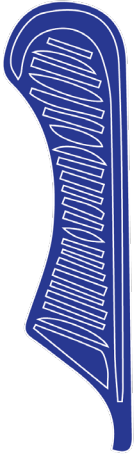


Sexually Guilty: Custom Morality and the Persecution of the LGBTQ Community in Egypt

A study on the methods used by the Egyptian State to persecute Queer individuals and its violations of the rule of Law and international human rights treaties backed by Case Law from 2001 to 2021

By Nora Noralla



القاهرة ٥٢

للأبحاث القانونية

CAIRO 52

LEGAL RESEARCH INSTITUTE

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Design and Layout: Omar Nouraldin

Publication Date: June 2023

Suggest Citation:

**Nora Noralla, Sexually Guilty: Custom Morality and the
Persecution of the LGBTQ Community in Egypt, Cairo 52
Legal Research Institute, June 2023**

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Glossary

Prostitution / Debauchery (El-Bagha – El-Fgoor):

Every act of fornication that is committed by a man or a woman to please the sexual desires of others. It is labeled debauchery if a man commits it and prostitution if a woman commits it¹. The legislative and social affairs committees in the Egyptian Parliament entrusted with drafting Law No. 68/1951 insisted on using the words prostitution and debauchery to distinguish between acts of indecency committed by women and acts of indecency committed by men, as the judicial custom at that time was to use of the word «prostitution» to define female sex working only².

Obscenity (Al-Fahsha):

Every act that the person commits to satisfy his own sexual needs or another person's sexual needs, whether this act is normal or abnormal to human nature.³

Debauch (El-Fasq):

The Court of Cassation has defined debauch in Article 270 of the canceled Penal Code of 1937 as every act committed by a man or a woman considered immoral. This definition accommodates all sexual acts and is not limited to sexual pleasure. It may also include corrupting morals, such as a father sending his daughter to a nightclub to dance.⁴

Court of Cassation:

The Court of Cassation is the highest Court in the Arab Republic of Egypt and sits at the top of the judicial hierarchy. Its mission is to work on unifying the application of laws by Egyptian courts, clarify laws and establish the legal principles guiding the application of each Law. It was established in 1932 in the High Court of Justice in Cairo.⁵

Flagrante delicto:

In flagrante delicto, or sometimes simply flagrante, is a legal term used to indicate that an offender has been caught committing an offense. The colloquial «caught red-handed» and «caught rapid» are English equivalents.

1 Appeal No 977 / Year 47 judicial at 29th of January 1978 - cairo52".2021. cairo52.
<https://cairo52.com/2021/01/13/appeal-no-977-year-47-judicial-at-29th-of-january-1978/>

2 13 درويش، د. احمد صلاح. 2018. المواجهة التشريعية والأمنية لجرائم البغاء. القاهرة: دار النهضة العربية.ص. 13
[Dr. Ahmad Salah Darwish- 2018- Al-Mowagah Al-Tashira'ia w Al-Amenya I Gar'am Al-Bagha- Dar Al Nahda Al Arabiya - P.13]

3 91 البقلي، هيثم عبد الرحمن. 2010. الجرائم الإلكترونية الواقعة على العرض، بين الشريعة والقانون المقارن. القاهرة: دار المنه. ص. 91

4 432 مجموعة القواعد القانونية ج.5. القاهرة: وزارة العدل. 1942. ص. 432.
[Magmo'a Al-Qaw'ad Al-Qanonya – C.5 – P.432 – Cassation Verdict date: 23rd of December 1940]

5 «Court Of Cassation - Cairo52». 2020. Cairo52. <https://cairo52.com/court-of-cassation/>.

Stopping (Istiqaf):

is the stopping of a person to ask them about their name, work, address, destination, and place of residence without restricting their freedom of movement and without the use of force.⁶

Judicial Arrest Officer:

A term used in the Egyptian legal system to describe a person who legally has the right to make an arrest, e.g., Police and some military officers.

Search:

is looking for evidence that can be used in a criminal investigation through searching the person himself, a private place, or personal electronic devices belonging to the suspect.⁷

Vice Police:

Vice is the arm of the police department concerned with immoral activities, so Vice Police Officers work on crimes like prostitution, illegal gambling, pornography, and the illegal sale of guns, alcohol, or drugs.⁸

Entrapment:

The act of government agents or officials that induces a person to commit a crime he or she has not previously disposed to commit. Entrapment is a defense to criminal charges when it is established that the idea of the crime originated from the agent or official and induced the accused to engage in it.⁹

Supreme State Security Prosecution (SSSP):

A special branch of the Public Prosecution responsible for prosecuting crimes that relate to "state security."¹⁰

Forced Anal Examination:

This is the examination of an individual's anus area to determine whether they are homosexuals or not; The exams are rooted in discredited 19th-century theories that homosexuals can be identified by the tone of the anal sphincter or the shape of the anus. International forensic medicine experts have found that the exams are useless, in addition

المكتبة-القانونية/مببرات-/. <https://lawyeregypt.net/>. 2021. «محاكي مصر - Lawyer Egypt - مببرات وحالات وصور الاستيقاف»⁶

[Mobart w Halat w Sowr Al-Istiqf: Legal and conditions of random streets stops]

محمد ابو بكر، د. عمر. 2004. جرائم الناشئة عن استخدام الإنترنت، رسالة دكتوراه. القاهرة: جامعة عين شمس. ص. 961.
[Omar Mohammed Abu Bakr, al-Jara'im al-Nashi'a 'an Istikhdam al-Internet, PhD thesis, Faculty of Law, Ain Shams]

8 «Vice Police Officer Salary and Career Advice». [www.careermatch.com](http://www.careermatch.com/job-prep/career-insights/profiles/vice-police-officer). 2021. <https://www.careermatch.com/job-prep/career-insights/profiles/vice-police-officer>.

9 «entrapment». TheFreeDictionary.com. 2021. <https://legal-dictionary.thefreedictionary.com/entrapment>

10 «Permanent State of Exception: Abuses By The Supreme State Security Prosecution In Egypt». Amnesty.org. 2019. <https://www.amnesty.org/en/latest/campaigns/2019/11/egypt-permanent-state-of-exception-abuses-by-the-supreme-state-security-prosecution/>

to being cruel and degrading.¹¹

¹¹ «Ban Forced Anal Exams Around World». Human Rights Watch. 2016. <https://www.hrw.org/news/2016/07/12/ban-forced-anal-exams-around-world>

Executive Summary

Egypt society is a generally conservative binary one, where any identity outside of the narrowly sanctioned social binary is considered immoral and taboo. Thus, in this atmosphere, it should be no surprise that LGBT+ identities are seen as deviant, with some labeling it as a Western product that aims to corrupt the youth of Egypt; this narrative is dominant in Egyptian society, as shown by a 2013 survey from Pew Research Center that 95% of Egyptians believe that homosexuality should not be accepted by society. Thus, LGBT+ people face social stigma, discrimination, and violence in this atmosphere of social hatred.

On the other hand, the State has not only failed to implement the concessional protections against violence and discrimination against its LGBT+ citizens but has also actively promoted hatred against LGBT+ people. The Egyptian State gains legitimacy from acting as a moral protector of Egyptian values and traditions; this role is vital, as the State often fails to meet its other economic and political obligations to its citizens. Thus, to maintain its moral protector image, the State aims to target those who are labeled “corrupt” by society, including not only LGBT+ people but also sex workers, liberal women, and even innocent girls who are just dancing on TikTok. For decades, The State has created the illusion of a “moral battle” that they are fighting against the “deviant” LGBTQ+ community. This “moral battle” allows the State to portray itself as the only protector of morality in society and to have a monopoly over the interpretation of laws. This interpretation is often twisted in the name of morality. The moral scapegoating of the LGBTQ+ community by the State also fuels state-sponsored social violence against the community.

The report investigates how the Egyptian State has used custom morality to justify interpreting the laws to prosecute LGBT+ people. Egypt does not possess any laws that criminalize LGBT+ identities but relies on several morality laws, such as laws related to sex work (10/1961), laws related to public decency (Article 269bis of the Penal Code), and laws related to cybercrime (Article 25 of law no 175/2018), the Egyptian State created a system based on a moral interpretation of those laws to facilitate its prosecution of LGBT+ people; this system operates as a chain, where the police, public prosecutor office, and the judiciary all do their part to ensure that the laws will be interpreted to mean criminalizing LGBT+ people.

The report showcases how this chain functions by outlining state agencies’ performance in LGBT+ cases. The first chapter examines four major LGBT+ cases from 2001 to 2018: The Queen Boat; The Boat Gay Marriage; Bab Al-Bahr; and The Rainbow Flag incident. The second chapter in-depth analyses how State agencies violate due process and constitutional

protections to create their anti-LGBT+ chain of discrimination; this system primarily operates without legal grounds, mainly relying on moral bias and interpretation of state officials. The third chapter investigates the violations of the Rule of Law and Bodily integrity in these cases and how those violations violate not only national law but also Egypt's international obligations. Also this chapter points out the failure of the international community to address this issue in Egypt, arguing that the geopolitical importance of Egypt prevents other states from enacting more human rights-oriented foreign policies. Finally, the report notes that the system and methods used by State agencies in this report apply to all those who deem immoral by the State, including LGBT+ people.

The report aims to intersect LGBT+ rights with other issues Egypt struggles with, most notably the absence of the rule of law, abuse of detainees, the corruption of the judiciary, police brutality, lack of professional media, failure to meet international obligations, violations of due process rights, violation of constitutional rights to privacy, equality, and anti-discrimination, and allowing social and moral bias to influence law and policy in the country. By doing so, the report puts LGBT+ rights in the context of Egypt's ever-worsening human rights record that impacts all its citizens to different degrees, with marginalized groups such as LGBT+ people facing dire human rights violations. The report also aims to expose how custom state morality operates in Egypt and how this morality is being used to justify violations against LGBT+ people.

