to strike and protest peacefully. In September, security forces arrested at least 41 workers at a state-owned textile company in Shebin al-Kom city who were protesting for their outstanding dues. All were released 10 days later.”

In 2019 [Front Line Defenders also reported](#):

“The government of President Abdel Fattah al-Sisi has punished labour rights defenders with arrests, disappearances, beatings in detention, intimidation by State Security officers, withholding of salaries and benefits, mass firings and trials in

military courts. **Several activists who have participated in factory strikes since the 1960s told Front Line Defenders that in their lifetimes, they had never faced this level of violence and retribution against labour rights activism.** As the Egyptian Ministry of Defense – estimated to control more than half of the country’s economy – purchases more land, factories, hospitals and hotels, labour rights defenders occupy a particularly dangerous space in Egypt’s increasingly militarized economy. Organizing in any company or sector owned or operated by the military puts HRDs (human rights defenders) at increased and direct risk of prosecution in military courts.”

Criterion “Independent pluralistic media that operate without censorship”

This section mentions several key issues involved in the repression of media freedoms in Egypt.

- However, it presents some contradictory content. The first paragraph is oddly laudatory, to the point of being misleading: *“Egypt has a long tradition of diverse media. Over two hundred newspapers, magazines, and tv stations operate in the country, where a wide range of views on social, political, and economic issues are aired, and where the government is normally criticized.”* It is at odds with this sentence further down the page: *“Several relevant domestic and international interlocutors report that the restrictions have contributed to a climate of self-censorship.”* This leaves the reader in doubt about which statement the EBRD gives credence to.
- The section accurately states: *“There were cases in which journalists were arrested and were detained on pre-trial charges for extended periods, including on charges of ‘joining a terrorist organization’.”* But it fails to reflect the severity of the situation: Egypt is now [the third worst jailer of journalists in the world after China and Myanmar](#) as of December 2021, according to the Committee to Protect Journalists (CPJ). With 25 media workers behind bars. [Reporters without Borders \(RSF\), who ranked Egypt 166th in the world in terms of media freedom, also reported](#) in 2021 that

“The press freedom situation is becoming more and more alarming in Egypt, with frequent waves of raids and arrests. Egypt is now one of the world’s biggest jailers of journalists, with some spending years in detention without being charged or tried, and others being sentenced to long jail terms or even life imprisonment in iniquitous mass trials. Ever since Gen. Abdel Fattah el-Sisi seized power in a coup in 2013, a process of a “Sisification” has been under way in the media. **The government has waged a witch-hunt against journalists suspected of supporting the Muslim Brotherhood and has bought up the biggest media groups to the point that it now controls the entire media landscape and has imposed a complete clampdown on free speech.** The Internet is the only place left where independently reported information can circulate, but **more than 500 websites have been blocked since the summer of 2017, including many news sites, and more and more people are being arrested because of their social media posts.** Many media outlets have been forced to close because they could not survive economically after being deprived of online visibility.

A draconian legislative arsenal poses an additional threat to media freedom. Under a terrorism law adopted in August 2015, journalists are obliged on national security grounds to report only the official version of “terrorist” attacks. In 2018, new cyber-crime and media laws enshrined government control over the media and made it possible to prosecute and imprison journalists and close websites for sharing independently reported information online.

Journalists and human rights defenders are meanwhile banned from much of the Sinai region and from providing independent coverage of any military operation. Coverage of many economic subjects, including inflation and corruption, can also result in imprisonment. (...) Foreign media are also targeted, with articles being blocked online or attacked by officials, and reporters being expelled or banned from visiting Egypt.”

Thus, according to the assessment of Egypt’s situation by the two best-known expert CSOs on the freedom of the press, this section of the Assessment clearly underestimates the crackdown in Egypt.

- It is concerning that this section only describes the Supreme Council for Media Regulation as *“the independent Supreme Council for the Regulation of the Media, which is composed of media professionals.”* [According to RSF in 2021,](#)
 “In recent years, the main weapons used by Egypt to control the media and gag journalists have been the Supreme Council for Media Regulation (SCMR) and the State Information Service (SIS). It has used the SCMR to block more than 500 websites since 2017 on the grounds that they have been publishing “fake news”.

