

Politicized and Unfair Trials Before the Emergency State Security Court

The Case of Zyad el-Elaimy



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A Trial Monitoring Brief

November 2022

I. OVERVIEW

This briefing summarizes the findings of a trial monitoring report documenting the 2021 trial of Egyptian parliamentarian Zyad el-Elaimy before Egypt's Emergency State Security Court (ESSC).¹ In light of Egypt's obligations under international human rights law, this document outlines a number of violations of Mr el-Elaimy's right to a fair trial in the context of the criminal proceedings against him before the ESSC.

The findings summarized below demonstrate the need for extensive law and policy reforms to ensure the fair administration of criminal justice, and to hold Egypt accountable for any violations of international human rights law.

This briefing concludes by outlining a number of recommendations addressed to the Egyptian authorities view a view to ensuring:

- effective remedies for fair trial violations;
- effective remedies for violations of Mr el-Elaimy's right to a fair trial; and
- legal and judicial reforms needed to prevent violations of the right to a fair trial from occurring in Egypt.

In particular, given its significance to the effective administration of justice in the country, as a priority, Egypt must revoke its restrictions on public scrutiny of trials, including its 2021 laws criminalizing media coverage and any reporting on criminal trials, including "terrorism" trials.²

Background

President Abdel-Fattah al-Sisi came to power on 8 June 2014 and has since presided over a relentless crackdown on the rule of law and human rights in the country. President Sisi announced a "state of emergency" in April 2017 under the pretext of "fighting terrorism".³ As highlighted by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the emergency powers have "enable[d] increasing practices of arbitrary detention with the heightened risk of torture, the absence of judicial oversight and procedural safeguards, restrictions on freedom of expression, the right to freedom of association and the right to freedom of peaceful assembly."⁴

Law no 162 of 1958 ("the Emergency Law") established the ESSC to adjudicate "crimes" committed during the "state of emergency".⁵ In 2017, the Prime Minister transferred "protesting" and "terrorism-related" offences from the jurisdiction of ordinary courts to the jurisdiction of the ESSC.⁶ In addition, certain "crimes" featured in the first two chapters of the Penal Code, including those relating to "spreading false news" were added to the ESSC jurisdiction in January 2021.⁷ Under article 12 of the Emergency Law, decisions by the ESSC are not subject to appeal.⁸

In addition, the Emergency Law grants either the President, or someone he delegates, the authority to:

- ratify court rulings, thereby making them final;
- annul rulings;

1. Egyptian Commission of Rights and Freedoms (ECRF), ['When Political Action Becomes A Crime: Publishing Crimes as a Tool To Restrain Civilian Opposition: Report on the Monitoring of the Trial of Former Parliamentarian: Zyad el-Elaimy and others in Case no.957 of 2021 at the Emergency State Security Court'](#) 18 June 2022.

2. [Law 71 of 2021](#), 5 June 2021 and Law 149 of 2021 amending certain articles of the Counter-Terrorism Law, 11 November 2021.

3. Vivian Yee ["Egypt's leader Ends State of Emergency, Says It's No Longer Needed"](#) (New York Times, October 2021)

4. United Nations Office of the High Commissioner for Human Rights, [Egypt's Updated Terrorism Law Opens the Door to More Rights Abuses](#), says UN expert, 9 April 2020.

5. Law 162 of 1958, [The Emergency Law](#), 28 September 1958, Art. 7.

6. Prime Ministerial Decision no. 2165/2017, Art. 1.

7. *ibid*

8. Law 162 of 1958, [The Emergency Law](#), 28 September 1958, Article 12

- amend sentences, or suspend their execution; and
- control the appointment of judges.

