**International Project on**

**Containing Death Penalty in Times of War on Terrorism**

**A Study on**

**Death Penalty in Egypt**

**Trends, Challenges and Opportunities**

**Introduction**

 Egypt continue to be one of the world minority nations in using the death penalty, and till 2018, the State used to carry out the burden to stand against the UN Resolutions calling for the abolishment of the death penalty.

 In March 2020, under the UN-UPR mechanism, the State has accepted to work towards reducing the number of crimes punishable with death penalty (rec. 91), and partially accepted to consider moving towards a Moratorium for the first time (Rec. 93, 96, 98, 101, 102, 103 and in particular the Austria Rec. 106).

 The large number of death penalty judicial verdicts issued annually has been a major source of concern, especially during the last three decades, and the concerns has increased during the last 6 years in the context of the war against terrorism, taking into consideration the efforts of the Muslim Brotherhood and their allies to address the use of death penalty in Egypt as part of a "political conflict", rather than the perspective of human rights.

 Since 2007, the AOHR has given the issue of death penalty in Egypt and the Arab region a greater interest, and chosen Egypt as a primary module under focus, to benefit from Egypt's soft influence in the region, especially in the legislative and judicial aspects.

 The AOHR has succeeded, along with local partners, to put the issue of death penalty in Egypt on the discussion table with the state parties, within the dialogue on methods to promote criminal justice - since 2008, and these efforts has been more extensive and progressing since 2017, through the implementation of the International Project on containing the death penalty (In Partnership with HOC with the EU support).

 The more detailed research and the substance of the 6 forums of dialogue (seminars – training) since 2017 has been fruitful in identifying the gaps and challenges, as well as the opportunities and the entry points.

 The AOHR recommends continuing its efforts in Egypt, to benefit from the accumulation of the positive results, especially the increasing engagement of the state authorities (executive – legislative – judicial), and the readiness to engage with CSOs, NHRIs and Law Academics to promote various aspects of criminal justice, and the matter of the death penalty in the core of those discussions.

**Background**

 Through the last three decades, Egypt has re-affirmed its position and intention to reduce the use of death penalty to the maximum possible limit of the most serious crimes, based on the obligation under the International Covenant for Civil and Political Rights (CCPR).

It can be noticed that since 2005, the annual large number of death penalty verdicts is worsening Egypt's record in that regard, and has dragged the attention of the human rights movement locally and worldwide, leading to a growing demand to abolish the death penalty, or to move towards a moratorium.

However, monitoring during the last 10 years has shown that rather the number of verdicts and final verdicts of death penalty has grown, the execution of final verdicts averaged 3 % to 6 % annually out of the total of final verdicts.

Egypt authorities has argued that the CCPR doesn't obligate state parties to neither abolish the death penalty nor require a moratorium, and the human rights groups has responded based on the resolutions of both the UN general assembly and the UN human rights council, as well as the growing trends of abolishment and moratorium worldwide.

**Legislation and regulations**

 The Egypt penal legislation has four penal legislations leads to death penalty, including the Penal Code, the Drug combating law, the Weapons and Ammunition law and the Martial law.

Estimated approximately 100 texts leading to death penalty, addressing 9 forms of crimes against life and 26 forms of crimes against state in the Penal Code, 10 forms of crimes in the Drug combating law, 2 forms of crime in the weapons and ammunition law and 10 forms of crimes in the martial law related to the time of war.

According to the argument of the Egypt authorities, all forms of those crimes constitute the most severe crimes in accordance with the international human rights standards.

The criminal procedures act has provided serious guarantees for the use of death penalty, including the consensus among the court judges (3 judges in first degree court and 5 judges in the court of cassation), and if one judge opposed the death sentence, the court can't issue a death penalty verdict.

Although addressed the need to refer to the Grand Mufti before issuing a death penalty sentence, and rather the fact the opinion of the Mufti is consultative, but always respected by the courts.