Among the blocked sites are those of the rights NGOs Human Rights Watch and Reporters Without Borders, several sites providing VPN services, and independent online media MadaMasr and Darb.

- The section reports the Egyptian authorities’ response to international criticism: *“no one is detained in the country for expressing their opinions or for publishing them and that the Penal Code and Counter-Terrorism*

Law and their implementation are in line with Egypt's obligations under the relevant provisions of international law." It is also important to recall that UN human rights experts repeatedly denounced Egypt's counter-terrorism legislation. [On 1 Dec. 2021 they expressed](#)

"Grave concern over Egypt's Anti-Terrorism Law and Terrorism Circuit Courts, and said the systematic use of overly broad and vague definitions of terrorism that target human rights defenders, **journalists**, and those exercising their human rights and fundamental freedoms – including the freedoms of expression as well as of peaceful assembly and of association – are detrimental to human rights. The experts affirmed that the Law's provisions go beyond the scope necessary to counter-terrorism and severely limit civic space and the exercise of fundamental freedoms in Egypt. Such measures also fail to comply with Egypt's international law obligations, which require counter-terrorism measures be undertaken in compliance with international human rights law..."

If this statement's date puts it outside the reporting period, we would refer the EBRD to the [11 Feb. 2021 statement by UN rights experts](#):

"We are deeply disturbed about counter-terrorism law, its definitions, misuse and the practice by the Egyptian authorities, and in particular the misuse of listing procedures at national level, to attack individuals engaged in human rights work," the experts said. **"The continued misuse of counter-terrorism powers is not consistent with the State's international law obligations and undermines broader international efforts to prevent terrorism by misusing such powers domestically."** (...) **"We are concerned that this indicates a systemic problem with human rights protections in Egypt, as well as a systemic problem in the abuse and misuse of counter-terrorism laws and practices."**

Criterion "Multiple channels of civic and political participation"

- This section is worryingly empty of content on Egypt's legislation and repressive State practices which have further closed the space for independent labor union organizing and adversely affected workers' ability to assert their basic rights in Egypt, as detailed on pages 3-4 of this submission.
- The sentence *"Student Union elections have a long history in Egypt of being major grounds for political and ideological debates on campuses"* is very misleading about the current situation for student rights activists and organizers, who are facing a harsh closure of public space in the period under assessment. The [April 2021 ten-year report on student union elections in Egypt by independent rights group AFTE](#) (Association for the Freedom of Thought and Expression) explains:

"On August 19, 2017, the Supreme Council of Universities headed by Khaled Abdel Ghaffar announced adopting a new student regulation, which (...) **completely abolished the student union at the national level and contented itself to colleges and universities unions (...). The conditions for candidacy in the new regulation included arbitrary clauses (...). These conditions were characterized by arbitrariness, broadness, ease of interpretation, and the impossibility of fair implementation**, as the university administration can adapt them as they wish, and thus write off any student who may be in opposition or of an independent political line at the very least. (...) **The State sought two main matters from the new regulation. The first was to cancel out the Egyptian Students' Union and thus completely avoid the possibility of opposition students or even students enjoying a degree of independence winning in an entity that is considered the legitimate representative of Egyptian students. As for the second matter, it is rigidity regarding the conditions for candidacy and thus facilitating the ban from the very beginning for any student who may show signs of opposition or independence.**"

Criterion "Freedom to form political parties and existence of organized opposition"

- This section accurately lists relevant constitutional articles and the legal powers of the Electoral Authority, but fails to tackle the question of the implementation of the relevant constitutional norms in a factual manner. It adds that *"Reports of relevant domestic and international NGOs and interlocutors allege that political activists and opponents that challenge the Government face the potentiality of arrests."* The terms "allege" and "potentiality" give the impression the Bank cannot determine whether or not these reports are accurate. The existence or not in Egypt of real, organized and functioning opposition parties, with agendas and programs differing from those of the Executive authorities, who are able to hold meetings and communicate with the public, to campaign freely in legislative elections and field candidates for presidential elections, is a factual question, not a matter of opinion. If the Bank believed such parties exist, they could be named in this section; if the Bank

does not believe such parties exist, it is unclear why this is not stated as such, and why such hypothetical language as “allege” and “potentiality” is necessary.