Methodology

The report uses qualitative research methods. The report used a literature review to analyze relevant case law for misdemeanor and appellate courts, case law from the Court of Cassation, police arrest reports, public prosecution investigation reports, national, international, and constitutional law, and human rights reports. The author conducted qualitative interviews with key stakeholders, including human rights lawyers, LGBT+ activists, and survivors of state prosecutions, to link the available data with the real-life experience of those involved in these cases. It is important to note that some of the survivors interviewed were also sex workers, thus, facing an intersectional risk of violations due to their queer identities and their profession as sex workers, which make them more vulnerable to targeting by the State, as they possess two characteristics of immorality in their opinions that cannot be forgiven: being LGBT+ and being a sex worker. In essence, the report aims to answer several issues; How does State-sponsored custom morality impact the livelihood of the LGBTQ+ community? What are the significant incidents affecting that community? What tactics are implemented by the authorities in these cases, and how does it violate their human rights and national and international laws? How does the State's system operate, and what's the role of moral and social biases in it? And finally, what is the social-legal context behind this prosecution?

Introduction

Sexual and bodily freedoms were not always limited in Egypt; despite common belief, Egypt, in most of its modern history, did not limit sexual and bodily freedoms for its citizens. The limitation started with the rise of political Islam and government-sponsored morality. This morality led to the criminalization of sex work and later using the same laws to criminalize homosexuality and prosecute the LGBTQ+ community in Egypt.

The community has heavily felt this morality, especially since the beginning of the 2000s to current times. Since then, notable prosecution incidents have occurred, e.g., Queen Boat and Rainbow Flag crackdown. The enactors of this morality are state actors represented in the Judiciary, Prosecution office, and Vice Police, who portray themselves as the protectors of the morality of the society against the immoral LGBTQ+ people.

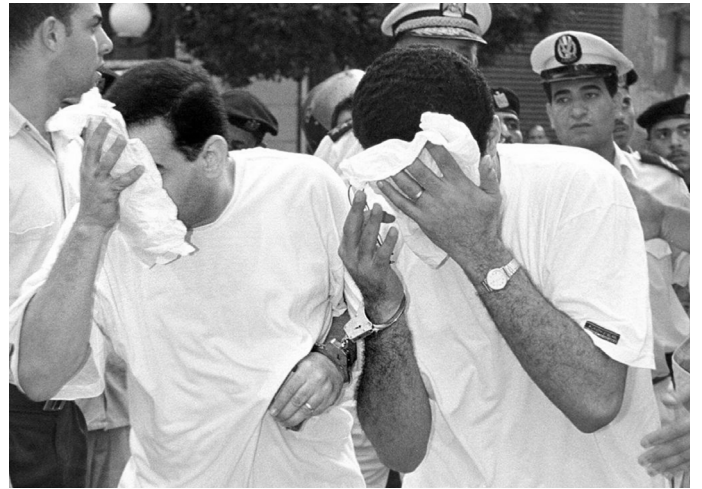
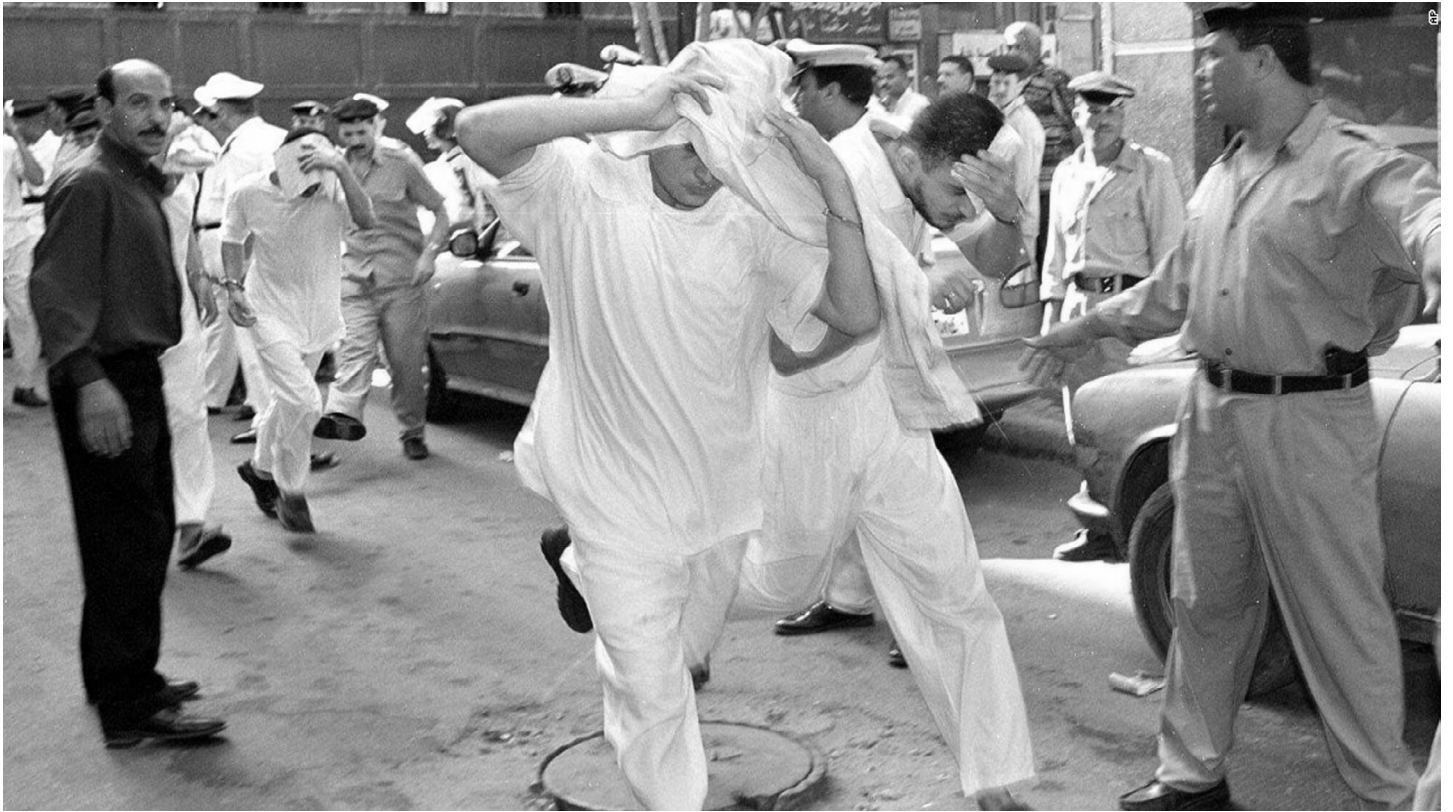
To enact this morality, state actors implement tactics whose legality is highly debatable, as the state actors do not care about the legality of the procedures or the legal safeguards to individuals but rather only about being the moral protectors of the State. The three chapters of this paper focus on exposing the illegalities and violations practiced by state actors in the name of morality; the first chapter focuses on notable incidents from the 2000s to the present day, while the second chapter focuses on the tactics implemented by the authorities and finally the third chapter exposes the violations committed against the LGBTQ+ community.

Chapter I: Mobilization hate: Important Incidents from the 2000s to the Present Day

The 90s and early 2000s in Egypt were an era of social change in Egypt. It was the beginning of the internet and the rise of the upper middle class due to the large numbers of Egyptians going to work in the Gulf States. The early 2000s also saw the rise of the “moral panic” around Egyptian society¹², as the youth’s exposure to the world led to a new culture that was more liberal and progressive than their older counterparts who were highly influenced by the Gulf States’ Islamic conservative.

In this atmosphere, the LGBTQ+ community found a new space for them on the web and started building a community around it. However, the Police began to note that and updated their tactics to entrap the new web generation. These incidents demonstrate not only the prosecution of the LGBTQ+ community but also the resilience of that community in surviving throughout the decades in the face of aggression by the State. These incidents also represent how the State has relied heavily on scapegoating the LGBTQ+ community to cover its failure in other aspects, *e.g.*, political and economic.

12 Long, Scott. 2014. «Egypt's growing moral panic». al-bab.com. <https://al-bab.com/blog/2014/09/egypts-growing-moral-panic>.



The Queen Boat Incident

*11 May 2001
Cairo, Egypt*

The Queen Boat represents a new era in LGBTQ+ persecution in Egypt. It showcases patterns that the Egyptian authorities still use to this day. The case happened on 11 May 2001, when a nightclub was raided by the Police, and 36 men were arrested. The final number was 52, as more were arrested from the streets. Based on tips received from informants¹³. National and international attention to the case, which spread a discussion about homosexuality in society.

The authorities portrayed the men arrested as a “cult” that was dedicated to the worship of Satan and homosexuality. The national media coverage was in favor of the arrests, projecting the idea of the authorities as the protector of morality for the Egyptian people. The media did not stop at only favoring the arrests but also led a widespread defamation campaign against the men arrested and published their personal information. This case is one of two LGBTQ+ Cases that were examined not by the regular prosecution office but by the more notorious Supreme State Security Prosecution (SSSP).

The investigation focused solely in the beginning on the idea of a “religious cult” that worships Satan and commits homosexuality and immoral acts in its ritual and tried to establish enough evidence to charge the men arrested with contempt of religion. When the evidence did not lead in this direction, the authorities charged the men with habitual debauchery under article 9(C) of Law 10/1961. In June, the men were referred to the medical forensic office to conduct an anal examination on them in order to determine whether they did have gay sex or not.

The so-called “medical reports” found that 16 men were indeed penetrated from their anus.

The trial took place in a tense atmosphere under tight security, and during the trial, the defendants began to wear face masks they made from white prison clothes to hide their faces from the lenses of the press and the media. On 14 November, the Court sentenced 23 of them to prison terms of up to 5 years, but former President Hosni Mubarak canceled the sentences at the time and referred them to an ordinary misdemeanor court, which reduced these sentences.¹⁴

¹³ Long, Scott. 2004. «In a Time of Torture: The Assault on Justice In Egypt’s Crackdown on Homosexual Conduct: III. Scandal and Stigma: The Queen Boat Trials». Hrw.org. <https://www.hrw.org/reports/2004/egypt0304/3.htm>.