When a first degree court issue a death penalty verdict as demanded by the prosecutor, the prosecutor is obligated to submit an appeal, in addition to the defendant's appeal, taking into consideration the possible negative position of the defendant who may not appeal.

After the defendant is finally subject to death penalty sentence through the court of cassation, the Minister of Justice must apply to the President of the Republic to practice his constitutional right, either to ratify the verdict or don't ratify the verdict, May as well or use his constitutional right to give amnesty or reduce the sentence to prison.

The law also prevents any death penalty execution for those under 18 years (Juveniles), and postpones the possible execution for pregnant women for at least 2 years of given birth.

In addition, by law, execution wouldn't be made on national or religious vacations, and the defendant should have the right to meet his family and religious representative before his execution that must take place under the supervision of the prosecutor and his religious representative, as well as a medical doctor and his lawyer.

The executed defendant should be formally heard and his testimony should be recorded in a formal report that also indicates the time of the execution and the formal certificate of the medical doctor.

The defendant would be buried by the state unless his family takes care of the burying.

Death Penalty as a maximum sentence against those defendants who are **absent** and doesn't attend their trials is one of the most confusing elements in the penal legislation, according to the penal legislation, any defendant doesn't appear in court for his trial shall be condemned and the verdict should adopt the most available sentences.

In all felonies that the maximum sentence may reach death penalty, absent defendants would be sentenced to death, but once they appear in court with application of re-procedures for trials, the absent verdict doesn't count, and immediately dropped without any legal effect on the trial.

**Situation**

Most of the international reports and press releases addresses the use of the death penalty in Egypt as part of the political context and the transition lasted from 2011 to 2015 from the formal perspective (2014 constitution – 2014 presidential election – 2015 parliamentarian election), but in reality, the transition continue to affect the country, the 2014 constitution requires huge legislative amendments. Nevertheless, the ongoing Terrorism and the Middle East instability have great negative impacts on the situation and hinder the capability of the human rights movement to argue.

Death Penalty Verdicts

During the last 4 years, the annual average of the death penalty verdicts in Egypt has shown that "Terrorists" constitutes 32 % of the defendants sentenced with death penalty, and the percentage varies from a year to the other (up and down).

The crimes of : (1) Deliberate Murders (2) Armed Rubbery engaged with Murders (3) Women Rape engaged with Murders (4) Women Rape (5) Child Rape, (6) Drugs Smuggling or Trade, constitutes 68 % of defendants sentenced with death penalty.

Executions

 During the last 6 years (Since June 2014 – July 2020), the authorities has executed (Approx.) 191 condemned defendants, including 6 in 2014, 15 in 2015, 16 in 2016, 31 in 2017, 62 in 2018, 28 in 2019 and 33 in the first 7 months of 2019.

 Monitoring has shown that persons executed for terrorism crimes are 78 persons (41 % of the executed), and 113 others for committing other forms of serious crimes, mainly (1) Deliberate Murders (2) Rape of Women and Children (3) Armed Rubbery engaged with Murders.

 Taking into consideration, the state gives priority to implement the death sentences in the crimes that have led to serious human casualties and those cases driving the anger of the community.

 The number of persons received final verdicts of death penalty was 535 in Mid-2014, taking into consideration that 350 out of them has received the final sentences between 1999 and 2010.

 The number is currently estimated at approximately 900 persons condemned with final verdicts in the beginning of 2020. (The Annual Percentage of executions 3 % to 6 %).

 The authorities consider that it has shown partial intention to decrease the number of execution to the maximum possible, and asserts that it is in conformity with the international standards.

 Local human rights groups seek to move towards a moratorium, through adopting a transparent policy aiming to decrease the number of executions gradually, to be fulfilled in 5 years. Part of the human rights groups demands the abolishment.

The majority believes that a moratorium can be achieved, especially through dialogue with the authorities, and the moratorium may be publicly accepted, and may represent a first step towards abolishment.

The AOHR share the views of the majority and believes that abolishment is a very difficult demand and won't be publicly accepted, and it will need a much longer time which requires a huge mixed economic and cultural development.

