



Situation Report on

**Guaranteeing Human and Civil Rights
under Egypt's New State of Emergency**

(Released: Wednesday, April 12th, 2017)

Background:

On Palm Sunday April 9th, 2017, two ISIS-affiliated terrorists simultaneously bombed Mary Girgis Church in Tanta and Mary Morcos Church in Alexandria. According to official statistics by the Egyptian Ministry of Health, the bombings claimed the lives of 45 citizens and injured 128 others.

Egypt's President Abdel Fattah El Sisi, immediately, convened a meeting with the National Defense Council (NDC). On the evening of Sunday April 9th, President El Sisi declared state of emergency and the Ministerial Cabinet approved it. On the next morning April 10th, the Official Newspaper published Presidential Declaration No. 157/2017 to instate the official application of emergency state for three months starting 1:00 pm on Monday April 10th.

To fulfill constitutional provisions necessary for instating national state of emergency, the Egyptian Parliament convened on the same day to discuss and approve the presidential declaration. The constitution provides that the absolute majority of Parliament Member have to positively vote for the declaration before. On the afternoon of Tuesday April 11th, the Parliament unanimously approved the presidential declaration, and thus the state of emergency has gone in effect.

On the same Tuesday April 11th, the Legislative Committee of Parliament worked on amending the stipulations of Emergency Law number 162/1958. The Committee proposed to add two articles "3 bis" and "3 bis A" and the Public Policies Committee of the Parliament approved it. The two new articles state the following:

Article 3 bis: “Judicial arrest officers, under emergency state and excluding other law provisions, may arrest whoever is proved committing a felony or a misdemeanor, search their houses and all other places where they are suspected to hide dangerous or explosive materials, weapons, ammunition, or other tools used in committing crimes. After taking Public Prosecutor’s permission, the arrested person may be held in custody for maximum period of seven days to continue collecting evidence.”

Article 3 bis A: “Partial State Security Courts may, based on Public Prosecutor’s request, hold in custody those proved dangerous on public security for one month subject to renewal.”

Effect Analysis:

The presidential declaration of state of emergency aroused concerns for several human rights activists, political observers, and a few Members of Parliament. They are legitimately worried that re-declaring the state of emergency means starting a new dictatorial era in Egypt. The ill reputation of the emergency state goes back to three decades of abusing emergency to crackdown on human rights and civil freedoms by the autocratic regime of Mubarak. One of the first calls of January 2011 revolution, which overthrew the Mubarak regime, was for the state of emergency to expire.

In this situation report, the Liberal Democracy Institute of Egypt (LDI) is trying to analyze the potential consequences of emergency state on citizens’ civil rights. The report is investigating the legitimacy of instating emergency in light of

the Egyptian Constitution of 2014 and other governing local and international legislations. Then, the report analyzes the expected effect and scope of emergency state on the daily lives of citizens. Finally, the report suggests a number of recommendations to policymakers on how to make use of state of emergency's three months period (maximum six months in case of renewal) to accomplish successful measures, politically and socially, to effectively combat terrorism on the long term, without having to resort to more exceptional procedures in the future.

(1) Local and international legislations governing the declaration of the state of emergency:

The Egyptian Constitution of 2014 permits the President of the State to declare state of emergency for three months provided the approval of Ministerial Cabinet and the absolute majority of Parliament. The state of emergency may be extended to another three months only if two third of parliament accepts. Article 154 of the Egyptian Constitution stipulates:

“The President of the Republic declares, after consultation with the Cabinet, a state of emergency in the manner regulated by law. Such proclamation must be submitted to the House of Representatives within the following seven days to consider it. If the declaration takes place when the House of Representatives is not in regular session, a session is called immediately in order to consider the declaration.

In all cases, the declaration of a state of emergency must be approved by a majority of members of the House of Representatives. The declaration is for

a specified period not exceeding three months, which can only be extended by another similar period upon the approval of two-thirds of House members. In the event the House of Representatives is dissolved, the matter is submitted to the new House in its first session. The House of Representatives cannot be dissolved while a state of emergency is in force.”