The prosecutors of the Supreme State Security Prosecution (SSSP) are responsible for prosecuting “terrorism-related” offences and oversee the pre-trial detention of individuals accused of such offences. With respect to this, the United Nations Working Group on Arbitrary Detention has previously observed that, “the near-automatic extension of pre-trial detention by prosecutors for a prolonged time period is a common practice, and that it is not based on individualized determination or periodic judicial reviews.”⁹

Once the maximum duration of pre-trial detention at the behest of the SSSP – namely, 150 days – has been reached, the trial court must then review the SSSP’s requests to renew pre-trial detention every 45 days. However, there have been credible reports that, even when a judge issues a release order, the “SSSP either always successfully appeals them or maintains them in detention without any legal basis, pending rotation into another new case.”¹⁰

While President Sisi formally lifted the “state of emergency” on 25 October 2021,¹¹ criminal cases have continued to be heard before the ESSC in trial proceedings that are inherently unfair,¹² and have been marred by a litany of violations of internationally recognized fair trial standards and rights, such as the right to be heard by an independent and impartial tribunal, the right to effective legal counsel and the right to appeal. Moreover, under Article 19 of the Emergency Law, the ESSC continues to hear cases that were referred to the Court before the end of the “state of emergency” with no change in its procedures.¹³ As a result, the ESSC continues to be a tool in the government’s efforts to suppress dissent, and to punish those who exercise their human rights legitimately.¹⁴

Having monitored the trial of Zyad el-Elaimy before Egypt’s ESSC, the International Commission of Jurists and the Egyptian Commission of Rights and Freedoms consider that his trial was a prime example of this concerning trend.

The trial of Zyad el-Elaimy before Egypt’s Emergency State Security Court

On 25 June 2019, the Egyptian authorities arrested Zyad el-Elaimy, an Egyptian parliamentarian and human rights lawyer. Mr el-Elaimy was initially arrested alongside other prominent political figures and journalists for attempting to form a parliamentary coalition called the “Hope Coalition” in order to run in the 2020 parliamentary elections.¹⁵

Shortly after his arrest, the Ministry of Interior issued a press release and video footage of security forces raiding the respective offices of some of the individuals accused under the pretext that they were in communication with exiled Muslim Brotherhood leaders, and were intending to “finance acts of violence against state institutions”.¹⁶ Mr el-Elaimy, among other prominent political figures linked to the Hope Coalition, was subsequently charged in 2019 in connection to Case no.930 with “aiding and abetting a terrorist organization to achieve its purpose”, as well as with the misdemeanour based on Articles 80(d)/1 and 102 bis/1 of the Egyptian Penal Code of “spreading false news on social media to cause strife and to overthrow the government.”¹⁷

9. UN Human Rights Council, Opinions adopted by the Working Group on Arbitrary Detention during its eight-seventh session, 27 April –1 May 2020, [A/HRC/WGAD/2020/14](#), §52

10. MENA Rights Group [“The practice of “rotation”: how Egypt keeps its dissidents in indefinite detention”](#), December 14, 2021

11. Egypt Presidential Website, [The President Abdel-Fattah al-Sisi announces decision to end the State of Emergency in all areas of the Country for the first time in years](#), 25 October 2021.

12. Amnesty International, [‘Egypt: Stop trials by Emergency Courts’](#), 31 October, 2021

13. Law 162 of 1958, [The Emergency Law](#), 28 September 1958, Art 19

14. Human Rights Watch [‘Egypt: Wave of unjust ‘emergency’ trials’](#) 19 December, 2021

15. Egyptian Initiative for Personal Rights [‘Egypt: Hope Coalition detainees must be immediately released, after nearly two years of wrongful imprisonment’](#) June 2021

16. ECRF report, p. 9

17. See ICJ [‘Egypt: Quash convictions of Zyad el-Elaimy and others and immediately release them’](#) 19 November, 2021

The SSSP initiated an investigation into the Case but did not take any further action to refer the Case to trial, or release Mr el-Elaimy, so he was left in pre-trial detention. During his pre-trial detention in relation to Case 930/2019, Mr el-Elaimy was tried and convicted by the Mokattam Misdemeanor Court on 10 March 2020 in Case no. 694/2020 for "insulting the President" during a 2017 BCC television interview, and was sentenced to one year in prison and a fine of 20,000 Egyptian Pounds (816 US Dollars).¹⁸ During the third investigation session in relation to this Case, Zyad presented his legal defence and refuted the charges against him, stating that they had been fabricated, and identified inconsistencies in the investigation reports.¹⁹ On 2 June 2020, a higher court judge upheld his conviction and one-year prison sentence.²⁰ After Mr el-Elaimy completed this sentence of imprisonment, he was not released since the SSSP renewed his pre-trial detention every 45 days pending investigations into Case No. 930/2021.²¹