¹⁴ Noralla, Nora. 2021. «Elkarakhana: History of Sex Working In Modern Egypt Between Legalization And Criminalization - Cairo52». Cairo52. <https://cairo52.com/2020/11/05/elkarakhana-eng/>. P.19



The Gay Marriage Case

September 2014

Cairo, Egypt

In September 2014, a video floated online depicting two young men getting married on a boat on the Nile in Cairo while their friends were cheering for them¹⁵. This took place one year after the military coup against the Islamists president Morsi¹⁶, and it fueled the old conflict on the morality of Egyptian society between the Muslim Brotherhood and the Government. The Muslim Brotherhood-affiliated media used video to show how morally corrupt the coup government was¹⁷. The Government, on the other hand, needed to have a strong response, and so they did.

Armed with its vice police, biased judiciary, and loyal media, the State arrested eight men involved in the video and started a big media campaign hailing the vice police as the protectors of morality in the society, using people who differ in sexual and gender expression as a scapegoat. The eight men were sent to the medical forensic office to determine whether they were penetrated from their anuses or not, and the “medical reports” came back negative. The case went before the Court in November, where they were acquitted of “habitual practice and incitement of debauchery” and sentenced to three years for the “publicizing and advertising of debauchery,” the sentencing was later reduced to one year in the Court of Appeals.¹⁸

15 «عبد الحميد، أشرف. 2014. «بعد ظهور الفيديو. مصر تبحث عن العريس «المثلي» الهارب»¹⁵

<https://www.alarabiya.net>. <https://www.alarabiya.net/arab-and-world/egypt/2014/09/07/رجال-9-باعتقال-مصر-تأمر-باعتقال-9-رجال>

[Bahd Zhoor Al-Video: Masr Tabhos Han Al-Harees “Al-Methly” Al Harb: After finding the video: Egypt is looking for the “gay” groom]

16 Kirkpatrick, David D. 2013. «Army Ousts Egypt’s President; Morsi Is Taken into Military Custody (Published 2013)». Nytimes.com. <https://www.nytimes.com/2013/07/04/world/middleeast/egypt.html>.

17 <https://rassd.net/110815.htm>. لأول مرة في مصر.. زواج مثليين وبرامج رقص في عهد السيسي - شبكة رصد الإخبارية. شبكة رصد الإخبارية»¹⁷

[L Awl Mara F Masar Zwag Al-Mathyleen W Bramg Raqs F Hahad Al-Sisi: For the first time in Egypt: gay marriage and dance programs during the reign of Sisi]

18 02014. مصر. «حفل زواج المثليين» ينتهي بالسجن 3 سنوات»¹⁸

<https://www.alarabiya.net/arab-and-world/egypt/2014/11/02/مصر-3-سنوات-للمشاركين-ب-حفل-زواج-المثليين-في-مصر>

[Hafal Zwag Al-Mathyleen Yanthy B Al-segn 3 Sanwat: Gay Marriage ends with three years in prison]



The Bab al-Bahr bathhouse Case

December 2014

Cairo, Egypt

In December of the same year, a new high-profile case appeared, showing how desperate the regime was to maintain its moral image in front of the public and how scapegoating the LGBTQ+ community was the easiest way to do so. The case was very controversial from the very beginning, as the Police built its case based on a tip they received from TV-presenter Mona Iraqi.

The tip from Mona pointed out Bab al-Bahr bathhouse as a place of gathering for homosexual men, where they would have big sex parties. Based on that alone, the Police raided the bathhouse and arrested 26 men, allowing Mona to film and later broadcast the footage of them being half-naked in the bathhouse¹⁹.

The men were later sent to the forensic office, where the medical reports were negative, and went on trial before the El-Azbakya misdemeanor court, which acquitted all the men due to the illogicality of the arrest and the evidence presented. The defense lawyers in the case pointed out that the Court found that the police officer who made the arrest left loopholes in the case, e.g., the lack of flagrante delicto and planting condoms and lubes, and these allowed the defense team to maneuver and present a strong and successful case. The Court judgment reads:

That the officers stormed the pool room and watched the defendants commit debauchery, and specified the role of each one of them, does not accord with reason and logic, so the Court is unable to assert wrongdoing with any certainty. It is not reasonable that the officer stormed the room, then the men continued practicing debauchery so that he was able to determine the role of each defendant and who was with whom in a detailed manner. He specified that in a way that does not fall within the logic of things, the defendants would continue practicing debauchery at the time the officers raided the place.²⁰

Some of the men decided to sue Mona Iraqi for defamation and succeeded before the first instance court, where she was sentenced to six months for defamation before being acquitted on appeal. The Court reasoned its judgment that Mona had enough reasonable doubt to support her claims and her intention was not defamation²¹. In an interview, one of the lawyers in this case said:

The Court failed to examine the case in relation to the facts of the other Case (Bathroom Case), as Mona Iraqi did not have any responsible doubts or evidence to support her claims. The Court did not explain how Mona Iraqi exactly had enough reasonable doubt to support her claim; by this, the Court is allowing anyone to falsely report people for homosexuality or other crimes without facing any consequences.²²

19 Abd El-Hamid, Dalia. 2017. «The Trap: Punishing Sexual Difference In Egypt | Egyptian Initiative For Personal Rights». Eipr.Org. <https://eipr.org/en/publications/trap-punishing-sexual-difference-egypt>. P.22

20 البحر باب 16050 لسنة 2014 المعروفة اعلاميا بقضية باب البحر - حكم رقم 16050 لسنة 2014 - cairo52». cairo52. .2021. <https://cairo52.com/ar/16050-2014-bab-el-bahr/> [Hokm Rakm 16050 L Sanet 2014 Al-Mohrofa Ahlamyn b Qedyt Bab Al-Bahr: Court's judgment in case 1605/2014 – Bab Al-Bahr Bathroom case]

21 «2016. «حمام باب البحر» قضية «عراقي في قضية براءة الإعلامية منى عراقي في قضية «حمام باب البحر». BBC News عربي. https://www.bbc.com/arabic/middleeast/2016/01/160118_egypt_tv_anchor_mona_iraqi_case.

[Bra'at Al-Alamyia Mona Al-Araqi f Qedyt Bab-Al Bahrr: Media person Mona Iraq is acquitted in Bab Al-Bahr Case].



The Rainbow Flag Crackdown

September 2017

Cairo, Egypt

A Concert, A Queer Signer, and a Flag are simple and harmless for most but very dangerous for the LGBTQ+ community in Egypt. In Sept 2017, a group of young queer Egyptians decided to show their resilience and survival despite the systematic discrimination by the State and society and went to the Mahsroua Lila concert to raise a rainbow flag. This act, however, made the entire country of Egypt go upside down. The media started a big campaign not only against those who dared to raise a rainbow flag but also against the Government.

The image of the moral protector was dwindling, and the Government decided to unleash hell on the Queer community in Egypt, arresting two people for their involvement directly with the raising of the flag and referring them to Supreme State Security Prosecution (SSSP)²³ and arresting close to seventy-five people in the span of two months on debauchery charges.²⁴

The Egyptian lawmakers were also condemned for the lack of any articles that clearly criminalized homosexuality, and some MPs decided to take on their patriotic moral duties and started to introduce new bills that would criminalize such actions²⁵. These bills did not go beyond being a show to maintain the moral image of the Government in front of the public.

The reality is the Egyptian Government enjoys having this gray area regarding homosexuality to allow it to deny abuses against the Queer community in Egypt in front of the international community. Another aspect of these bills never going anywhere is the huge advocacy work done by advocates during this period internationally to pressure the Government to back off:

We started working from different angles; first, we wanted to provide legal aid for people who were arrested, protect those who were at risk of being arrested, and conduct efficient advocacy campaigns with local embassies and diplomatic entities in Egypt and abroad.²⁶

These incidents represent how the State and Society created this idea of custom morality, which puts the LGBTQ+ community at the center of this moral battle; in the next chapter, I will explore the tactics and violations regarding these cases.

23 https://www.masrawy.com/news/news_cases/details/2017/9/25/1160829/التائب-العام-يكلف-نيابة-أمن-الدولة-بالتحقيق-في-واقعة-رفع-أعلام-المثليين-بالتجمع-الخامس. مصر اوى. كوم 2017.

[Al-Na'ab Al-Ham Ykolf Naybt Amn Al Dowla Belthaqiq f Wqaht Rafah Alam Al Maslyeen B Al- Tagmoh Al-Khams: Egypt's Public Prosecutor orders a special investigation by the SSSP into the raising of a rainbow flag in New Cairo]

24 Bernstein, Alyssa. 2018. «2017 Was a Bad Year for Egypt's LGBT Community. 2018 Could Be Even Worse.». Foreign Policy. <https://foreignpolicy.com/2017/12/28/2017-was-a-bad-year-for-egypts-lgbt-community-2018-could-be-even-worse/>.

25 «2017 للمثلية للعام 2017». <https://cairo52.com/ar/مشروع-قانون-تجريم-العلاقات-المثلية-لل/>. Mashrooh Q'anon Tagreem Al-halqat Al- Meslya Il Ham 2017: Bill proposal to criminalize homosexuality in 2017]

Chapter II: The Chain of Discrimination

In this chapter, I will provide an analysis of the tactics which we were exposed to in the previous chapter; these tactics often twist the Law in favor of creating a narrative that serves the moral protector image of the State. These tactics will be reviewed based on case law from the period of 2016-2021 and interviews with stakeholders. This in-depth analysis aims to provide a glimpse of the hardship the LGBTQ+ community lives in at the hands of state actors.

Vice Police

The chain starts with the vice police, who, through their tactics, aim to create a story for the prosecution and judiciary about immoral people whose purpose is to corrupt society. This story does not need to be real or even legal. It just needs to be convincing enough for the other two parties to prosecute the individual in question. The story-fabrication takes place in three different settings: entrapment, collecting evidence, and interrogation.