In addition, the United Nation’s International Covenant on Civil and Political Rights (ICCPR), allows nations to declare state of emergency, as an exceptional measure, whenever the political leadership needs to deal with damaging threats imposed by man-made attacks or natural disasters. Article 4 of the UN’s ICCPR states:

“1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United

Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.”

(2) Potential extent and effect of current state of emergency on civil and political liberties:

Emergency Law number 162/1958 gives extended powers to the President of the State, to take exceptional measures, not abided by Criminal Law. According to Emergency Law, the President may also summon Armed Forces and Security Forces to do exceptional tasks, with the purpose to remove an existing threat and its damaging consequences.

Theoretically, the supreme powers given to the president under Emergency Law may turn him into a dictator, and act as a serious threat to human rights and civil freedoms, had those powers are abused to target political opponents. We have seen this happening in Egypt for decades under Mubarak regime, when emergency turned from an exceptional time-limited state to an ever-going statuesque.

Practically, however, the current legislations governing Egypt under the state of emergency makes it hard for the president to abuse his powers against liberal democratic rights. The following excerpts from legal texts may explain better.

A. Regarding potential slap into dictatorship:

In a smart move, President El Sisi disowned his exceptional powers under Emergency Law and waived them to the Prime Minister. This was a message of assurance to Egyptian citizens frightened by the negative reflection of Mubarak era. This also indicates El Sisi's persistence to commit to the rule of law, even under exceptional circumstances. Article 3 of the Presidential Declaration of Emergency State number 157/2017 states:

“Upon reviewing Constitution, Penalty Code, and Emergency Law 162/1958, and because of the current security risk the country is entering:

(...)

Article 3: All powers given to the President of the Republic, under the State of Emergency, shall be delegated to the Prime Minister.”

B. Regarding potential violation of individual rights:

The Emergency Law number 162/1958 states a number of procedures that the Judicial Arrest Officer may take, including arresting persons and searching houses and preventing people from assembly. However, citizen's right to privacy, freedom to assembly, and protection from arbitrary arrest are already guaranteed by the Egyptian constitution, which supersedes all other laws and regulations, even when the state of emergency is in effect.

The Supreme Constitutional Court, in June 2013, made a historical verdict that dropped Clause 1 of Article 3 of the Emergency Law 162/1958, which tolerates arbitrary arrest and searching individuals and houses without abiding to procedures traditionally followed under Criminal Law; including the necessity of

getting written permission from Public Prosecutor before taking such actions towards individuals. According to this verdict, even under state of emergency, citizens' individual rights may not be violated.

The merits of the Constitutional Court's aforementioned verdict were established on the fact that individual rights should be always guaranteed and protected, as follows:

"The constitution is the superior law... Its rules and principles are the reference for specifying public authorities' powers under normal and/or exceptional circumstances. Consecutive Egyptian constitutions have always stipulated public's rights and freedoms, to prevent ordinary legislator while stating laws and regulations from violating a right or a liberty guaranteed by the constitution, ever... Emergency Law is only an exceptional system, which may not be extended during application. Authorities have to commit to the minimum interpretations of its stipulations within the specific purpose of its application, without violating constitutional principles. Otherwise shall be considered a violation of the constitution... Thereupon, issuing Emergency Law based on a constitutional stipulation does not mean allowing this law to violate other constitutional stipulations."

Besides, United Nation's Human Rights Committee (substituted latter by Human Rights Council) provided a legal interpretation to Article 4 of the International Covenant on Civil and Political Rights (see article's text above). General Comment number 29 stated during the Meeting of Human Rights Treaty Bodies in 2001

emphasized protection for human and civil rights while applying state of emergency. Clause 2 of the General Comment 29 states:

“2. Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature. Before a State moves to invoke article 4, two fundamental conditions must be met: the situation must amount to a public emergency which threatens the life of the nation, and the State party must have officially proclaimed a state of emergency. The latter requirement is essential for the maintenance of the principles of legality and rule of law at times when they are most needed. When proclaiming a state of emergency with consequences that could entail derogation from any provision of the Covenant, States must act within their constitutional and other provisions of law that govern such proclamation and the exercise of emergency powers; it is the task of the Committee to monitor the laws in question with respect to whether they enable and secure compliance with article 4. In order that the Committee can perform its task, States parties to the Covenant should include in their reports submitted under article 40 sufficient and precise information about their law and practice in the field of emergency powers.”