Mr el-Elaimy was also charged in connection to a different case, Case No. 571/2020, but neither the charges against him or the details of the case were known to either Zyad or to his defence lawyer at the time, and they remain unknown at the time of writing.²² On 16 April 2020, the Cairo Criminal Court decided to place Mr el-Elaimy and 12 other individuals, including those charged in Case 930/2019, on a "terrorist list" at the request of the Public Prosecutor in relation to Case No. 571/2020. Mr el-Elaimy's lawyers appealed this decision,²³ and UN experts publicly called for Mr el-Elaimy's removal from the list,²⁴ but on 14 July 2021, the decision was upheld by Egypt's Court of Cassation.²⁵ The "terrorist entities" list is prepared by the Public Prosecutor and all that is required before placing an individual on this list, is a formal request made by the Public Prosecutor to the Court, with supporting documents, such as investigation papers.²⁶ This decision was taken in absentia, without the presence of both Zyad and his lawyers and without due process.²⁷ Being added to this list meant the imposition of travel bans and asset freezes, disbarment from the Lawyers Syndicate and from any political party for Mr el-Elaimy.

On 12 July 2021, the SSSP accused Mr el-Elaimy in a separate case, Case no. 957/2021, based on effectively the same charges as Case 930. This time, however, Mr el-Elaimy was solely charged with "spreading false news", based on Articles 80(d)/1 and 102 bis/1 of the Egyptian Penal Code. The accusation against him was based on the publication of three articles on news websites and social media networks, including an article titled "This Is How They Violated Our Constitution", that Mr el-Elaimy published on a page called "Our Youth Forum" on Facebook, in which he claimed that State institutions did not respect the Egyptian Constitution because they were committing human rights violations.²⁸ On 14 July 2021, Case 957 was referred to the ESSC.

In light of the above, the ICJ and ECRF are concerned that Zyad el-Elaimy was subjected to the practice known as *tadwir*, or "rotation", specifically when Mr el-Elaimy was added to Case 694/2020 while he was still being detained in Case 930/2019, and again when Mr el-Elaimy was added to Case 571/2020 and 957/2021 amid ongoing pre-trial detention in Case 930/2019, for which, incidentally he was never referred to trial. *Tadwir* is common in trials before the ESSC, and it refers to the practice of initiating a new criminal Case (B) against individuals while they are in pre-trial detention for another criminal Case (A), where the charges and fact patterns are the same in both A and B.

18. Cairo Institute for Human Rights Studies, '[Egypt: Prison sentence against human rights defender Zyad el-Elaimy represents political vengeance](#)' 12 March, 2020

19. *ibid*

20. Amnesty, '[Egypt: Further information: Opposition politicians tried by special court: Zyad el-Elaimy, Hisham Fouad, Hossam Moanis](#)' August 4, 2021

21. UN Human Rights Council, Opinions adopted by the Working Group on Arbitrary Detention during its 92nd session, 15-19 November 2021, [A/HRC/WGAD/2021/79](#) §12

22. Cairo Institute for Human Rights Studies, '[Grave concerns over prominent activists Ramy Shaath and Zyad al-Elaimy being added to Egypt's "terrorist list"](#)' 25 April, 2020

23. ECRF report, p.18

24. United Nations Office of the High Commissioner for Human Rights, [UN experts call for removal of human rights defenders Ramy Shaath and Zyad El-Elaimy from "terrorism entities" list](#), 11 February 2021.

25. Cairo Institute for Human Rights Studies, '[Grave concerns over prominent activists Ramy Shaath and Zyad al-Elaimy being added to Egypt's "terrorist list"](#)' 25 April, 2020

26. Articles 2 and 3 of [Law No.8/2015 on Terrorist Entities](#)

27. Cairo Institute for Human Rights Studies, '[Grave concerns over prominent activists Ramy Shaath and Zyad al-Elaimy being added to Egypt's "terrorist list"](#)' 25 April, 2020