1.1. Entrapment

The entrapment methods used by vice police have evolved significantly in the last few years. Now they involve trained individuals speaking foreign languages, who would provide personal pictures to the targeted person to gain their trust and use international phone numbers to conduct a phone call or a video conference with the targeted person. All these newly developed set of skills and tactics that the Police now implement during the online entrapment process increases the chances that the targeted person agrees to meet the police officer/informant and feels more comfortable going out on a date with them. Analyzing the cases, I identified three main methods of entrapment by the vice police:

Dating Apps:

in operations utilizing this method, the Police create fake accounts on different dating apps, e.g., Grinder, T-S dating & WhosHere²⁷. The Police employ informants who pretend to be LGBTQ+ individuals on dating apps and often have great knowledge of the LGBTQ+ community. The informants use language that is common within the community and often try to make the conversations with the victim as sexual as they can in order to incriminate them even more. Most individuals on these dating apps use neither their own pictures nor their real names, and the informants always try to convince the victim to send pictures that show their face or to move the conversation to a social media app, e.g., WhatsApp or Facebook.²⁸

This move is beneficial to the vice police, as it helps them link the conversations directly to the victim. Once the conversation is concluded, the informant agrees on a place and time to meet with the victim. As soon as the victim arrives and the informant verifies their identity, the Police move in and arrest the individual. An example recounting an entrapment from a police report filed in 2020:

Once we had received the tips, identified the targeted person, and planned a date with him, we moved with our secret informant, and a secret police task force to the place agreed on. When we arrived there, the informant conducted phone calls with the targeted person to make him come to the meeting spot. We saw the targeted person come in, and we identified him through the pictures he sent to our informant. We sent out our informant to conduct a chat with him. The targeted person offered to have a sexual encounter with our informant and to take him back to his place to conduct these acts. Then we received the secret signal from our informant, and we moved in and told the targeted person that he was being

²⁷ Abd El-Hamid, Dalia. 2017. «The Trap: Punishing Sexual Difference In Egypt | Egyptian Initiative For Personal Rights». Eipr.Org. <https://eipr.org/en/publications/trap-punishing-sexual-difference-egypt>. P.9

²⁸ Brandom, Russell. 2018. «In Egypt, Dating Apps Are A Refuge For The LGBTQ Community, But They Can Also Be A Trap». The Verge. <https://www.theverge.com/2018/4/25/17279270/lgbtq-dating-apps-egypt-illegal-human-rights>.

*arrested for violating cybercrime Law no. 175/2018 and Law no. 10/1961 on combating prostitution*²⁹.

It is important to note: the Police always claim that the person who helped them identify the accused is a secret informant, and they must keep their identity hidden for their safety. For this reason, the informant remains anonymous throughout the trial, which does not allow the defense to cross-examine the informant, and in general, raises serious concerns about the fairness of the trial.

“Gay” hotspots and random street-arrest:

in these operations, the police officers also rely on secret informants to gather information on the known meeting spots for the LGBTQ+ community in order to determine where to set up checkpoints, e.g., in places like Ramsis Sq. and Gamat El-Dowl St. However, this method of an arrest does not have any legal basis as the Law only permits officers to conduct an arrest in cases of flagrante delicto as defined by Law³⁰. Police officers always try to use language that indicates the existence of the constitutive elements of flagrante delicto, as we can see in the following report from a case that happened in 2018:

*We received a tip from one of our secret informants that a group of homosexual youth is using Ramsis Sq. as a spot to meet and conduct sexual relations in exchange for money. A secret taskforce moved to the location and placed a checkpoint to monitor the area. We noticed a homosexual guy doing suspicious movements and signals to seduce men to commit debauchery with him for money, and we moved in to arrest him. We approached the suspect and confronted him, and he confessed that he came to Ramsis square to commit debauchery with men for money.*³¹

Home and hotel arrests:

it is the least common method of the three since the Police need to receive an official complaint to make the arrest. Those complaints can come from two sources. First, it is a hotel worker who reports an individual for being “suspicious” in look or acts as a report in 2019 illustrates:

*The operation room at the Department of public morality received a complaint from a hotel worker, and we were ordered to move to Marriott Hotel Zamalek to investigate an individual who was stopped by the security supervisor at the hotel. The security supervisor said that he stopped the individual because he was seen in the hotel hallways waving and signaling to the people there to get to know them. We arrived at the hotel and received a memo from the security supervisor, Mr/_____. In that memo, he mentioned that there was a suspiciously looking person who kept trying to get to know other hotel guests to seduce them into committing debauchery with him in exchange for money. Attached to the memo was the surveillance footage from the hotel’s camera that shows what happened.*³²

Second, the Police often receive complaints from neighbors. The reasoning behind the complaint is the same as in the case of hotel workers. The difference here is that since this is a private house, the Police must obtain a search warrant before commencing the arrest. An example on that from 2019:

²⁹ Case No 403/2020 Cairo Misdemeanor Economic Court.

³⁰ Shadow report for the third Universal Periodic Review of the Arab Republic of Egypt - Alliance of Queer Egyptian Organizations Human - rights violations based on SOGIESC in Egypt- P.3

³¹ Case No 1160/2018 Abdeen Misdemeanor Court.

³² Case No 3011/2019 Qasr El-Nil Misdemeanor Court

Executing the search warrant issued for my colleague Major/_____ to arrest and search the place of residence of the suspect Mr/_____ residing at _____, as the suspect allegedly operates an illegal brothel at his home and homosexual and immoral acts are committed to there in exchange for money. Upon searching the house of the suspect, we found evidence that indicates that such accusations are true³³.

1.2. Collecting evidence

Evidence in these cases resulting from the above-discussed police operations is either physical or digital. The physical ones are collected upon arrest, e.g., condoms and money, whilst the digital ones may be collected prior to the arrest, e.g., screenshots of the conversations, or after the arrest by searching the victim's phone.

Although the legality of obtaining such evidence is highly debatable, the public prosecutor's office never challenges it, and the evidence always gets placed in the log. The type of evidence differs based on the method of arrest, but digital evidence is the most popular one due to its flexibility and relative ease of obtaining it. Most cases would have digital evidence even if the arrest was made offline, as the Police often illegally confiscate the victim's phone and use whatever pictures or conversations they find on it.

The Police often include items in the case file that on their own are not illegal in any way (i.e., their possession is not a criminal act), for instance, wigs, money, condoms, and alcohol, to enforce the narrative of the person's immorality. An example from a police report in 2017:

We found several contrabands during the search of the suspect, and by examining the suspect's phone (Lenovo white) with sim card number 000 inside, we found a number of conversations and pictures that the suspect used to incite debauchery and to practice it in exchange for money. We confronted the suspect with what we found, and he confessed that he uses his mobile phone to find clients to have sex with him for money. We also found 1000 EGP on him, and he admitted he collected his money as fees from his work in debauchery.

Note: we printed out screenshots of the conversations that the suspect had with the informant and attached them to the report.

Note: we entered the mobile phone (Lenovo white) and 1000 EGP in the evidence log and placed them in a white envelope.³⁴

It is important to note that the Police collect items used by transwomen to help them pass, e.g., wigs, as strong evidence against them to prove that they committed habitual debauchery. An example on that from 2020:

When we searched the suspect's bag before taking him to the police station, we found inside female clothes, wigs, condoms, lubes, and a glass dildo that the accused used in his sexual sessions. We also found a laptop (Lenovo black) broken from the back and a black wallet. By searching the wallet, we

³³ Case No 17417/2019 Montazha Tany Misdemeanor Court.

³⁴ Case No 5988/2017 Qasr El-Nil Misdemeanor Court.

found 5200 EGP, 100 USD, 1180 EURO, and several credit cards. When confronting the suspect with what we found, he confessed to his crimes.³⁵

1.3. Interrogation

The Police use physical, verbal, and mental abuse to get a confession out of the victims. These abuses will be discussed in the second chapter of this paper. It is important to note that the Police often conduct the interrogation in the absence of the victim's lawyers. The Police sometimes offer an unofficial bargain to the victim to give up some of his LGBTQ+ friends, and the arrest report will be gone. An interview referring to this practice reads:

I was dragged inside a dark room, and a person came in. I did not know who he was, and he hit me in the back. Then another person who was also in the room stopped him and told him we know you are a fag and go to fag parties. How about you work as an informant for us, and we let you go?³⁶

This offer is only proposed to individuals whom the Police know that they are active members of the LGBTQ+ community. The Police look for signs that may indicate their belonging to a sexual or gender minority, e.g., tattoos, Facebook/WhatsApp groups, and body hair (whether they wax or not). It is also noteworthy that victims always confess to committing debauchery in the police reports, and these reports are standardized; the language used throughout different police reports often does not change. An example from 2019:

Q: What do you say of what you are suspected of?

A: I was wrong.

Q: Were you arrested before?

A: No.

Q: What was your status when you were arrested?

A: I was standing in Ramsis Sq. Doing signals and movements to the passers in the public street to seduce them to commit debauchery with me for money.

Q: You are suspected of making signals and movements to the passersby to seduce them into committing debauchery with you for money, which is illegal. What do you say about that?

A: I did it for the last time.³⁷

The tactics by the Police in this section often constitute a violation under national and international Law, yet the prosecution office does not enact any oversight over these actions and just complements the work of the Police with the same strategy of "morality" over "legality."

³⁵ Case No 3465/2020 El-Nozha Misdemeanor Court.

³⁶ Interview EG 301

³⁷ Case No 3011/2019 Qasr El-Nil Misdemeanor Court

Prosecution office

The second chapter of our story takes us to the supposedly “impartial” prosecution office. The lack of impartiality in these cases is easy to spot: the prosecution office hardly challenges any of the information and evidence presented to them by the vice police, nor does it investigate the legality of obtaining that information and evidence or the arrest itself. In addition to this, the prosecution officer uses their power to question the arresting officer. It is worth noting that under the Law, a defense lawyer must be present during the questioning by the public prosecutor, but the victim often does not get to choose, as they are brought in quickly after the arrest without a chance to call anyone to bring them a lawyer. Thus, the lawyer who is present is the one who is assigned by the prosecutor, and they do not demonstrate any professionalism or knowledge during the questioning. An example of the questioning process from 2019:

Q: What is the relation between you and the evidence in front of you?