Nevertheless, the stipulations of Emergency Law number 162/1958 limited the prohibition of assembly, movement, and other measures constraining individual freedoms to a specific time and place. Article 3 of Emergency Law states:

“The President of the Republic, when state of emergency is declared, may make written or oral orders to apply the following measures: Imposing restraints on individual freedom to assembly, movement, residency, or passing in certain places and times...”

C. Regarding the right to appear before a normal judge:

Emergency Law number 162/1958 designates to the Armed Forces the primary responsibility to apply order, enhance public security, and protect state institutions. Thereupon, Armed Forces officers beside policemen are permitted to arrest violators and send them to trial by supreme or partial emergency state security courts.

According to Emergency Law, the composition of the judicial body of these courts may include civilian or military judges. However, along Egypt’s history with emergency state, the judicial bodies of state security courts were always composed of civil judges. In a handful number of cases, terrorists who attacked military institutions or personal were put trial before independent military courts.

Emergency state security courts provide prompt justice on specific terrorism cases, unlike the traditional judiciary system. They are one degree courts with a much lesser traffic of cases. Egypt has been suffering for years with holding terrorists accountable under normal judicial system.

One recent example was Adel Habbara case. Adel Habbara was a leading terrorist at Ansar Beit Almaqds in Sinai. In 2013, he killed armless 20 soldiers during their vacation while taking a bus to Cairo. Although Habbara admitted his deed from the first day he had been arrested, it took the court three years, finishing judicial procedures and degrees, to eventually apply justice and sentence

him to execution in 2016. During the years he spent in prison, he allegedly continued to plan and instruct his followers in Sinai to do more terrorist attacks. Had he been tried before an emergency state security court, he could have received the sentence in less than one month.

It is also important to mention that emergency state security courts are only allowed to investigate the charges punishable in the general Penal Code. Despite their exceptional status, they may not produce exceptional judgments outside the general code. In other words, they are not allowed to make up new charges or issue politically-motivated verdicts, which cannot be legally justified by an existing text of law.

Moreover, Emergency Law 162/1958 stipulates that verdicts issued by emergency state security courts are not considered final, unless the president of the state (the Prime Minister, in the current case) approves them. The president (or the Prime Minister, here) may also over-rule the verdict by exempting the proven guilty perpetrator or sending him to retrial.

(3) Does emergency state hinder or enhance liberal democratization?

The state of emergency does hinder liberal democratization on the short run, but if properly applied it could enhance democratic progress on the long run. The purpose of applying state of emergency is to protect the wellbeing of a nation and its citizens from a damaging threat.

If properly applied for a short period of time with a specific vision and mission, the exceptional powers given to authorities under emergency law will definitely enhance state's progress towards democracy, on the long run. That is particularly true in cases of fighting violent extremism, like the one Egypt is

currently facing. The goal of terrorists is to destroy state system and turn it into chaos, where their ideology can prosper and attract more angry followers. Under chaos and threat, a state can hardly operate, not to mention seek democratic progress.

However, the vision of a state, while under emergency law has to include recognizing that protecting human rights and civil freedoms, rather than suppressing them, is one of the tools to remove the existing threat. If a state suppressed freedoms, it will be simply giving terrorists what they asked for; i.e. more angry young people who could be easily recruited for jihad against the state itself.

Three examples of democratic countries applying state of emergency to fight violent extremism are Germany, France, and the United States:

- Germany: In 2015, German County declared state of emergency to deal with refugees' crisis. In 2016, Munich declared the state of emergency to deal with terrorist threats on civilians in public places. They are still in effect until today.
- France: In November 2015, France declared nation-wide state of emergency after a terrorist attack killing 130 people. The state of emergency in France shall remain in effect till the next presidential elections, due this year.
- United States of America: The US has declared more than 30 states of emergency since 1979. None of them was allowed to expire, including

democratic presidents. Under Obama, for instance, the emergency state has been renewed seven times, on annual basis. Technically, the US has been under emergency for 38 years.