- Similarly, to the section on the criterion “Free, fair and competitive elections”, this section is missing a mention of the Hope Case, in which persons attempting in 2019 to plan formation of a secular democratic opposition coalition to contest the 2020 legislative elections, were subjected to arrest and long arbitrary detention, followed by heavy sentences from a State Security Emergency Court in November 2021 on unsubstantiated charges.

3. Rule of Law and Access to Justice

Criterion “Supremacy of the Law”

- This section adequately covers the relevant constitutional articles (which is more relevant in this section than in others in the Assessment), and correctly mentions the long duration of time Egypt was under a nationwide state of emergency (2017-2021, i.e., almost the entirety of the reporting period). The Egyptian authorities’ remark about the state of emergency being enacted following 2017 terrorist attacks, reported in this section, is also accurate.
- However, it is important to note that although the state of emergency was formally lifted in October 2021, Egypt remains in a *de facto* state of exception. Other legislation enacted or amended in the Al-Sisi era, notably the 2015 Laws on Terrorist Entities and on Counterterrorism, Law 136/2014 protecting public facilities, and the Judicial Authorities law (no. 13/2017) – not to mention the 2019 constitutional amendments – [already gives the Executive a legislative arsenal to repress peaceful dissent](#). These laws contain multiple violations of the rights guarantees provided by Egypt’s Constitution, and they require no formal state of emergency. Furthermore, in November 2021 President al-Sisi ratified amendments to Law 58 of 1937 on the Penal Code, Law 94 of 2015 on counterterrorism, and Law 136 of 2014 protecting public facilities, [introducing harsher penalties than the emergency law itself, tacitly supporting the trial of civilians before military courts, and further protecting the armed forces](#) and its corporate entities from civilian accountability. Emergency state security courts, whose rulings cannot be appealed, have continuing to try human rights defenders, journalists, bloggers and peaceful democracy activists referred to them before the October ‘lifting’ of the state of emergency.
- Some key aspects of the authorities’ disregard of the law are missing from this section. In particular, the National Security Prosecution continues to misuse pre-trial detention to hold detainees—including human rights activists and journalists—on unsubstantiated, vaguely worded charges, and sometimes without formally charging them at all, for prolonged periods of time, sometimes over the legal limit of two years, without referring the detainees to court. The National Security Prosecution has [increasingly used the illegitimate practice of “recycling cases” to keep political prisoners behind bars](#) indefinitely:

“Used to keep an ever-growing number of peaceful critics of Egypt’s authoritarian government perpetually behind bars, cases are “recycled” primarily in two ways. In the first, an activist is released for weeks or months after being detained on dubious charges, and then is re-arrested in a new case for the same or similar charges – as occurred in the cases of lawyer and activist Mahienour el-Masry and lawyer Mohamed Hamdoun. In the second, verdicts are issued to release detainees; however, the verdict is never actually implemented. Instead, the detainee remains imprisoned or is disappeared for a while and then re-appears charged under a new case.”

These practices and many laws violate rights guarantees in Egypt's Constitution and international human rights commitments, which are supposed to be applicable and binding in the country.

- [Lack of due process](#) remains widespread in Egypt, and has been [denounced](#) on many occasions [by UN experts](#). Structurally unfair mass trials have continued in Egypt; they have been described by the UN as [“making a mockery of justice”](#). [According to Reprieve UK](#),
“Mass trials continue to proceed despite widespread international condemnation that they are simply unfit to meet the basic requirements of international fair trial protections. There have been at least 53 mass trials since 2011, in which 2,182 people were sentenced to death. Egypt has continued to use mass trials to issue death sentences in the last three years; at least 213 people have been sentenced to death in mass trials since 2018, a quarter of all death sentences in that period. In the same period, at least 27 people were executed after being convicted in mass trials.”