The human rights society in Egypt is growing in numbers, more and more human rights associations are established, but most of it doesn't meet professionalism requirements, and many of those may have relations with the government and supports the death penalty without limitations, their voices will count for many coming years and shall represent a possible additional challenge to the advancement of the human rights movement.

**Terrorism Dilemma**

Egypt has known the context of the large war on terrorism early in the 90s, and its response was to increase number of death penalty sentences against the terrorists and their supporters (Law 97/1992 amending the Penal Code to combat Terrorism).

In the decade 1990 – 2000, Egypt has suffered a huge terrorism attacks, mainly with, especially the years 1991 – 1997, and the state has used the death penalty excessively, leading to the executions of Hundreds of Condemned Terrorist annually.

Estimations asserts that Approx. 1250 defendants has received death penalty sentences in first degree trials since 2014, while the court of Cassation has abolished the death penalty for Approx. 1100 defendants, and supported the sentence against 100 defendants till the end of 2019.

In addition, approximately 3500 defendants have received death penalty sentences **for their absence** in trials and those sentences has no legal effect once they present for trials. Approximately **2000 defendants** have applied to review their absence sentences and their death penalty sentences were removed automatically.

The authorities has executed 78 condemned for terrorism since May 2015, taking into consideration that 31 of them received final verdicts of death penalty through civic trials, and the other 47 received death penal sentences through military trials.

Many of the Muslim Brotherhood members has received verdicts with death penalty, however, only one member has been executed in 2015 for killing two teenagers during the revolution of June 2013. Most of the executed belongs to ISIS, Al-Qaeda and similar terrorist organizations, which their crimes have led to human casualties.

Civic Trials against Terrorists

 Trails against terrorists in Egypt has gained a huge wave of criticism worldwide, especially with certain verdicts of death penalty against a large number of defendants in the first half of 2014 (2 verdicts of circle 8 - El-Manya Felonies Court). And those verdicts were used in a way to condemn the Egypt Judiciaries in the context of a "political conflict" with the Muslim Brotherhood.

 Local human rights groups has stood against the two verdicts based on the negative attitude of the circle judges, focusing on the clash with the defendants' lawyers resulted in issuing the two verdicts in only 2 sessions of trials without consideration to the files and the evidences gathered in both cases, and those reasons were sufficient for the Court of Cassation to abolish both verdicts in a very short time.

 The mentioned verdicts has dragged the attention of all concerned locally and worldwide, neglecting the large number of innocent verdicts (37 cases of approximately 2000 defendants), and the large number of innocents defendants in other cases, were some defendants were condemned, some were punished with death penalty and the large number were innocent.

 The Court of Cassation (well trusted locally and worldwide) has abolished approximately verdicts of death penalty against 700 defendants till the end of 2015, ordering retrials, and the number reached 1100 defendants till the end of 2019.

 According to the criminal procedures act, all condemned absence defendants punished with different sentences, including death penalty should be re-trialed immediately once they appear in court, the sentence is dropped automatically and he is cleared under a new trial.

 In the context of war on terrorism, approximately 1250 defendants were present in trials and received death penalty sentences by courts of felonies (first degree trial).

Military Trials for Terrorists

During that decade, the state of emergencies was imposed (1981 – 2012), and used widely since 190 to 2006, to bring the terrorism perpetrators to Military Courts, such phenomena has continued till 2010. The 1971 constitution (served till 2012) was allowing the authorities to bring the State Security Crimes to Military Courts, along with "Emergency State Security Courts".

The 2012 constitution (served till July 2013) hasn't brought any change to this availability, while the 2014 constitution has reduced the issue to only attacks on Military Personnel and Venues.

In addition, the Military Judicial Law was amended in 2014 to be in conformity with the constitution, as well as to adopt the Civic Criminal Procedures Act in Military prosecution and trials.

During the last 4 years, Local Human Rights Groups continue to resist the military trials for the civilians and the Non-Military personnel, the response of the state were traditional negative.