A: I know nothing about it, and I only had 50 EGP with me.

Q: Who does this evidence belong to then?

A: I do not know.

Q: They were presented to us as evidence. What do you say about that?

A: I do not know.

Q: The police report came with surveillance footage that shows you seducing other hotel guests to commit debauchery, as well as nude pictures of yourself. What do you say about that?

A: I do not know anything about these pictures.

Q: Were you arrested before?

A: No.

Q: Do you have a criminal record?

A: No.

Q: You are accused of practicing habitual debauchery with men for money. What do you say about that?

A: It did not happen.

Q: You are accused of seducing a Saudi citizen to commit debauchery acts with you for 1000 SAR. What do you say about that?

A: It did not happen.

Q: You are accused of seducing the guests in the hotel and advertising yourself online. What do you say about this?

A: It did not happen.

Q: Do you have anything to add?

*A: No.*³⁸

The public prosecution office is notorious in these cases for coercing the victims into confessing. The prosecution office uses mental games on the victims and takes advantage of the fact the victims are not receiving good legal advice from their assigned lawyers. Those mental games take different forms: (a) convincing the accused that if they confess their sexual orientation or gender identity, they will not be prosecuted as they are not sex workers; (b) if there are two accused persons in one case, they work on convincing each one that if they confess, they will not be imprisoned and will be treated as

a witness; (c) confronting the accused with whatever evidence they have, even if the legality of such evidence is debatable until the accused confesses of any crime they want. A defense lawyer shared the following comments on the questioning process:

Most of the time, we reach the clients too late, after the questioning has already happened. Our clients often get coerced into making a confession or tricked into saying details that may incriminate them. Most of the time, through mental games, the clients just break down and say whatever the prosecution tells them to say with the promise that they will be returned home.³⁹

It is important to emphasize that although the prosecution tries to force the accused into confessing, this does not happen very often. At the same time, it is interesting that in the cases I reviewed, those under criminal prosecutions do confess in the Police reports and later deny such accusations at the prosecution office. It suggests that it is likely that the suspects are subjected to ill-treatment while in police custody and admit the commission of a crime as a result of that.

³⁹ Interview EG101

Judiciary

The last chapter of the story and the one that is supposed to be the most impartial. The court system in Egypt is overwhelmed by cases, and the backlog is reflected in the quality of judgments, especially in first-degree misdemeanor courts. Judges often do not review the case properly or give the defense team a chance to talk about the case. The entire review takes around 5 to 7 minutes. Then a judgment is issued.

First-degree courts often find the accused guilty, while judges in the appellate courts would take more time reviewing the cases and hearing defense arguments. However, in all cases, the judges often display prejudice against the accused, especially if their appearances do not fit the social norms:

When I entered the room, people started to whisper whether I was a boy or a girl. They put me in front of the judge, and he immediately looked at me in disgust and asked the lawyer are you with this fag, lawyer?⁴⁰

This prejudice is usually expressed only through looks, as most judges care about their “independent” image in the eyes of the Law and do not show clear bias against the victims. However, in some cases, in addition to looks or verbal expression of bias, the judge writes clearly in his judgment that he issued a such judgment on moral grounds, not legal ones:

We do not believe that the accused's denials or the defense arguments can shake the evidence presented to this Court. We believe that sexual lust is a life necessity. Allah guided us to the only way to satisfy this lust in all of his religions, and to choose another way to satisfy it is nothing but an act of immorality. Homosexuality is a new modern moral disease eating through our society, and it is something that we should firmly face with the mightiness of the Law.⁴¹

It is noticeable that the motivation behind most actions taken by state actors described in this chapter is not Law oriented. Rather they are acting based on their own religious and moral bias. The State has worked hard in the last year to create a “custom morality” to enforce its vision of what society should be and how individuals of that society should interact with each other⁴². Acting on this custom morality, the state actors do not care for the legality of cases against the LGBTQ+ community, only about the fact that it is against members of that community; thus, most of the time, individuals are being arrested, prosecuted, and convicted solely based on their attitude and social appearance.

This targeting is limiting the safe spaces accessible to the community to express their sexuality and gender identity, as the authorities maintain a strong “moral” mentoring of both the public and private spaces, including digital spaces as well⁴³. This mentoring is mostly stipulated by the need to have

⁴⁰ Interview EG 302

⁴¹ Case No 1997/2018 Boulaq Misdemeanor Court

⁴² Ezzat, Ahmed. “Law and Moral Regulation in Modern Egypt: Ḥisba from Tradition to Modernity.” *International Journal of Middle East Studies* 52, no. 4 (2020): 665–84. doi:10.1017/S002074382000080X.

⁴³ Sayadi, Emna. 2017. «In Egypt, Expressing Your Sexuality Online Makes You a Target For Human Rights Abuse. That Has to Stop. - Access Now».

moral protection of the social norms and values, and its legality is debatable, especially given the number of violations that occurs during the process of prosecuting the LGBTQ+ community⁴⁴. In the next chapter, I will reflect on these violations and how the Egyptian authorities violate its own Law and international Law when it comes to dealing with these cases.

Access Now. <https://www.accessnow.org/egypt-expressing-sexuality-online-makes-target-human-rights-abuse-stop/>.

44 Dalia Abd El-Hameed; The Egyptian General Directorate for Protecting Public Morality: Purveyors and Guardians of Penetrating Masculinity. *Journal of Middle East Women's Studies* 1 July 2018; 14 (2): 252–254. doi: <https://doi.org/10.1215/15525864-6680387>

Chapter III: Violations

Egypt has managed in the past decade to normalize the violation committed by the State, whether it is on the national level or the international level. These violations became part of the Egyptian State's identity. Egypt has been under one dictator or another for decades and is currently ruled by an authoritarian military regime that has been working on enforcing the narrative of the normalization of human rights abuses and the rule of law violations.⁴⁵

The geopolitical and military importance of Egypt has allowed it to escape accountability when it comes to human rights generally and LGBTQ+ specifically⁴⁶. In this chapter, I will shed light on the violations endorsed by the national authorities, reflect on how the practice also violates Egypt's international obligation, and how the international community has failed to address these violations effectively.

⁴⁵ Unprecedented repression six years since fall of Morsi». 2019. Amnesty.org. <https://www.amnesty.org/en/latest/news/2019/07/egypt-series-of-draconian-laws-legalizes-unprecedented-repression-six-years-since-fall-of-morsi/>.

⁴⁶ Dunne, Michele. 2020. «Egypt: Trends in Politics, Economics, and Human Rights». Carnegie Endowment for International Peace. <https://carnegieendowment.org/2020/09/09/egypt-trends-in-politics-economics-and-human-rights-pub-82677>.

Rule of Law

The rule of Law has been seriously undermined in Egypt since the military coup in 2013. The reign of President Sisi has been characterized by human rights abuses and using Law to consolidate authoritarianism. This is reflected in a new wave of legislation that restricts rights and re-writes the relationship between civilians and the State.⁴⁷

These legislations include the newly passed cybercrime law, which contains vague articles open to interpretation, e.g., "Article 25: violation of family values and social traditions"⁴⁸, which directly violates the constitution, especially Article 95 and the rule of Law in the country: it does define a crime, rather a value, which differs from one human to another and is too vague to be understandable by the public that opens the door for different judicial interpretations⁴⁹. This above-mentioned provision was just an addition to the vague "moral" provisions mobilized by the State to silence the LGBTQ+ community and others⁵⁰.

Furthermore, the principle of separation of powers – a core component of the rule of Law – has been seriously eroded in Egypt, as president Sisi modified the constitution to his liking to produce a judiciary that serves the agenda of the State in⁵¹ scapegoating the LGBTQ+ community and makes the State appear in a good light.

In addition, the legislative branch (the parliament in our case) is nothing more but a puppet to the regime, and ever since 2017, it has attempted more than once to pass anti-LGBT laws to increase the moral authority of the State over its citizens⁵². The use of this moral authority also undermines the rights that should be guaranteed to its citizens, e.g., fair trial and impartial investigations.

These rights are threatened by the lack of accountability and impartiality within the different state actors, e.g., vice police, prosecution office, and judiciary. As they all serve the moral agenda of the State, the case process is rigged with illegalities and leads to biased judgments⁵³. In this part, I will explore these illegalities happening by the vice police and the lack of oversight over their actions by

47 «EGYPT: There's Been Severe Deterioration in The Rule Of Law & Respect For Human Rights'». 2020. Civicus.Org. <https://www.civicus.org/index.php/media-resources/news/interviews/4324-egypt-there-has-been-a-severe-deterioration-in-the-rule-of-law-and-respect-for-human-rights>.

48 «قانون رقم 175 لسنة 2018 في شأن مكافحة جرائم تقنية المعلومات». cairo52. 2021
<https://cairo52.com/ar/قانون-رقم-175-لسنة-2018-في-شأن-مكافحة-جرائم-تقنية-المعلومات/>.

[Q'anon Rakm 175 L sent 2018 F Sha'an Mokafht Gra'am Teqany Al-Mohlmat: Cybercrime law 175/2018]

49 «مسار تدفع بعدم دستورية جريمة الاعتداء على قيم الأسرة المصرية». Massar. 2020 .
<https://masaar.net/مسار-تدفع-بعدم-دستورية-جريمة-الاعتداء-على-قيم-الأسرة-المصرية/>.

[Masar Tadof'h b hadm Destoryt Gr'eema Al Atah'a Ala Qym Al-Asor Al-Masrya: defense memo regarding the unconstitutionality of the crime of violating family values]

50 Rigot, Afsaneh. 2021. «Egypt's Dangerous New Strategy for Criminalizing Queerness». Slate Magazine.
<https://slate.com/technology/2020/12/egypt-lgbtq-crime-economic-courts.html>.