28. ECRF, p. 11

On 15 July 2021, Mr el-Elaimy was brought to the ESSC for his first hearing of his criminal trial in Case 957. The SSSP had referred the case to the ESSC for trial only the day before, making it impossible for the defence lawyers to meet with Mr el-Elaimy before the start of trial. Nine other trial hearings followed. On the first and second trial hearing, the defence requested to review and receive a copy of the case files,²⁹ to no avail. During the third hearing, the Prosecution presented their charge and the purported evidence against Mr el-Elaimy on which they relied, which he denied. The fourth, fifth and sixth hearings were postponed pending a response from the Court on requests made by some members of the defence team to dismiss the panel of judges ruling on the case, because they had shown their partiality towards the prosecution by not intervening to demand that the defence team view a full scanned copy of the case files. The members of the defence ultimately withdrew their request.³⁰ The seventh and ninth hearings saw the prosecution and defence present their oral arguments and written submissions. The eighth hearing was postponed as the defendants were not present in Court due to the failure of the Ministry of interior to schedule their transportation to Court from the prison where they were being held.

On 17 November 2021, in the 10th hearing, the ESSC convicted Zyad el-Elaimy of “spreading false news to undermine the State and national security”, and sentenced him to five years in prison and a fine of 500 Egyptian pounds (20 US Dollars). The Prime Minister ratified (i.e., confirmed) this verdict through delegated power from the President, making it final and not subject to any appeal.³¹ On 24 October 2022, President Sisi issued decree 510 of 2022 pardoning Mr el-Elaimy in response to the persistent calls of political parties and the Presidential Pardon Committee, and he was released later that day. As of the time of writing, however, the charges against Mr el-Elaimy in Case 930 are still pending.

With respect to Mr el-Elaimy's guilty verdict and sentence in Case 957, the ICJ and the ECRF are particularly concerned that:

1. The charge against Mr el-Elaimy was brought to criminalize his legitimate exercise of his right to freedom of expression as recognized and guaranteed by the Egyptian Constitution³² and international human rights law³³ by which Egypt is bound;
2. The breadth of the criminal provision on which the charge was based is inconsistent with the principle of legality,³⁴ which requires that criminal offences be clearly and precisely defined within the law.
3. The proceedings against Mr el-Elaimy failed to meet internationally recognized standards of fairness. In particular, the ICJ and ECRF consider that his fair trial rights were violated as a result of and following his arrest, and leading up to his trial, which was inherently unfair;
4. The trial of Mr el-Elaimy before the ESSC reflects a pattern of human rights violations to which individuals prosecuted by the SSSP and tried by the ESSC are subjected. This pattern begins with their arbitrary arrest, incommunicado detention, arbitrary or unlawful pre-trial detention and ends with grossly unfair trials before the ESSC.

29. Case files contained details of the charges, any available evidence, interrogation and investigation minutes collected by the Public Prosecution.

30. The reasons for the withdrawal of this request are not known.

31. Al-Shorouk Newspaper, '[Khaled Ali: Prime Minister Ratified Prison Sentence for Ziad Al-Elaimy, Hossam Mounis and Hisham Fouad](#)' 29 December 2021.

32. See the text of Article 65 of the [2014 Egyptian Constitution](#)

33. See, Human Rights Committee, [General Comment 34](#), Article 19, Freedom of Expression, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 25.

34. Criminal offences must be prescribed by law and must conform to the principle of legality. See, Human Rights Committee, [Nicholas v Australia](#), UN Doc. CCPR/C/80/D/1180/2002 (2004), para. 7.5; and UN Human Rights Committee, [General Comment 32](#), UN Doc. CCPR/C/GC/32, 2007, para. 30. See, Inter-American Court of Human Rights, [Castillo Petruzzi et al v Peru](#), 30 May 1999, para. 121.

II. HUMAN RIGHTS VIOLATIONS IN THE CASE OF ZYAD EL-ELAIMY

The ICJ and ECRF are concerned that Zyad el-Elaimy's pre-trial detention, trial, conviction and sentencing by the ESSC violated his right to a fair trial, his right to liberty and security of person, his right to be tried before an independent and impartial tribunal, his right to appeal, his right to access to justice and effective remedies for human rights violations and his right to participate in public affairs, rights guaranteed by international human rights law binding on Egypt.³⁵

A. Arbitrary detention and a violation of the right to liberty

Every State has the obligation to ensure everyone's right to liberty and security of persons under their jurisdiction. The ICJ and ECRF consider that there are at least three reasons why, under international human rights law standards, Mr el-Elaimy's pre-trial detention was arbitrary, and therefore violated his right to liberty and security of person, among other rights.