An alarming increase in executions being carried out in the country in 2017-18 notably provoked the European Parliament's 2018 [urgency resolution on executions in Egypt](#).

- Though the Egyptian authorities have asserted to the EBRD in this section that military trials of civilians are *“consistent with the country's obligations under International Human Rights Law and that judges in military courts enjoy the same entitlements and immunities to safeguard their independence as those in non-military courts,”* [independent Egyptian rights groups have documented](#) a number of trials before military courts that show otherwise. They stress that death sentences issued by military courts are of especially “grave concern due to the partiality of military courts and their haste in carrying out death sentences, relative to civilian courts.” They add that for military courts:
“The Minister of Defense appoints the judges of these tribunals, leaving them with no claim to neutrality or independence. Fundamental rights are denied, disregarded, or severely curtailed – including the rights to defense and a trial before one's natural judge, and the principle of a public trial. The military judicial system is also prone to extracting confessions using illegal practices such as torture and enforced disappearance....”
- In general, the fact that Egyptian citizens' access to criminal justice and redress for the gravest of violations against them by State agencies is extremely low—or totally absent for some types of violations such as enforced disappearance—also shows contempt of the law from several State institutions, and [fuels grievances against the State](#) among growing numbers of Egyptians.

Criterion “The independence of the judiciary”

- This section mentions two relevant developments, the 2017 [amendments to the Judicial Authorities Law](#) and Code of Criminal Procedure, and the 2019 constitutional amendments. However, it does not clearly state any conclusion regarding criterion of independence of Egypt's judiciary. In fact, these developments have fed into a [trend of increasing Executive control over the judiciary](#) despite the ready availability of analysis in English, online on the topic (for instance [here on the constitutional amendments](#)). A Freedom House analyst [stated in 2019](#):
“The politicization of Egypt's once-proud judiciary has been one of the saddest stories of the post-2011 period. There were always some judges under the control of the security agencies, and there were always some military trials of civilians. But all of this has increased dramatically under Sisi, with mass trials of hundreds of defendants and death sentences against dozens at once now happening regularly. The constitutional amendments that are currently in the process of being passed will be the icing on the cake, completing Sisi's control over the appointments and budgets of senior judges.”
- The more and more blatant involvement of parts of the judiciary in the repression of peaceful dissent in Egypt in the reporting period, has made it very clear that the judicial system has become severely lacking in independence.
 - It has been clear for years that the role of Egypt's Public Prosecution is extremely problematic, and that it has become *“a driving force in the vast crackdown on dissent”*, using various tactics to illegitimately target peaceful dissenters whom the regime considers enemies of the state, as detailed in a [2017 study by CIHRS legal researcher M. Ansary](#). He concluded that

“The Public Prosecution often brings criminal charges based on flawed evidence, including defective evidence and “confessions” obtained through torture and ill-treatment; such “evidence” has been used to convict innocent people. (...) The Public Prosecution has played a key role in the forced resignation of dozens of independent judges... The Public Prosecution generally has failed to pursue credible allegations of wrongdoing by police, security agencies, and other “protected groups.””

- Other research has documented the specific role of the Supreme State Security Prosecution (SSSP) in this regard. A 2019 [Amnesty International study on the SSSP](#) concluded that it “is responsible for routinely violating the rights to liberty and a fair trial, ordering the arbitrary detention of thousands, and for complicity in serious violations carried out by the police, particularly the National Security Agency, including enforced disappearances and torture and other ill-treatment.”

The SSSP commonly [uses vague terrorism-related charges](#) to justify widespread, long arbitrary detention as a punitive practice against human rights defenders, media workers, opposition party members, peaceful activists and anyone perceived as a dissident. In 2020, [Human Rights Watch also commented](#):

“Egypt’s use of pretrial detention transforms it from what it should be – a precautionary, exceptional measure – into a tool of political punishment wielded by security agencies and rubber-stamped by the judiciary on a large scale, even as a global pandemic threatens prison populations.”