51 «Egypt: Constitutional Amendments Entrench Repression». Human Rights Watch. 2019.
<https://www.hrw.org/news/2019/04/20/egypt-constitutional-amendments-entrench-repression>.

52 Lang, Nico. 2017. «'It Will Pass': Egypt Set to Enact One of the World's Most Extreme Anti-LGBTQ Laws - LGL». LGL.
<https://www.lgl.it/en/?p=18692>.

53 Abd El-Hamid, Dalia. 2017. «The Trap: Punishing Sexual Difference In Egypt | Egyptian Initiative For Personal Rights». Eipr.Org. <https://eipr.org/en/publications/trap-punishing-sexual-difference-egypt>. P.24-26

the judiciary, and the moral biases demonstrated against the LGBTQ+ community.

Random street stopping (Istiqaf)

Egyptian Law gives the judicial arrest officers the right to stop and search individuals in specific cases, e.g., flagrante delicto or if the person commits questionable or “dubious” conduct⁵⁴. The Court of Cassation has given some definitions to what “questionable or dubious conduct” can be and emphasized the fact that the Police are not entitled to stop any person to ask them to verify their identity, rather the person is supposed to put themselves in a position of suspicion with acts that require the intervention of the judicial arrest officers⁵⁵.

In addition to this, the Supreme Constitutional Court (SCC) ruled on 14 January 1993, in appeal no. 3/10CJY that “suspicion” alone does not stipulate a ground for arrest⁵⁶. Despite these court judgments, the Police often fabricate questionable or dubious conduct to allow itself to stop members of the LGBTQ+ community and search them. Most police reports regarding random street arrest use terms like “seductive movements and signs” to create the illusion of the existence of questionable or dubious conduct that calls for their intervention.

Arrest and detention in public venues

The Egyptian Constitution and the Criminal Procedure Code, and in particular Articles 54⁵⁷ and 30⁵⁸, allow police officers to detain and apprehend individuals without a prior arrest or search warrant from the Public Prosecutor Office in cases of flagrante delicto. Therefore the police officers always attempt to fabricate a flagrante delicto case when writing their reports to ensure the lawfulness of the arrest procedures and to justify arresting individuals without prior search or arrest warrants. An example from a report in 2018:

We received tips from one of our secret informants that a group of gay youth are meeting at Opera square for sexual pleasure in exchange for money. A secret police force moved to the location and noticed one of those gay youth making suspicious movements and signals to seduce men to commit debauchery with him for money. We approached the accused and confronted him, and he confessed that he came to Opera square to commit debauchery with men for money.⁵⁹

Arrest and detention in private venues

Both the Egyptian Constitution and the Criminal Procedure Code place great emphasis on the inviolability of homes⁶⁰. The judicial arrest officer may only be allowed to search a house after receiving

⁵⁴ Egypt Criminal Procedure Code - Article 30.

⁵⁵ See the Court judgments on “استيقاف”, https://www.cc.gov.eg/criminal_judgments

⁵⁶ «Routine Infringement Of Privacy:Your Phone And ID, Please!! | Egyptian Initiative for Personal Rights». 2019. Eipr.Org. <https://eipr.org/en/publications/routine-infringement-privacyyour-phone-and-id-please> - P. 13

⁵⁷ See Article 54 of the Constitution

⁵⁸ See Article 30 of the criminal procedure code.

⁵⁹ Case No 1160/2018 Abdin Misdemeanor Court

⁶⁰ See Article 58 of the Egyptian Constitution and Article 45 of the Criminal Procedures Code

a judicial search warrant from the prosecution office. The search party must warn the residents before conducting a search, and the owner of the house must be informed of the details of the search warrant.⁶¹

Furthermore, the Court of Cassation stated that a judicial officer may conduct a house search without a prior search warrant if the owner consents to this⁶². However, the Police often ignore these protections and just break into houses of the LGBTQ+ community and later fabricate the reports to the State that they were arrested from the streets. The Police also allow neighbors to unlawfully detain members of the LGBTQ+ community inside their houses. Instead of coming to aid the victims, they would come to arrest them based on the complaints of the neighbors:

I was inside the house with three of my friends when the neighbors started knocking heavily on the doors, I opened up, and they just stormed inside and started beating me and detaining me and my friends inside the house, insulting and beating us in the process. When the Police came, they arrested us and left us.⁶³

Search and Evidence

Private life is protected by the constitution⁶⁴ and the criminal procedure code. The latter contains articles that regulate the process of searching and collecting evidence. To search an individual, house, or telephones, a person must be suspected of committing a crime in the context of an investigation. This search must be based on reasonable suspicion and conducted by a judicial order. In any case, the judicial arrest officer does not have the right to open any private items belonging to the accused, e.g., mobile phones and sealed letters. The Law permits the judicial arrest officer to only conduct a preventive search⁶⁵ to deprive the suspect of any implement that could be used to assault them while in custody and to seize the private items without opening or searching them as evidence⁶⁶.

The examination of these private items is only permitted to the investigating magistrate, e.g., the prosecution office or an investigating judge.⁶⁷ Although all these protections are granted by Law, the Police often force individuals to open any private item they have, e.g., mobile phones, and conduct an illegal search of these private items that results in evidence. The public prosecution office, instead of investigating the legality of this evidence, often just “corrects” the illegal actions of the Police by reopening and researching this evidence in front of the accused in an attempt to add legitimacy to the evidence under the aforementioned laws.

A blind oversight

The illegalities committed by the Police are often endorsed by the entities that are supposed to oversee

61 Article 51 of the Criminal Procedures Code

62 Appeal No.9680/JY86 dated on 21/03/2018.

63 Interview EG 301

64 Article 57 of the Constitution

65 This Search is only permitted in cases of flagrante delicto or with a judicial search warrant.

66 See Articles 31, 32, 34 and 52 of the criminal procedure Code.

67 Ibid- Article 97

it, e.g., the judiciary and prosecution office⁶⁸. As mentioned before, the separation of powers is nearly nonexistent in the country, and all three entities serve the “custom morality” advocated for by the State. As such, there is a lack of accountability and oversight which encourages these illegalities to continue.

According to the lawyers interviewed for this paper, even when it is clear that the basis of the cases is rigged with illegalities, the prosecution and judiciary still examine the case. The fruit of the poisonous tree is not applicable to the Egyptian authorities. All of these illegalities undermine the rights of individuals, e.g., the right to a fair trial, and constitute violations of the constitutional protections provided for the citizens. Rule of Law is not only jeopardized in these cases but throughout the entire Egyptian legal system. The practices of the Police became a pandemic that is slowly diminishing the Rule of Law in the country. The judiciary and prosecution are just accomplices in these practices, endorsing them through their blind oversight.

The acts mentioned indicate a violation of fundamental rights for individuals, as these arrests are arbitrary, based on nothing but the imagination of the arresting officer, and without a responsible cause. Thus, the notion of the security of a person⁶⁹ is violated, and the state actors have failed with their positive obligations to provide individuals with it.

This arbitrariness is also undermining the legal principles of foreseeability and certainty, as the vice police twist the laws to their convenience, which makes it harder for individuals to anticipate that their actions are unlawful⁷⁰. Other notable rights that are violated by these illegalities are the right to privacy and the right to compensation in the event of unlawful deprivation of liberty⁷¹. These are not the only violations happening in these cases, though. In the next section, I will examine the violations happening to individuals’ bodily integrity.

68 Sayigh, Yezid. 2015. «Missed Opportunity: The Politics of Police Reform in Egypt and Tunisia». Carnegie Middle East Center. <https://carne-gie-mec.org/2015/03/17/missed-opportunity-politics-of-police-reform-in-egypt-and-tunisia-pub-59391>.

69 OHCHR. 2003 “Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers”. Chapter 5- P. 162

70 Ibid. P.167

71 Ibid- P.209

Bodily Integrity

Although the Egyptian Government would proudly state that it incorporated international conventions like UN Convention against Torture (CAT) into its constitution⁷², systematic torture is an epidemic in Egypt. The Egyptian State has failed to meet its international obligations when it comes to the criminalization of torture. Under article 126 of the Egyptian Penal Code, torture is limited to acts inflicted with the purpose of inducing confessions from accused persons, excluding, therefore, acts against those detained without charge and for the purposes of obtaining information or punishment. Due to this limited scope, the prosecutors often use the more lenient article 129 (use of cruelty) instead to charge perpetrators.⁷³

The prosecution office is responsible for receiving complaints from victims regarding the abuses they underwent⁷⁴. However, the prosecution office has demonstrated failure in conducting serious investigations into these complaints, as the impartiality of the prosecution office is debatable, and more and more victims are reluctant to submit a complaint to them. Also, victims often fear reprisal by their perpetrators if they submit a complaint.⁷⁵

Queer individuals are subjected to ill-treatment that can amount to torture based on their gender identity or sexual orientation. This ill-treatment has many forms, e.g., humiliation, physical and verbal, and often does not serve any purpose like taking a confession out of the victim. Rather it is just an instrument of enjoyment for the perpetrators.⁷⁶

They stormed into my flat out of nowhere. I was inside with 5 of my friends. They started beating us and calling us "fags". They took us downstairs, screaming loudly to everyone in the streets that we were "fags", but this was only the beginning. The moment we arrived at the police station, the real torture party started.⁷⁷

The practice of forced anal examination⁷⁸ is endorsed by the State and predicted by the forensic office on orders from the public prosecution. This practice is used to provide "medical" evidence that people involved in debauchery cases are indeed homosexual, despite the lack of any medical or scientific backing to this practice. Egyptian officials still have recourse to it and praise it as being very effective in these cases:

"The shape of the hole will change," he said. The anus "won't be normal anymore and will look like the

⁷² See Articles 51, 52, 55 and 60.

⁷³ «Egypt: Systematic Torture Is a State Policy - Cairo Institute For Human Rights Studies». 2019. Cairo Institute for Human Rights Studies. <https://cihrs.org/egypt-systematic-torture-is-a-state-policy/?lang=en>.