First, the arrest and detention of Mr el-Elaimy, along with those of other political activists in June 2019, were linked to their involvement in establishing a political coalition to run for the parliamentary elections in 2020.³⁶ Their arrest was a violation of their right to participate in public affairs, which is protected by Article 25 of the Covenant.³⁷ The Human Rights Committee has clarified that "detention as punishment for the legitimate exercise of rights as guaranteed by the Covenant is arbitrary..."³⁸

Second, the pre-trial detention of Mr el-Elaimy did not meet basic human rights safeguards³⁹ guaranteed by international human rights law to ensure that the use of pre-trial detention be consistent with the right to liberty and security of person and the presumption of innocence, including:

- (i) the presumption of liberty pending trial on criminal charges;
- (ii) the requirement for States to demonstrate reasonable suspicion that the individual in question has committed a criminal offence that is punishable by imprisonment;
- (iii) the requirement that deprivation of liberty pursuant to the criminal law must have a legitimate aim and must also serve a genuine public interest, in accordance with international human rights law and standards, which, notwithstanding the presumption of innocence, outweighs the individual's right to liberty;
- (iv) the requirement for States to demonstrate that there are substantial reasons for believing that, if released, the individual would either abscond or commit a serious offence, or interfere with the investigation or the course of justice, or pose a serious threat to public order, and that there is no possibility that alternative measures (that is, alternatives to detention) would address these concerns;
- (v) the requirement that, in light of the above, detention must be both necessary and reasonable in the individualized case; and

35. Egypt has ratified the following applicable International Human Rights Law treaties and as such is bound to comply with obligations therein: the International Covenant on Civil and Political Rights (ICCPR), see [United Nations Treaty Collection](#), Chapter IV Human Rights, 4. The ICCPR ; the Arab Charter of Human Rights, see Egypt Official Gazette, [Decision](#) of the Ministry of Foreign Affairs No 12 of 2019, 13 June 2019 ; The African Charter on Human and People's Rights, see African Commission on Human and People's Rights, [State Parties](#); the Convention against Torture, United Nations Treaty Collection, Chapter V, Human Rights, [9. Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#). For a detailed review of these standards, please see Amnesty International, [Fair Trial Manual Second Edition](#), 2014; and the International Commission of Jurists, [Trial Observation Manual](#), 2009.

36. Cairo Institute for Human Rights Studies, '[Egypt: Prison sentence against human rights defender Zyad el-Elaimy represents political vengeance](#)' 12 March, 2020

37. UN Human Rights Council, Opinions adopted by the Working Group on Arbitrary Detention during its 92nd session, 15-19 November 2021, [A/HRC/WGAD/2021/79](#) §41

38. See HRC, [General Comment 35](#), para. 15.

39. See HRC, [General Comment 35](#), para. 38. See also [Arab Charter on Human Rights](#) 2004, Art. 14 (5) ; [UN Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment](#), adopted by UN General Assembly Resolution 42/173 of 9 December 1998, Principle 39, [UN Standard Minimum Rules for Non-Custodial Measures](#) (The Tokyo Rules), Adopted by General Assembly resolution 45/110 of 14 December 1990, Rule 6 and African Commission on Human and People's Rights, [Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa](#), 2003, Section M(1)(e).

(vi) periodic judicial review of the continuing lawfulness and necessity of detention in each individual case.

As part of the government's crackdown⁴⁰ on the rule of law and fundamental freedoms, pre-trial detention has been used as a tool to silence those suspected of opposing the authorities without undertaking individualised assessments as to the necessity and reasonableness of such detention.

Third, fundamental flaws in the ESSC's procedures have deprived Mr el-Elaimy of his right to challenge the lawfulness and necessity of his detention, as guaranteed under international human rights law, including article 9(4) of the ICCPR. The detainees may only challenge the legality of their detention in a petition to the ESSC.⁴¹ The Human Rights Committee have previously expressed that in order to secure this right, the detainee must be brought before a court that enjoys "judicial independence."⁴² Given the role of the Egyptian President, or someone he delegates, in ratifying rulings and controlling the composition of the Judiciary in the ESSC, it is clear that the ESSC does not enjoy sufficient judicial independence required to secure this right.