The [targeting of human rights lawyers](#) by the NSA with the assistance of the National Security Prosecution has also increased since 2019.

- The increasingly common practice of “recycling cases” mentioned on page 6 of this submission regarding the criterion “Supremacy of the law”, also involves clear judicial complicity and has been denounced by independent international and Egyptian rights groups on multiple occasions (e.g. [Jan. 2020](#), [Sept. 2020](#), [Nov. 2020](#))

Criterion “Government and citizens equally subject to the law”

- This section correctly mentions domestic and international concern over Egypt’s Terrorist Entities law and its use. It also reports the Egyptian authorities’ reply to this concern, which includes a reminder that individuals listed can appeal that listing to the Court of Cassation.
- It is relevant to note that in 2021, four individual human rights defenders (HRDs – Ziad el-Elaimy, Ramy Shaath, Alaa Abdelfattah and Mohamed al-Baqer) – did so, but the Court of Cassation denied their appeals. UN human rights experts have condemned the listing of all four HRDs (in [February 2021](#) and [December 2021](#)) and called on the Egyptian authorities to remove them from the list. In fact, for Mr Abdelfattah and Mr al-Baqer, [the World Organization Against Torture and the International Federation for Human Rights report that](#)

“The Court of Cassation issued its ruling despite the advisory decision submitted by the Cassation Prosecution recommending the Court to accept the appeal and remove the defenders from the terrorist list. The decision of the Court of Cassation is final and hence cannot be appealed.”

The five-year listing includes restrictions such as travel bans, asset freezes, and bans on practicing civil society work, and founding or joining NGO boards. For Mr El-Elaimy and Mr al-Baqer, it also bars them from practicing law (their profession) for five years.

- This section also correctly highlights the 2018 legislation allowing the government to grant high-ranking military officers immunity for violations committed while the Constitution was suspended.
- However, this section should have mentioned [the near-complete impunity of Egyptian security bodies](#) for many [serious crimes of torture—including against children](#)—, enforced disappearance against citizens—[also including children](#)— as well as the [impunity of the military](#) and security forces for [probable war crimes and a number of suspicious killings](#) and [a number of suspicious killings that probably constitute extrajudicial executions](#). These are very serious crimes which should be subject to serious, independent investigation and the responsible parties should be tried. Yet it is [extremely](#)

[rare to see any such accountability for torture](#) cases, and it has never happened for enforced disappearance cases or extrajudicial executions during the reporting period. In contrast, Egyptian citizens are frequently punished severely by the National Security Agency and the judiciary for exercising their human rights. Hence, security bodies and the military are clearly not equally subject to the law, with citizens.

Criterion “Effective policies and institutions to prevent corruption”

- This section notes relevant legislative changes, including to reinforce the mandates of the Central Authority for Accounts (also translated as Central Auditing Agency or CAA) and of the Administrative Control Authority was extended in terms of scope and powers. However, the lack of independence of the Central Auditing Agency remains problematic. The Egyptian Constitution had previously provided the head of the CAA immunity from dismissal to protect the person from pressure, but President al-Sisi issued a decree in July 2015, allowing him to dismiss the heads of several regulatory agencies, including this one as well as the governor of the Central Bank of Egypt, the financial regulator, and the Administrative Control Authority. A few months later, [Al-Sisi dismissed Hisham Geneina, head of the CAA after he spoke to the media about the amount of State funds lost to corruption](#) within the administration. To this day, nothing has been done to restore the independence of this position and of other regulatory bodies.
- This section also ought to have mentioned the problem of State regulatory agencies’ inability to oversee the issue of corruption within the military-controlled enterprises. Indeed, according [to a 2019 Carnegie Middle East Center report](#), “[t]he bulk of the formal military economic sector does not fall within the remit of Egypt’s audit and anticorruption agencies, whether de jure or de facto,” and it was President Sisi who amended the laws governing the Administrative Control Authority in 2017 to formally limit its scope to civilian agencies only. Unsurprisingly, the report adds (p.314) that
“anecdotal evidence, insider accounts, and public revelations ... indicate extensive and routinized corruption within at least those parts of the defense sector concerned with procurement and supply, licensing civilian functions of any kind, and public contracting and services.”