⁷⁴ See Article 232 of the Criminal Procedure Code

⁷⁵ El-Ansary, Mohamed. 2017. «The Role Of The Public Prosecution In Egypt'S Repression». Pomed.Org. <https://pomed.org/wp-content/uploads/2016/11/POMEDAnsaryEgyptReport.pdf>.

⁷⁶ «Egypt: Security Forces Abuse, Torture LGBT People». 2020. Human Rights Watch. <https://www.hrw.org/news/2020/10/01/egypt-security-forces-abuse-torture-lgbt-people>

⁷⁷ Interview EG303

⁷⁸ «DIGNITY DEBASED». 2016. Human Rights Watch. https://www.hrw.org/sites/default/files/report_pdf/globalgbtanalexams0716web.pdf.

female vagina.79”

Also, trans individuals who are arrested in these cases are often placed in prison cells that do not reflect their gender identity or in solitary confinement for an extended period of time⁸⁰. These kinds of ill-treatment and abuses are committed by state actors and other inmates with the supervision and approval of the State. The state actors often encourage other inmates to attack and sexually assault people who are arrested in these cases:

They took me to Dokki Police Station, beat me so hard I lost consciousness, then threw me in a cell with other prisoners. They told them: “He’s a faggot” and told me, “Careful not to get pregnant.” I stayed one week in that cell, and between the beatings by officers and assaults by other detainees, I thought I would not survive⁸¹.

79 Dr. Maged Louis, deputy director of the Justice Ministry’s Forensic Medical Authority commenting on the practice of anal examination in an interview to BuzzFeed in 2015: Feder, J. Lester & Atef, Maged. 2015. «Egyptian Doctors Think This Torturous Exam Can Detect «Chronic Homosexuals»». Buzzfeednews.com. <https://www.buzzfeednews.com/article/lesterfeder/egyptian-doctors-think-this-torturous-exam-can-detect-chroni>.

80 «Petition: Release Tina (Transwoman) From Egyptian Prison and Extradite Her Back To Cyprus - Cairo52». 2021. Cairo52. <https://cairo52.com/2020/11/18/petition-bring-tina-home/>.

81 «Egypt: Security Forces Abuse, Torture LGBT People». 2020. Human Rights Watch. <https://www.hrw.org/news/2020/10/01/egypt-security-forces-abuse-torture-lgbt-people>

International Obligations

*Egypt does not recognize the terminology contained in this recommendation. According to the Constitution and Law, all citizens are equal before the Law. The rights of all individuals are protected without distinction, regardless of the charges pressed against any individual.*⁸²

This is a quote from the Egyptian delegation at the Human Rights Council regarding SOGI recommendations they received during the last cycle. The “wrong terminology” claim was used to reject the other two recommendations received in 2019. Not recognizing SOGI as an issue simply means that Egypt does not feel obligated to uphold any kind of human rights commitment it should have toward the issue.⁸³

This is happening despite international and regional obligations Egypt has to respect the rights of LGBTQ+ people, as the ICCPR includes sexual orientation as a protected group under it⁸⁴, and the African Commission of Human Rights has called on its members, including Egypt, to respect the rights of LGBTQ+ people and to stop prosecuting them.⁸⁵

Also, Egypt has failed to meet its obligations under CAT, as noted in the bodily integrity section. This failure to comply with international standards is often ignored by the international community, as Egypt relies on its soft power and geopolitical importance to escape accountability. Apart from condemning statements regarding Egypt’s human rights abuses⁸⁶, the international community chose to place military and economic cooperation over human rights, as Egypt escaped the fate of other human rights abusers, who often get outcasted and sanctioned by the international community.⁸⁷

⁸² «UPR Sexual Rights Database | UPR Database».2020. Uprdatabase.org. <https://tinyurl.com/3ww2au3j>

⁸³ Yones, Rasha. 2020. «Egypt’s Denial of Sexual Orientation and Gender Identity». Human Rights Watch. <https://www.hrw.org/news/2020/03/20/egypts-denial-sexual-orientation-and-gender-identity>.

⁸⁴ In *Toonen v Australia* (CCPR/C/50/D/488/1992), the United Nations Human Rights Committee held that reference to “sex” in Articles 2 and 26 of the ICCPR is to be taken as including sexual orientation. Also, the “other status” is interpreted in a flexible manner to capture all forms of discrimination, that can include gender identity. See Committee on Economic, Social and Cultural Rights, General Comment No 20 at paras 27, 28 and 35.

⁸⁵ See Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, adopted by African Commission at its 55th Ordinary Session, in Angola, from 28April to 12 May 2014.

⁸⁶ «Human Rights Council: Countries Should Take Bold Action on Egypt». Human Rights Watch. 2021. <https://www.hrw.org/news/2021/02/09/human-rights-council-countries-should-take-bold-action-egypt>

⁸⁷ Gutmann, Jerg et al. 2018. «Economic sanctions and human rights: Quantifying the legal proportionality principle». Hdl.handle.net. <http://hdl.handle.net/10419/179260>

*Conclusion: Socio-legal context
and prosecuted groups*

Although all LGBTQ+ individuals face different layers of discrimination, few selected groups face prosecution. Legal prosecution is often reserved for the groups which impose the most threat to the ideals of Manhood in society. This Manhood is often sought after and celebrated in society, whilst Womanhood is often something that needs to be contained within the conservative religious patriarchy of the society, as it is believed that a woman can bring shame to the family if she escapes its assigned gender roles.⁸⁸

The conservative Egyptian society is a champion of patriarchy, which is often state-sponsored, as the State encourages a very narrow understanding of gender and sexuality⁸⁹. This is reflected in Law no. 10/1961 and the groups that are prosecuted on the basis of that: the Law often punishes female sex workers, transwomen, and homosexual men, whilst rewarding heterosexual men. The most significant problem with the Law lies in the disparity that exists in both its application and interpretation in protecting heterosexual men but not gay men and female sex workers.⁹⁰

This is evident in the Court of Cassation rulings, as it gave an authoritative interpretation of the Law, which let heterosexual men escape accountability under the Law in cases of "habitual debauchery"⁹¹. This interpretation is driven by a sexist understanding of morality and gender roles in society from a judiciary that is dominated by reactionary conservative thinking. This kind of thinking grants heterosexual men more sexual freedoms only because of their Manhood and denies those freedoms to their counterparts, e.g., women and homosexual men.

State actors have developed a custom understanding of morality, which is the main drive force behind their persecution of LGBTQ+ individuals. This is evident by the illegality of the arrest procedures, the failure to investigate this illegality, and the harsh sentences received by LGBTQ+ individuals. In addition to this, the state sponsors hate speech and social discrimination against the LGBTQ+ community, as they often overlook and even aggravate hate attacks against the LGBTQ+ community and encourage the public to work as "moral police" for the authority and to report any "immoral" actions they see.⁹²

LGBTQ+ individuals who are convicted in these cases do not only serve jail time, rather a life sentence of shame, as they remain for years-long socially ostracized because the crime they had been convicted of violates honor. After the 2013 coup, the new Egyptian State under Sisi found itself under attack by Islamists as too secular. This sparked a fight over the morality of society between the Islamists and governments.

88 El-Bahery, Hend. 2017. «87% Of Egyptian Men Believe Women's Basic Role Is To Be Housewives: Study - Egypt Independent». Egypt Independent. <https://egyptindependent.com/87-egyptian-men-believe-women-s-basic-role-be-housewives-study/>.

89 ROBERT FERNEA (2003) Gender, sexuality and patriarchy in modern Egypt, Critique: Critical Middle Eastern Studies, 12:2, 141-153, DOI: 10.1080/1066992032000130602

90 Abd El-Hamid, Dalia. 2017. «The Trap: Punishing Sexual Difference In Egypt | Egyptian Initiative For Personal Rights». Eipr.Org. <https://eipr.org/en/publications/trap-punishing-sexual-difference-egypt>. P.39

91 Court of Cassation appeal No 99/ JY 58 in 21st of April 1988, Court of Cassation appeal No 2434/ JY 58 in 8th of June 1988, Court of Cassation appeal No 49867/ JY 59 in 14th of November 1996 and Court of Cassation appeal No 8838/ JY 60 in 13th of October 1997.

92 «Egypt | Stop Prosecuting and Harassing LGBTQ+ Individuals And Organisations». 2021. ISHR. <https://www.ishr.ch/news/egypt-stop-prosecuting-and-harassing-lgbtq-individuals-and-organisations>.

The State was under the obligation to prove to society that it was still the protector of morality and religion in society⁹³. As such, the State's institutes, e.g., vice police, prosecutors, and judiciary, assumed the role of moral protectors and started a widespread campaign against sexual and bodily freedoms in the country, including LGBTQ+ rights⁹⁴. In addition to this, The LGBTQ+ community is often used as a scapegoat to distract the public from the Government's failure to implement social justice reforms⁹⁵.

All of this represents a strong testimony to the way the State reproduces the patriarchal and toxic masculinity ideals as the dominant power that leads its policies. Those ideals put the LGBTQ+ community (Especially Queer men and Transgender/sexual women) under threat and under pressure to fit within the socially normative gender binary ideals in Egypt; if they choose to move away from these ideals, they risk punishment by the judicial system. On the other hand, Queer women may face social stigma and family-driven violence, but not a state-sponsored one. This is led by the sexist view of women as less worthy than men in society, and as such, lesbianism does not to be punished, as a woman is expected to be "treated" from it just by marrying a man and fitting into her social role.

The State has managed to adapt vague laws to criminalize homosexuality. This criminalization is empowered by the moral bias practiced by state actors and numerous violations of the rule of Law, bodily integrity, and International Law. The State has embedded its image as the moral protector in the mindset of Egyptians, using sexual minorities to do so and to win the undeclared "moral battle" between the Government and the Muslim Brotherhood.

However, in the darkness, there is light, and Queer movements are that light, as activists, legal advocates, and survivors are still fighting this discrimination, demonstrating resilience and commitment to their cause. These movements need the international community to start putting human rights first and not provide concessions to a government known for its human rights abuses.