In addition, during the first few months of pre-trial detention, the accused in Case 930 were able to receive visits, but they were heavily monitored by State security personnel. However, after the spread of coronavirus, the prison administration repeatedly denied visitation rights as a preventative measure to reduce the spread of infection inside places of detention. Moreover, the prison administration undermined Mr el-Elaimy's right to communication with the outside world,⁴³ by making it increasingly difficult for him to communicate regularly with their family and friends through letters or calls.

B. Right to human treatment in detention

Mr el-Elaimy suffers from diabetes, asthma, high blood pressure, stomach ulcers and a rare autoimmune disease, which requires special medical care, including regular injections of cortisone, periodic examinations and staying in well-ventilated places to ensure that the disease does not progress.⁴⁴ During Mr el-Elaimy's pre-trial detention, the SSSP repeatedly ignored requests from the defence team, and pleas from the family to transfer Mr el-Elaimy to a hospital for medical examinations, despite medical records being presented that showed the severity of his condition. The health of Mr el-Elaimy deteriorated during his pre-trial detention, which prompted his family to submit complaints to the Office of the Attorney General and the Assistant Minister of Interior for the Prisons Sector and persuaded his lawyers to file a lawsuit before the Court of Administrative Justice demanding that the necessary measures be taken regarding Mr el-Elaimy's health. All of these requests were rejected.

In light of this, the ICJ and ESRF consider that Mr el-Elaimy's right to receive medical treatment, as enshrined in article 18 of the Egyptian Constitution, as well as provisions 33-37 of Chapter VII of the Egyptian Prisons Organisation Law No. 396 of 1956, was violated. Similarly, according to international human rights law, failure to provide access to adequate medical treatment may violate the right to health.⁴⁵ The repeated refusal of the authorities to allow Mr el-Elaimy to receive treatment seriously endangered his life and harmed his health irreparably, thereby violating both his right to life and his right to health.

40. See TIMEP and the ICJ, '[Targeting the last line of defence: Egypt's attacks against lawyers](#)', September 2020, p. 12.

41. See Law 162 of 1958, The Emergency Law Art. 3(a)(2).

42. See HRC, [General Comment 35](#) art. 45.

43. [Nelson Mandela Rules](#), Rule 58

44. ECRF report, p. 22

45. [African Commission on Human and Peoples' Rights, Media Rights Agenda and Constitutional Rights Project v. Nigeria](#), Cases No. 105/93, No. 128/94, No. 130/94 and No. 152/96, Decision, 31 October 1998; and African Commission on Human and Peoples' Rights, [International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organisation v. Nigeria](#), Cases No. 137/94, No. 139/94, No. 154/96 and No. 161/97, Decision, 31 October 1998.

C. The right to a defence

During his pre-trial detention, Mr el-Elaimy was prohibited from meeting with his lawyer without the presence of an SSSP prosecutor. Communications between defendants and their lawyers were always heavily monitored as they were forced to speak loudly so that the prosecutors could take notes.⁴⁶ Furthermore, pursuant to COVID restrictions, the SSSP began to renew pre-trial detention without the presence of Mr el-Elaimy or his lawyers, and denied him the right to receive family visits for a long duration. Mr el-Elaimy was referred to trial on 14 July 2021, and the first trial hearing was held the following day, without giving him an opportunity to meet with his lawyers. Between the first trial hearing on 15 July 2021, and at least the third hearing on 17 August 2021, Mr el-Elaimy was unable to meet with his lawyers to prepare a defence.

It follows that Mr el-Elaimy's right to legal counsel guaranteed under international human rights law was violated throughout the entirety of the proceedings against him, thereby severely undermining the fairness of his trial,⁴⁷ and further compounding the arbitrariness of his detention.⁴⁸ Under the International Covenant on Civil and Political Rights (ICCPR), the right to legal counsel guarantees the right to private and prompt communication with one's own counsel,⁴⁹ in full confidentiality.⁵⁰ Consultations at irregular intervals, held in the presence of State officials who are specifically tasked with monitoring and documenting such communications, violate this right and Egypt's obligations under international law.