4. Civil and Political Rights

Criterion “Freedom of Speech, information, religion, conscience, movement, association, assembly and private property”

- This section reports the Egyptian authorities’ announcement about Egypt’s new national human rights strategy and adds, “*The official implementation of the Strategy has begun in September 2021*”. This is somewhat misleading. The Strategy was formally announced in September 2021, but it includes no roadmap or action plan for implementation. The authorities indicated that would be produced, but no specific action plan has been announced at the time of writing (mid-December 2021). The independent rights NGO Committee for Justice has published a round-up of the human rights trends in the first 100 days after the strategy launch and [concluded there has been no tangible progress to date whatsoever](#).
- [The content of the human rights strategy and the context of its production are worrying](#).
 - President al-Sisi attended the launch ceremony in person, then days later [denied on Arabic-language television for the Egyptian public](#) that there are any human rights violations in Egypt,

holding forth on poverty and ignorance leading to “unfortunate behaviors”. Drafted under the aegis of the Ministry of Foreign Affairs in order to respond to international criticism, the strategy is based on denial of both the reality of Egypt’s dismal human rights situation—the strategy lauds Egypt’s “performance” in that field and purports to set out plans to carry it further—and the cause of the crisis: the strategy identifies any failings in the field of human rights to a lack of popular awareness and to failings of political parties and civil society, instead of State repression.

- The document stresses constitutional articles guaranteeing many rights, but is silent on a multitude of laws and state practices violating these guarantees, failing to mention the widespread use of the death penalty after unfair mass trials, systemic torture in detention facilities in Egypt, the prolonged arbitrary detention of peaceful critics, endless violations to due process and fair trial rights, severe violations of prisoners and detainees’ rights, and the harsh rollback of the rights to freedom of expression and to privacy. As the strategy pinpoints alleged “causes” for human rights issues in Egypt, it neglects to mention the key role played by several factors in creating the current situation, notably the harsh clampdown on media freedom and the rights to freedom of expression, peaceful assembly, association, and to political participation, as well as the lack of real progress regarding the right to freedom of religion and belief.
- Based on this misdiagnosis of the cause and nature of Egypt’s human rights crisis, the document logically puts forward inadequate recommendations: legislative amendments, increased training, and raising awareness. These cannot counter the mobilization of the executive, legislative, judicial, security, and military institutions of the State to systematically attack human rights and repress peaceful dissent in Egypt, in constant violation of the rights guarantees provided in the constitution and law.
- On the freedom of association and expression, the references to relevant statements by the OHCHR and States at the UN Human Rights Council in this section, are to the point and appropriate.
- This section does not mention any development regarding the freedom of assembly. It is important to note that [Egypt’s colonial-era draconian Assembly Law \(no.10/1914\) is still on the books](#) and used to repress the freedom of peaceful assembly (in conjunction with the 2013 Protest Law), although it should have been abrogated in 1928 (when the Parliament adopted a law repealing the Assembly law, but the King then failed to enact it). The Assembly Law dates from the time of British colonial occupation and criminalizes the public assembly of five or more persons without a government permit. [According to the independent regional rights NGO CIHRS in 2020:](#)

“The Assembly Law is not only used by the Egyptian government to deny its citizens their right to protest, but it is also used to deny them their right to life. Between 2014 and 2017, 474 people were [sentenced to death](#) on the basis of the law, which – by negating the principle of individual criminal responsibility – enables Egypt’s judiciary to indiscriminately issue mass death sentences against hundreds of persons. Under the Assembly Law, it is only necessary for an assembly to have occurred (defined as five or more persons gathering without a security permit) in order to render all participants and persons calling for it—even those who did not participate—guilty of “assembling” and any other crimes that may have been committed by any individual participant during the assembly, including crimes punishable by death. Soaring numbers of Egyptians have either been [executed](#) or are awaiting execution for crimes they did not personally commit that occurred during an assembly.”

