

For how long will impunity prevail?

Alice Goodenough & Marya Farah

Legal Adviser & Associate Legal
Adviser for the MENA Programme
International Commission of Jurists

For many years, the Egyptian authorities have failed to hold accountable those responsible for torture and other ill-treatment, unlawful killings and arbitrary detention, to name just a few violations of human rights. As a result, impunity has prevailed and the human rights violations have continued unabated, including both during and after the 2011 uprising. To end this cycle of impunity, the underlying causes must be addressed.

The International Commission of Jurists (ICJ) visited Egypt and organised a conference with the Cairo Institute for Human Rights Studies and the Egyptian Initiative for Personal Rights. During that, judges, lawyers, human rights defenders and victims identified numerous failings and obstacles in the current system that preclude accountability for those responsible for gross human rights violations.

Egypt's legal framework falls far short of international law standards in many respects. For example, it fails to criminalise a variety of conduct that amounts to torture under Article 1 of the Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment (CAT), to which Egypt is a State party. In particular, Article 126 of the Criminal Code only extends the crime of torture to public officials or employees who order or conduct the torturing of a "suspect" and the torture is done "in order to force him/her to confess". The acquiescence or consent of a public official to, or their complicity in, the act is not criminalised by this definition, nor is it clear that the infliction of mental suffering is covered. Punishment for this offence can range from 3 to 10 years imprisonment. Further, if the torture or ill-treatment occurs for a purpose other than a

coerced "confession", it is not considered torture and instead must be examined under Article 129, the lesser offence of "employing cruelty" against a person to "breach their honour" or "cause bodily pain". This crime is classified as a misdemeanour, which is punishable by a maximum of one-year imprisonment, and only applies to the individual that carried out the torture. The punishments provided for under both Articles 126 and 129 are not commensurate with the gravity of the crime.

An example of the implications of this deeply flawed framework is a case raised with the ICJ mission of a police officer acquitted of torture on the basis that the victim was said to have died of "fear" while in police custody. The mere fact that the victim was found to have died of "fear" should have raised legitimate suspicions about the victim having been subjected to severe mental and/or physical suffering while in police custody. The court failed to properly address these suspicions.

This case also highlights the flaws in the forensic medical report that identified the cause of death and the failings in the forensic medical establishment as a whole. Reforming this institution and safeguarding its independence from the police and the executive is a pre-requisite to ensuring accountability for cases of human rights violations committed by law enforcement officers. Equally important to ensuring such accountability is reinforcing the capacity of judges and prosecutors to adequately and properly apply international human rights law and standards in investigating and ruling on cases of human rights violations.

In relation to trials of former regime officials and police and military officers, judges stressed that they must rule on the facts presented in the courtroom and the evidence before them rather than bowing to pressure from the street.

While a number of judges suggested that prosecutors had bowed to this pressure and were referring cases that were ill-prepared and lacking in evidence and sufficient grounds for referral, some prosecutors acknowledged that the high rate of acquittals in cases of torture and the injury and unlawful killing of protestors was due to the difficulties they face in the collection of evidence.



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Prosecutors and lawyers stated that the problem in such cases is that evidence of the crime is in the hands of the perpetrator, and the police and/or the military are unwilling to provide evidence against themselves in cases of human rights abuses. It is therefore important for the Egyptian authorities to ensure that investigations in cases of torture and ill-treatment allegedly committed by law enforcement officials are thorough, independent, impartial and in full compliance with international standards.



From the perspective of victims of human rights violations and their families, the feeling is that those who have suffered the most remain a secondary concern. The barriers they face in bringing cases against the police and other State officials are profound, including inaccurate forensic reports that ignored clear signs of abuse, morgues and hospitals that obstructed their search for relatives and prosecutors that either exert pressure on individuals not to pursue claims or hinder their rights to file complaints.

These barriers undermine not only the rights of victims and family members to a remedy and to hold those responsible accountable, they also frequently hinder their access to government-sponsored reparation initiatives. For example, because the forensic report inaccurately attributes the cause of death to “fear” instead of torture, the victim can be excluded from such initiatives. Further, current reparation mechanisms are limited in terms of their remit and the reparation they can provide.

In addition, while proposals for much-needed reforms of the police and security services have stalled, other proposals to reform the justice system, if adopted, would undermine the independence of the judiciary rather than reinforcing it. For example, recent draft laws on the judiciary have focused on reducing the retirement age for judges. The immediate effect of these draft laws, if adopted, would be the forced retirement of scores of judges. It would also constitute a serious attack on the security of tenure of judges, contrary to international law standards.

The denial of the rights of victims of human rights violations and the impunity that continues to prevail is not unique to Egypt and can be seen in other MENA countries where recent uprisings have also led to the overthrow of repressive regimes, namely Tunisia and Libya.

In Tunisia, the government has shown an increased willingness to initiate transitional justice initiatives, including through the drafting of a transitional justice bill. However, victims, family members and civil society groups continue to raise major concerns about the lack of effective measures to address impunity and ensure the rights of victims to a remedy and to reparation.

One of these concerns has been the pervasive use of military tribunals to hear cases involving gross human rights violations committed before and during the Tunisian uprising. These tribunals lack the necessary independence from the executive both to conduct effective investigations and to adjudicate cases in an independent and impartial manner in accordance with international fair trial standards. Failings include extensive delays in investigating cases or inadequate investigations, a lack of cooperation with the prosecution by the Ministry of Defence and Interior, and judges handing down sentences that are not commensurate with the gravity of the crimes committed.

At the same time, the Tunisian authorities have failed so far to bring the legal framework in line with international human rights standards. For example, as is the case in Egypt, the definition of torture in the Tunisian Criminal Code requires amendment to bring it in line with Article 1 of the CAT, including by criminalising the acquiescence or consent of a public official to, or their complicity in, acts of torture. Further reforms are also required to prohibit reliance on confessions obtained by torture and to end limitation periods for the crime of torture.

Although the most recent draft Constitution offers some improvements in this regard, notably by providing that the crime of torture is imprescriptible, it falls short of international standards by limiting the definition of torture, referring only to the prohibition of “all forms of moral and physical torture”, and by failing to restrict the jurisdiction of military courts to exclude civilians and cases involving human rights violations.

In Libya, judicial independence has been severely undermined over many years by the former regime as a result of systematic attacks on the judiciary, including through executive control over the public

prosecution service and the extensive use of special courts. Under this framework, the rights of victims of gross human rights violations committed before, during and after the uprising have largely been denied.

While the transitional authorities have made tentative steps towards reforming the judiciary to grant it independence, the remaining challenges are extensive, not least the need to protect judges, prosecutors and court houses from increasing violent attacks, the weaknesses of State institutions and law enforcement bodies, including police services, and the role being played by numerous armed groups in unlawfully arresting and detaining individuals, as well as subjecting them to various human rights abuses.

In each of these three countries, there is an urgent need to initiate and implement the necessary legal and policy reforms to ensure accountability for human rights violations, including through the establishment of transitional justice mechanisms. Only once this has been achieved can the victims and their rights cease to be a secondary concern and impunity be brought to an end.