D. Equality of arms

In addition to the restrictions on the right to a defence outlined above in Section C, during Mr el-Elaimy's pre-trial detention, the Public Prosecution continually denied his lawyers access to defendant and witness statements taken by the Prosecution. Furthermore, during the first three hearings between 15 July and 17 August 2021, most of the proceedings focused on the Defence Counsel's requests for a complete scanned copy of the case files as they were only permitted by the Prosecution to view the case files briefly and take notes, without obtaining a complete scanned copy, severely undermining their ability to prepare a defence.

Under international human rights law, the principle of equality of arms requires that "the defence has a genuine opportunity to prepare and present its case, and to contest the arguments and evidence put before the court, on a footing equal to that of the prosecution."⁵¹ Mr el-Elaimy's lawyers were denied access to the case file, and were thus unable to advise their client and assist him in preparing his own defence until at least the third trial hearing, rendering illusory the equality of arms and his right to an adequate defence.⁵²

E. The right to be heard before an independent and impartial tribunal

The ESSC is subject to strong executive influence, as attested by the President's powers to ratify and amend judgments, annul sentences, control the courts' composition and appoint judges.⁵³ The Human Rights Committee has expressed concern about the President's broad authority over the ESSC, including with respect to "ratifying judgments and issuing pardons", describing this role as "both part of the executive and part of the judiciary system".⁵⁴ The influence that the President wields over the ESSC seriously blurs the strict distinction between the judiciary and

46. ECRF report, p. 24

47. See, inter alia, ICCPR, Article 14 (3)(b), and 75. Human Rights Committee, [General Comment 32](#), Article 14, Right to Equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32, para. 34.

48. See the UN Working Group on Arbitrary Detention, [Revised Fact Sheet No. 26](#), 8 February 2019, Section IV (A).

49. ICCPR, Art. 14(3)(b); HRC, [General Comment 32](#), para. 34.

50. [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#), Principle 18 (3) and the [UN Basic Principles on the Role of Lawyers](#), Principle 8.

51. HRC [General Comment 32](#), §13;

52. Special Rapporteur [report](#) on human rights and counter-terrorism: UN Doc. A/HRC/13/37/Add.2, 2009, paras. 36-37.

53. Law 162 of 1958, [The Emergency Law](#), 28 September 1958, Articles 12-14

54. Human Rights Committee, [Concluding Observations on Egypt](#), UN Doc. CCPR/C/79/Add.23, 1993, para. 9.

the executive,⁵⁵ which ultimately undermines the impartiality and independence of the tribunal, and the separation of powers guaranteed by international human rights law.⁵⁶

F. Presumption of innocence

The trial failed to ensure Mr el-Elaimy's right to be presumed innocent, as guaranteed by international human rights law, in at least two ways.⁵⁷

First, a presumption of guilt was effectively implied upon Mr el-Elaimy's arrest, as the Ministry of Interior released footage of security forces raiding the offices of the individuals accused under the pretext that the accused had planned with exiled Muslim brotherhood leaders to "finance acts of violence against state institutions" through 19 companies and entities. This footage effectively indicated that the accused were guilty of the crime, before a final conviction.⁵⁸ Second, the ESSC issued a verdict convicting Mr el-Elaimy of the charges despite the absence of credible, admissible evidence to support and prove the prosecution's case beyond a reasonable doubt. Indeed, the prosecutor's case relied solely on evidence provided by the Public Prosecution, the minutes of the National Security Agency's investigations and the technical report issued by the General Directorate of Information Technology, which, moreover, failed to prove the charges against the accused. The ESSC held that they did not need to consider the defence evidence and pleas because doing so would put in doubt the Prosecution's case.⁵⁹ As such, the conviction of Mr el-Elaimy violated the standard required by international human rights law, namely, to be presumed innocent, unless and until one's guilt be proven beyond any reasonable doubt following a trial that meets international fair trial standards.⁶⁰

G. Right of appeal

Under article 12 of the Emergency law, decisions by the ESSC are not subject to appeal.⁶¹ The President may, however, commute or reduce a sentence, suspend its execution or order a retrial before another bench of the ESSC.