(4) How can Egypt utilize short-term emergency state for effectively fighting terrorism on the long-term?

Resorting to exceptional tools to confront a damaging threat means that the existing security and legislative tools are not effective. Therefore, the top priority after the immediate removal of the threat should be launching a wide-spread campaign of educational, legal, and security reform.

The reform campaign's purpose should be to guarantee that the state will be ready to face similar threats in the future without having to enter into another exceptional status. That is particularly true when fighting violent extremism, which requires work on social immunity against radicalization, more than counterinsurgency operations.

Liberal Democracy Institute of Egypt (LDI) suggests the following twelve priority measures to be adopted by state authorities during the short period of emergency state (three months or six in case of renewal) to enable long term immunity against similar threats in the future:

1. Review Criminal Law and Terrorism law, and do all necessary amendments to guarantee prompt justice in cases of terrorism and violent extremism.
2. Reviewing all discriminatory laws that are being used by Islamic extremists against progressive thinkers; e.g. article 98f of the Penal Code which put

several though leaders in prison for speaking out against extremist doctrines in Islam.

3. Accelerating the process of issuing Anti-Discrimination Law, and consequently establishing Anti-Discrimination Authority, provided by the constitution.
4. Provide judicial authorities with all necessary tools, either legislative or physical (e.g. court spaces and more judges), to help them apply prompt justice in cases of terrorism and practicing violence.
5. Training policemen and Armed Forces officers on employing modern and innovative counterinsurgency tools, and discovering potential terrorists (e.g. recruiting youth by terrorist organizations on social media).
6. Accelerate the process of reaching a final verdict on prolonged cases related to Islamic extremism and use of violence (e.g. cases against Muslim Brotherhood leaders who incited violence against state institutions and Coptic Christians after the fall of their regime in 2013).
7. For respective state authorities to cooperate on disconnecting religious discourse from political discourse, refining school curricula to remove discriminatory and violence-tolerating texts, and publicly shame discriminatory acts against Christians or other non-Muslim citizens.

8. Dissolving the nine religious parties, including the Salafi Al-Nour Party, which are still operating in Egypt since they were established under the Muslim Brotherhood rule, despite their unconstitutional status. The High Committee on Political Parties Affairs filed a claim to dissolve those parties in mid-2015, but the court did not make a decision up till now.
9. Providing press and popular media outlets with educational materials, prepared by specialists, to spread social awareness and encourage citizens to denounce religious discrimination and extremist ideologies.
10. For security apparatus to cooperate with civil society organizations on educating citizens on how to protect their lives and provide medical aid to others, when under a violent attack.
11. Encouraging citizens to act positively when they suspect potential terrorists or suicide-bombers, by showing them how to report the suspected to security forces as soon as they can.
12. Utilizing Egypt's temporary membership at the United Nation's Security Council in applying diplomatic pressure for disclosing and persecuting states sponsoring terrorism, which directly threaten Egypt's national security.

Conclusion:

Declaring the state of emergency in Egypt was a necessity to confront the damaging threat of violent extremism, which has been shaking national security for nearly four years. Coptic Christian citizens, who represent more than 15% of Egypt's 100 million population, have recorded the highest number of losses under terrorist attacks since the removal of Muslim Brotherhood regime in 2013.

By constantly attacking churches, the terrorists are betting on causing anger among Coptic Christians against the political leadership, and consequently push the state into chaos, wherein their violent ideologies can flourish. Coptic Christians were not only targeted by terrorists for their religious affiliation, but also because they represent the majority of President El Sisi's supporters.

The Egyptian Constitution of 2014, and the international treaties on which Egypt is a signatory, in addition to local regulations governing the application of the state of emergency provide a solid guarantee to human rights and civil freedoms under this exceptional status which is expected to last for only three months, or maximum six months in case of renewal.

However, for the state of emergency to succeed in its main goal, which is combating terrorism, various measures needs to be taken by the state to ensure long term reforms on educational, legislative, and security levels. We hope the aforementioned recommendation may act as the basic pillars for respective state authorities on this tough mission.