However, after the executions of 6 terrorists (ISIS) in May 2015 after being condemned through military trails (executions was 3 days after the assassination of 3 Judges in Northern Sinai), no terrorists were executed based on military courts verdicts for 30 months.

After the Terrorism Massacre in Al-Rawda Masjid (Northern Sinai) in November 2017, the state has conducted the executions of part of the terrorists condemned by military courts in various cases.

Between 26 December 2017 and February 2018, 31 terrorists condemned through military courts were executed,

Since March 2018, the state hasn't executed any terrorist condemned through military courts, and the number of terrorists punished with death penalty has decreased.

In the estimation of the leading human rights figures, the state has taken into consideration their calls and their direct discussion with state officials and the Parliament Members.

In February 2019, the state has executed 15 terrorists based on 3 verdicts through the CIVIC Courts, in the estimation of the human rights figures, the state has adopted a new methodology, that could be summarized in 2 aspects:

1. To avoid the executions for condemned terrorists by military courts to the maximum possible
2. Some terrorists by Civic courts condemned for serious human casualties may be executed

**Conclusion**

 Through the ongoing and increasing engagement of the AOHR (in partnership with international and local CSOs) with the state authorities on the various human rights aspects, the AOHR believes that advancement can be made in Egypt, including in criminal justice aspects, and especially on cases of Death Penalty, Detention, Combating Torture and the adoption of alternative sentences.

 The legislative transition in Egypt under the ongoing implementation of the 2014 constitution represents a good opportunity for the promotion of human rights and criminal justice.

 Many draft legislation are represented and discussed in the parliament, whether by the Government or some Parliament Members, including wide range of amendments on the criminal procedures act adopted by the government, a draft law to compensate the innocent defendants for their pretrial detention adopted by the parliament human rights committee, and an alternative sentences draft law prepared by a criminal court judge and submitted to the parliament.

 **During the project activities in October 2018, April 2019 and December 2019 with the engagement of the state authorities (Government, Parliament and Judiciaries), a consensus has been reached among participants for the high need to revise and modernize the penal code and other related penal legislation, the consensus included addressing the large number of texts leading to death penalty, the need to empower the criminalization of torture, and to adopt alternatives of pretrial detention to the most possible, as well as the adoption of alternative sentences to prison sentences.**

 Through the engagement of the AOHR and other partners (especially NCHR & EOHR) with the specialist state bodies, the state has given priority to the economic legislation during the last four years to meet the development and investment requirements.

However, there are changes in priorities which shall prevail and allows some good opportunities through 2021 – 2025, based on the UPR outcome, and throght the newly established Higher Permanent Committee for Human Rights to lead the Government work towards promoting human rights, and the Committee's ongoing work to adopt the AOHR recommendations and to integrate the main issues within the undergoing preparation of the Government's Human Rights National Strategy 2021 – 2025 and the integration of the AOHR recommendations on criminal justice in the Committee's Legislative Agenda for the new Parliament Term 2021 – 2025.

 The AOHR notes clearly that the march 'still slow, but the need of the state to move forward is also clear, and maintaining the dialogue with the state would be fruitful.

 The AOHR recommends:

* The methodology of activities shall focus first on decreasing the penal legislation texts leading to death penalty through ongoing dialogue, second on developing the awareness of the criminal judiciaries to avoid the death penalty sentence when possible, third on encouraging the executive power to decrease the ratification of the final death penalty verdicts and to increase amnesty decrees when possible
* Using the practical similar experiments of similar region countries adopted a formal death penalty Moratorium (Algeria) or a De-facto Moratorium (Lebanon, Morocco & Tunisia) to encourage steps
* More engagement with the state bodies
* More recruitment to the related actors: religious, academics, media and lawyers
* Additional efforts towards the Judiciaries to strengthen the positive reached results with the Government and the Parliament
* Selective engagement with the Parliament committees of Legislation, National Security and Social Solidarity to promote the positive results of engagement with the parliament human rights committee

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