In 2017, CIHRS initiated a lawsuit seeking an Administrative Court injunction against the government’s application of the Assembly Law, and publication by the President of the law’s 1928 abrogation bill in the Official Gazette. After an arduous three-year process and many delays, the Administrative Court [denied the lawsuit in 2020](#), and kept the 1914 Assembly Law on the books.

Criterion “Political inclusiveness for women, ethnic and other minorities”

- This section focuses mainly on the situation of women, touching on some key issues such as political participation, fighting child marriage and violence against women, access to identification papers and literacy. It is unfortunate that the improvement in literacy rates quoted here, is for the period 1996 to 2017, i.e. outside the period of time to be considered in this Assessment (2017-21).
- The section includes one paragraph on women’s increased participation in politics, which is accurate and a fair point. Unfortunately, the more numerous women parliamentarians in the 2015-20 and the 2020-25 legislatures have not achieved major legislative progress to secure women’s rights, which is sorely needed.
- The section neglects to mention the 2020-21 trend of repression of women social media influencers, in an apparent attempt to harshly police the morality of women online. According to [Amnesty International’s 2020 annual report chapter on Egypt](#),
 “the authorities intensified their crackdown on women social media influencers for the way they dressed, acted and earned money on apps such as TikTok, prosecuting at least nine women on charges of “indecentcy” and “violating family principles and values”. At least six women were sentenced to prison terms ranging from two to six years.”
- As long as this section goes beyond political inclusion to mention personal and social rights issues for women, it could also have mentioned the situation of LGBTQI+ rights in Egypt, which is particularly dire due to social stigma but also clearly due to State practices of harassment and repression, including patterns of torture and other grave rights violations as documented by [Human Rights Watch](#) and [EIPR](#) (and there is really no political inclusion of LGBTQI+ people to speak of). It is also unfortunate this section does not mention the question of inclusion of the Nubian minority, which is very much lacking. Nubian rights defenders were targeted in a harsh crackdown after a peaceful demonstration in 2017, and [referred to trial before a State Security Emergency Court](#). The 2020 [Freedom House annual report section on Egypt](#) states:
 “...women, Christians, Shiite Muslims, people of color, and LGBT+ people face discrimination and are denied access to a number of rights, which in turn affects their ability to participate in political life. In light of increasing control by Sisi and the military over elections and other aspects of society, these groups are generally only able to represent their interests within the narrow scope of officially sanctioned politics, and risk harsh penalties for transgressing stated and unstated red lines. The diminishing power of the legislature further undercuts avenues for meaningful representation.”
- This section does not include any developments regarding the rights to freedom of religion and belief. On that topic, it would have been advisable to refer to the sourced overview of the issue in the April 2021 [briefing by the US-based NGO Coptic Solidarity](#) (CS), a relevant civil society stakeholder. CS created the document as a fact-checking brief in response to a document on the issue of freedom of religion or belief in Egypt and the situation of the Coptic community there, circulated among US policy-making circles by lobbyists working officially for the Egyptian Embassy in the USA. We note the overall conclusion on the issue by CS:
 “The fact is that the Copts, the indigenous population of Egypt, are subjected to institutional, systemic and systematic discrimination in their own country. It is imperative that the Egyptian government admit this reality at the highest levels of the state and enact rigorous and urgent plans to restore full citizenship rights of Copts.”
- This section includes a brief paragraph on the situation for refugees and “residents” (we assume this refers to asylum seekers and other foreign residents) in Egypt. Here, the sentence “*They live outside any forms of camps and have equal access to services available to Egyptians including all subsidies*” corresponds to the Egyptian authorities’ narrative, but unfortunately not to the lived reality of asylum seekers and refugees in Egypt. Indeed, they *ought* to receive equal access to services as they are, in theory, entitled to. But according to local rights NGOs, media and academic researchers, many do not enjoy equal access in practice. The research by [international rights NGOs](#) concurs with the information shared by expert local NGOs and independent journalists to confirm that many asylum seekers are in fact unable to access basic State services and resources, and tend to remain in legal limbo for long

durations of time due to low capacity of the UNHCR staff (who is responsible for refugee status determination in Egypt).