93 Noralla, Nora. 2021. «Elkarakhana: History of Sex Working In Modern Egypt Between Legalization And Criminalization - Cairo52». Cairo52. <https://cairo52.com/2020/11/05/elkarakhana-eng/>. P.24

94 «Egypt: Spate Of 'Morality' Prosecutions Of Women». 2020. Human Rights Watch. <https://www.hrw.org/news/2020/08/17/egypt-spate-morality-prosecutions-women>.

95 «LGBT People Are Egypt's Scapegoats». 2016. Human Rights First. <https://www.humanrightsfirst.org/blog/lgbt-people-are-egypt-s-scapegoats>

Annex I.

1. Applicable legal provisions:

A quick overview of the current legal articles used to prosecute the queer community and on which the state actors base their Cases against Queer individuals.

Law No.10/ 1961:

The Law was passed in 1961, replacing law No. 68/1951, as the main Law to combat all forms of prostitution. The main article being used in the covered cases is Article 9(C): Punishment by imprisonment for a period not less than three months and not exceeding three years and a fine not less than 25 LE and not exceeding 300 LE in the Egyptian administration and not less than 250 Lira and not exceeding 3000 Lira in the Syrian administration or one of these two punishments applies in the following cases: (c) Whoever habitually engages in debauchery or prostitution.⁹⁶

Cybercrime Law No. 175/2018:

The latest addition to the articles being used in cases targeting the Queer community passed in 2018 is the Cybercrime law containing vague articles that can be used to restrict their freedoms and prosecute them, most notably its article 25: Posting content that “violates the family principles and values upheld by Egyptian society” may be punished by a minimum of six-months imprisonment and/or a fine of EGP50,000–100,000.⁹⁷

Egyptian Penal Code:

Some articles in the Egyptian Penal Code can and are used in some cases against members of the Queer community, e.g., Article 178: Whoever publishes or show or print advertising material or symbolic signs or brochures or photographs that violate public morals is to be punished with a maximum of two years jailtime and with a fine of minimum 5000 EGP and maximum 10000EGP⁹⁸.

Article 269 bis:

Whoever is found on a public road or a traveled and frequent place inciting the passers with signals or words to commit adultery (Obscenity) shall be punished with detention for a period not exceeding one month. If the felon recures to committing the crime within one year from the date the court ruling is passed against him to the first crime, the penalty shall become detention for a period not exceeding six months and a fine not exceeding fifty pounds. A ruling of indictment shall necessitate placing the convict on police parole for a period equal to that of penalty.⁹⁹

96 2020. «Egypt: Law No. 10/1961, on the Combating of Prostitution - cairo52». cairo52. <https://cairo52.com/egypt-law-no-10-1961-on-the-combating-of-prostitution/>.

97 2018. «Egypt: President Ratifies Anti-Cybercrime Law | Global Legal Monitor». Loc.gov. <https://www.loc.gov/law/foreign-news/article/egypt-president-ratifies-anti-cybercrime-law>

98 Current exchange rate is 1 Euro = 18.56 EGP.

99 Egypt: Penal Code [Egypt], No. 58 of 1937, August 1937, available at: <https://www.refworld.org/docid/3f827fc44.html> [accessed 19 June 2021]

2. Relevant Constitutional Articles:

Source: https://www.constituteproject.org/constitution/Egypt_2014.pdf

Article 51: Human dignity

Dignity is a right for every person that may not be infringed upon. The State shall respect, guarantee, and protect it.

Article 52: Torture

All forms of torture are a crime with no statute of limitations.

Article 54: Personal freedom

Personal freedom is a natural right that is safeguarded and cannot be infringed upon. Except in cases of flagrante delicto, citizens may only be apprehended, searched, arrested, or have their freedoms restricted by a causal judicial warrant necessitated by an investigation.

All those whose freedoms have been restricted shall be immediately informed of the causes, therefore notified of their rights in writing, be allowed to immediately contact their family and lawyer, and be brought before the investigating authority within twenty-four hours of their freedoms having been restricted.

Questioning of the person may only begin once his lawyer is present. If he has no lawyer, a lawyer will be appointed for him. Those with disabilities shall be provided all necessary aid according to procedures stipulated in the Law.

Those who have their freedom restricted and others possess the right of recourse before the judiciary. Judgment must be rendered within a week from such recourse. Otherwise, the petitioner shall be immediately released.

The Law shall regulate preventive detention, its duration, causes, and which cases are eligible for compensation that the State shall discharge for preventative detention or for the execution of a penalty that had been executed by virtue of a judgment that is overruled by a final judgment.

In all cases, the accused may be brought to criminal trial for crimes that he may be detained for only in the presence of an authorized or appointed lawyer.

Article 55: Due process

All those who are apprehended, detained, or have their freedom restricted shall be treated in a way that preserves their dignity. They may not be tortured, terrorized, or coerced. They may not be physically or mentally harmed or arrested and confined in designated locations that are appropriate according to humanitarian and health standards. The State shall provide means of access for those with disabilities.

Any violation of the above is a crime, and the perpetrator shall be punished under the Law. The accused possesses the right to remain silent. Any statement that is proven to have been given by the detainee under the pressure of any of that which is stated above or the threat of such shall be considered null and void.

Article 57: Private life

Private life is inviolable, safeguarded, and may not be infringed upon. Telegraph, postal, and electronic correspondence, telephone calls, and other forms of communication are inviolable, their confidentiality is guaranteed, and they may only be confiscated, examined, or monitored by causal judicial order for a limited period of time and in cases specified by the Law.

The State shall protect the rights of citizens to use all forms of public means of communication, which may not be arbitrarily disrupted, stopped, or withheld from citizens, as regulated by the Law.

Article 58: Inviolability of homes

Homes are inviolable. Except in cases of danger or if a call for help is made, they may not be entered, searched, monitored, or wiretapped except by causal judicial warrant specifying the place, time, and purpose thereof. All of the above is to be conducted in cases specified by the Law and in the manner prescribed. Upon entering or searching homes, those inside shall be notified and informed of the warrant issued in this regard.

Article 60: Inviolability of the human body

The human body is inviolable. Any assault, defilement, or mutilation thereof is a crime punishable by Law. Organ trafficking is forbidden, and no medical or scientific experiment may be performed thereon without the documented free consent of the subject, according to the established principles of the medical field as regulated by Law.

3. Criminal Procedure Code:

Source: <https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code+English+Final.pdf>

Article 30: A crime shall be deemed a crime in flagrante delicto in the event caught during the commission or shortly after the commission thereof. A crime shall also be deemed a crime in flagrante delicto if the perpetrator is chased by the victim or the public while crying out after the commission thereof or if the perpetrator is found shortly after the commission of the crime carrying arms, weapons, baggage, documents, or other items proving that said is the perpetrator of or accomplice in the crime, or if there are signs or indications of the guilt thereof.

Article 31: A judicial officer, in the event of a situation of flagrante delicto in a crime or misdemeanor, shall move immediately to the scene of the crime, inspect the relevant physical evidence, preserve such evidence, make a statement of facts with respect to the place, individuals and everything that may help reveal the truth and listen to the testimonies of individuals who were present or who may be able to verify information about the crime and the perpetrator thereof. The judicial officer shall immediately inform the Public Prosecution of the act of moving to the scene of the crime. Once informed of a crime in flagrante delicto, the Public Prosecution shall immediately move to the scene of the crime (amended by Decree-Law No.353 of the year 1952).

Article 32: A judicial officer may, in the event of moving to the scene of a crime in a situation of flagrante delicto, prohibit persons present from leaving or moving far from the scene of the crime until a report is made. The judicial officer may immediately summon any person who can clarify the events of the crime.

Article 34: In the event of a situation of flagrante delicto in a crime or misdemeanor punishable by incarceration for a period of time exceeding a three-month period, the judicial officer may order the arrest of the suspect present at the scene of the crime having sufficient evidence thereagainst for the accusation thereof (amended by Law No.37 of the year 1972).

Article 45: No public official may enter any place of residence unless in the cases stipulated by Law, in the event assistance is requested, or in instances of fire, drowning, or the alike.

Article 51: Whenever possible, the process of searching shall be conducted lawsuit in the presence of the suspect or of any person delegated thereby. Otherwise, two witnesses shall be present who shall, to the best extent possible, be adult relatives thereof, residing therewith or neighbors thereof. Such shall be recorded in the relevant report.

Article 52: If, in the place of residence of the suspect, documents sealed or enveloped by any other means are found, such may not be opened by the judicial officer.

Article 97: The investigating magistrate shall have sole inspection over the letters, correspondences, documents, and other seized items provided that, whenever possible, the inspection be done in

the presence of the person accused and the possessor or the person to whom such were sent. The investigating magistrate shall record any observations made. Whenever necessary, the investigating magistrate may delegate a member of the Public Prosecution to sort the aforementioned documents out and may, according to the results, order the inclusion of such documents to the case file or return such to the possessor or the person to whom such were sent.

Article 232: The lawsuit shall be referred to the Court of misdemeanors and petty offenses upon an order issued by the investigating judge or the misdemeanor court of appeal sitting in chambers, or upon a direct summons served by a member of the public prosecution or by the civil rights plaintiff, for the accused person to appear before the Court. Such summons may be dispensed with if the accused person appears before the Court, faces the charge imposed by the Public Prosecution, and accepts the trial. However, the civil rights plaintiff may not bring an action to the Court by directly summoning the accused person to appear in two cases. First: If the investigating judge or the public prosecution decided that there was no case to answer, and the civil rights plaintiff did not appeal such ruling in due time, or did challenge the decision, and the misdemeanor court of appeal sitting in chambers sustained the decision (Amended by virtue of Law No. 107 of the year 1962, then amended by virtue of the Law No. 170 of the year 1981). Second: If the lawsuit is against a public officer, a civil servant, or an arresting officer, for a crime committed during the course of performing his duties or on account thereof, save for crimes referred to in Article 123 of the Penal Code (Amended by virtue of Law No. 37 of the year 1972).

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