These provisions violate Egypt's obligations under international law to ensure the right to appeal a verdict of guilt. Article 14 of the ICCPR provides that 'everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law', and the Human Rights Committee has confirmed that this right applies during a "state of emergency".⁶²

H. Public hearing

All substantive trial hearings in Case 957 were held in the absence of journalists and the general public. The right to a public hearing⁶³ safeguards the rights of the accused and guarantees the right of the general public to know and monitor how justice is administered.⁶⁴ As such, the right to a public hearing, as guaranteed by international human rights law, was violated.

Furthermore, on 17 November 2021, the ESSC issued its verdict in Case 957 of 2021 completely in private, even in the absence of the accused and their lawyers, violating the right to a public judgment.⁶⁵

55. Special Rapporteur [report](#) on human rights and counter-terrorism: UN Doc. A/HRC/13/37/Add.2, 2009, para.35.

56. See ICCPR, Art 14(1); Universal Declaration, Art 10; African Charter, Art 26

57. Arab Charter on Human and People's Rights, 22 May 2004, Art. 16 ; ICCPR, Art. 14 (2).

58. Section N(6)(e)(ii) of the [Principles on Fair Trial in Africa](#)

59. ECRF report, p.32

60. ICCPR, Art. 14(3)(b); HRC, [General Comment 32](#), Article 14, Right to Equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32, para. 30.

61. Law 162 of 1958, [The Emergency Law](#), 28 September 1958, Art. 12.

62. ICCPR, Art. 14 (5) ; HRC [General Comment 29 on states of emergency](#), UN Doc. CCPR/C/21/ Rev.1/Add. 11, 31, August 2001, para 16 read in line with Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949, Art. 73.

63. ICCPR, Art 14(1); Universal Declaration, Art 10; Principle 36(1) of the Body of Principles

64. ICCPR, Art 14(1); HRC [General Comment 32](#), §28

65. ICCPR, Art 14(1) of the ICCPR; Section A(3)(j) of the [Principles on Fair Trial in Africa](#)

III. RECOMMENDATIONS

In light of the findings outlined above, the ICJ and ECRF call on the Egyptian authorities to comply with their obligations under international human rights law and:

1. In relation to Zyad El- Elaimy
 - a. Reverse the decision to include Zyad El-Elaimy on the "terrorist list";
 - b. Drop all other pending criminal Cases against him, including Case 930.
2. End all forms of arbitrary detention.
3. Repeal or amend provisions of Penal Code No. 58 of 1937 related to freedom of the press to ensure that they are compatible with Egypt's obligations under international law and in line with the 2014 Constitution.
4. Abolish the ESSC, including by repealing relevant provisions of the Emergency Law. Any existing proceedings before the ESSC should be either nullified or transferred to the ordinary courts;
5. End the practice of tadwir, nullify recycled charges and close related Cases.
6. Reform the pre-trial detention framework, including with a view to ensuring that it is an exceptional measure based on an individualized determination that detention pending trial is necessary taking into account all the circumstances, including specific and relevant factors defined in the law, such as to prevent flight, tampering with evidence or interfering with witnesses or the risk of commission of serious offences. Ensure that the accused has the right to regular judicial review of the continuing lawfulness and necessity of their detention. To this end, the authorities must amend the Code of Criminal Procedure, including with a view to providing exhaustive, clear and precise grounds and criteria for pre-trial detention, in accordance with international standards on appropriateness, predictability and due process of law;
7. Ensure the right of habeas corpus by allowing any detained person to challenge the legality of their detention before an independent and impartial court;
8. Pending the abolition of the ESSC, afford prompt, private access to counsel for all defendants in Cases before the ESSC, and provide them with adequate time and facilities to prepare an adequate defence.
9. Guarantee the presumption of innocence in all criminal Cases, including by ensuring that the prosecution presents admissible evidence capable of establishing guilt beyond reasonable doubt.
10. Ensure that the defence has access to all incriminating evidence on which the prosecution's Case relies so as to respect the equality of arms principle.
11. Revoke Law no. 71 of 2021 and Law 139 of 2021 in order to enable effective trial monitoring and ensure the right to a public trial and to freedom of expression.
12. Ensure humane conditions of detention and respect the right to medical care of detainees.

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November 2022 (for an updated list, please visit www.icj.org/commission)

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