- Persons apprehended while attempting to cross a border irregularly in or out of Egypt, or apprehended on Egyptian territory without valid identification documents (a common situation due to administrative delays to register or renew asylum-seeker documents, which worsened during the pandemic) are at high risk of long arbitrary detention, in dreadful conditions in Egyptian prisons. The latter is a very widespread practice, and foreign detainees risk unfair trials before military courts for the irregular crossing (or attempted crossing) of a border considered a military zone. There is also a continuing risk of forced deportation back to unsafe countries of origin, including to situations of war and persecution. In October and November 2021, the Egyptian authorities forcibly deported two groups of Eritrean asylum seekers, including minors, back to Eritrea in violation of the principle of non-refoulement; this was [denounced by UN human rights experts](#). This practice is ongoing and escalating at the time of writing, [according to a specialized local rights organization](#). [Media and civil society reports](#) of anti-Black racism and lack of access to justice, adversely affecting the Sudanese community and others in Egypt, continue to appear. Two researched reports published during the reporting period by [Migreurop](#) and by [EuroMed Rights](#), contain much detailed information on all of these issues.

Criterion “Freedom from harassment, intimidation and torture”

- This section shows improvement compared to the corresponding section of the 2017 strategy’s Political Assessment; the factual errors are no longer present, and it benefits from the inclusion of references to notable UN sources on the topic of torture. It is also a positive step that the Regeni case in Italy is acknowledged with somewhat clearer language.
- However, it is unfortunate that the reference to the [2017 UN Committee against Torture \(UNCAT\) report](#) language on Egypt is somewhat downplayed and the word “alleged” is used to qualify the practice of torture, presenting its existence in Egypt as somewhat uncertain or unverified. This same section cites the Egyptian authorities’ UPR report in which they themselves do not use the word “alleged”: “*tens of police officers have been investigated in cases related to torture and ill treatment of people in custody (...) at least 70 investigations resulted in criminal convictions*”. Egyptian authorities formally deny the fact that torture is systematic, a matter of policy and how serious the problem is, but do not usually dispute (at least not in the UPR process...) that it exists in Egypt at all. Hence, the fact the EBRD does not mention the practice of torture in Egypt without appending the word “alleged” to it in this section, appears difficult to justify. At least, in referring to the 2017 UNCAT report, it would have been preferable for the Bank to directly quote the clear, affirmative language of the report, from this passage:
“69. Torture appears to occur particularly frequently following arbitrary arrests and is often carried out to obtain a confession or to punish and threaten political dissenters. **Torture occurs** in police stations, prisons, State security facilities, and Central Security Forces facilities. **Torture is perpetrated** by police officers, military officers, National Security officers and prison guards. However, **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. Many documented incidents occurred in greater Cairo, but cases have also been reported throughout the country. Perpetrators of torture almost universally enjoy impunity, although Egyptian law prohibits and creates accountability mechanisms for torture and related practices, demonstrating a serious dissonance between law and practice. **In the view of the Committee, all the above lead to the inescapable conclusion that torture is a systematic practice in Egypt.**”
- This section does not mention the very widespread and serious issue of intimidation and harassment, including judicial harassment, of those viewed by the Egyptian authorities as peaceful dissidents, in particular human rights defenders, journalists, opposition party members, and academics. The long-standing trend of harassment of human rights defenders in particular, has worsened in the period covered by this Assessment (2017-21). [Amnesty International’s September 2021 report](#) covers recent

developments, but earlier examples worth noting include [Nubian minority rights defenders](#), and [women human rights defenders](#).