

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

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By Facsimile

His Excellency Abdel Fattah El-Sisi
President of the Arab Republic of Egypt
C/o The Embassy of the Arab Republic of Egypt
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Your Excellency:

I write on behalf of the New York City Bar Association (the “Association”) concerning troubling reports of suppression of freedom of expression in Egypt. The actions reportedly taken by your government against human rights activists, journalists and other citizens run counter to the Egyptian Constitution, the International Covenant on Civil and Political Rights, and the African (Banjul) Charter on Human and Peoples’ Rights. We ask that institutional reforms be adopted to ensure that laws are written and enforced in a way that is consistent with Egypt’s Constitution and the international agreements to which Egypt is a signatory.

The Association is an independent non-governmental organization with more than 24,000 members in over 50 countries. Founded in 1870, the Association has a long history of dedication to human rights.

The Association is heartened by your recent pardon of 203 young Egyptian protesters and your November 2016 pardon of 82 prisoners.¹ We also welcome your pledge to amend Egypt’s overly restrictive law on assembly and protests, which ostensibly exists to protect national security but which has been used to abuse and suppress Egyptians’ rights.² However, the government should do more to protect and advance rather than undermine the important and cherished rights of free speech and free assembly of Egyptian citizens.

The original arrest of the 203 pardoned youths—who did not present any threat to national security—is a case in point. Moreover, many other individuals continue to be detained for no apparent national security purpose, and in some cases interrogated and tortured by the

¹ Reuters, *Egypt’s Sisi Pardons 203 Young Protesters*, March 13, 2017, available at <http://www.reuters.com/article/us-egypt-politics-idUSKBN16K1OP>.

² *Id.*

Supreme State Security Prosecution and National Security Agency.³ The Association for Freedom of Thought and Expression (“AFTE”) reports 437 violations in 2016 against the press and media community.⁴ Among the detentions that have received international attention are:

- Al Jazeera journalists Mohammed Fahmy, Baher Mohamed, and Peter Greste, who were imprisoned for allegedly collaborating with the Muslim Brotherhood and reporting false news⁵;
- Journalist and human rights advocate Hossam Bahgat, who was detained and interrogated regarding his report describing criminal convictions against military officers⁶;
- *Masr al-Arabia* photographer Omar Abdel Maksoud, who was arrested while “covering a baby shower for a woman [accused of participating in an anti-government protest] who had been taken into custody and forced to give birth in a hospital in handcuffs”⁷; and
- Al Jazeera journalist Mahmoud Hussein, who was arrested in December for “incitement against state institutions and broadcasting false news,” and has been held without formal charges⁸.

These are well-known cases. Many other instances in which Egyptian citizens have been detained or harassed for exercising their constitutional rights are less well-known, but no less noteworthy. Laws such as the recently approved law to govern civil society organizations⁹ have been used to incarcerate thousands of citizens, and human rights organizations estimate the number of political prisoners to be as high as 60,000.¹⁰ The United Nations Special Rapporteur, David Kaye, noted in his report in September 2016 that

³ Amnesty International, *Egypt: ‘Officially, You Do Not Exist’ Disappeared and Tortured in the Name of Counter-Terrorism*, 2016, p. 53, available at http://www.amnestyusa.org/sites/default/files/embargoed_13_july_egypt_officially_you_do_not_exist.pdf, linking the Supreme State Security Prosecution with the National Security Agency, which performs the actual torture.

⁴ Association for Freedom of Thought and Expression, *Freedom of Media Program “Semiannual Newsletter”*, July-December 2016, p. 7, <http://afteegypt.org/wp-content/uploads/%D8%A7%D9%84%D9%86%D8%B4%D8%B1%D8%A9-%D8%A7%D9%84%D9%86%D8%B5%D9%81-%D8%B3%D9%86%D9%88%D9%8A%D8%A9-english%D8%A7%D9%84%D9%86%D8%B5%D9%81-%D8%A7%D9%84%D8%AB%D8%A7%D9%86%D9%8A-%D9%85%D9%86-2016.pdf>.

⁵ BBC, *Who Are the Al-Jazeera Journalists Tried in Egypt?*, February 13, 2015, available at <http://www.bbc.com/news/world-middle-east-27943387>.

⁶ David D. Kirkpatrick, *Hossam Bahgat, Journalist and Advocate, Is Released by Egypt’s Military*, N.Y. TIMES, November 10, 2015, available at <https://www.nytimes.com/2015/11/11/world/middleeast/hossam-bahgat-egypt.html>.

⁷ Committee to Protect Journalists, *Egypt’s Imprisonment of Journalists Is at an All-Time High*, June 25, 2015, <https://www.cpj.org/reports/2015/06/egypt-imprisonment-of-journalists-is-at-an-all-time-high.php>.

⁸ Al Jazeera, *Egypt renews detention of Al Jazeera’s Mahmoud Hussein*, March 19, 2017, available at <http://www.aljazeera.com/news/2017/03/egypt-renews-detention-al-jazeera-mahmoud-hussein-170319135531817.html>.

⁹ The International Center for Not-for-Profit Law, *Civic Freedom Monitor*, December 2, 2016, available at <http://www.icnl.org/research/monitor/egypt.html>.

¹⁰ Joshua Hammer, *How Egypt’s Activists Became ‘Generation Jail’*, N.Y. TIMES MAGAZINE, March 14, 2017, p. 49, available at <https://www.nytimes.com/2017/03/14/magazine/how-egypts-activists-became-generation-jail.html>.

“[t]he Egyptian Penal Code provides a basis for restricting artists in its article 98, which subjects to penalty ‘whoever exploits and uses the religion in advocating and propagating orally, in writing or by any other method, extremist thoughts with the aim of instigating sedition or division, or disdain and contempting any of the heavenly religions or prejudicing national unity and social peace.’”¹¹

This code is written and applied so broadly that the government can use it to suppress any legitimate artistic expression. The cases of the journalists cited above are examples of the Special Rapporteur’s observation that

“[i]n the context of protests, it is common for journalists to be detained and prohibited from reporting. Such has been the case in Egypt, where journalists collecting information about demonstrations have been detained and charged on various grounds, including involvement in terrorism.”¹²

Article 65 of the Egyptian Constitution guarantees the right to “freedom of thought and opinion,” providing that “[a]ll individuals have the right to express their opinion through speech, writing, imagery, or any other means of expression and publication.”¹³ Article 70 guarantees the right to freedom of the press, and Article 71 prohibits censorship, confiscation, suspension, or closure of newspapers and media outlets, all of which are the basic means of a free people to express their thoughts and opinions. The African Charter on Human and Peoples’ Rights, which Egypt ratified in 1984, affirms these rights in Article 9, which states that “[e]very individual shall have the right to express and disseminate his opinions within the law.”¹⁴ And the International Covenant on Civil and Political Rights, which Egypt ratified in 1982, protects the right to freedom of expression in Article 19, which specifically guarantees “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”¹⁵

To comply with the Egyptian Constitution and international agreements to which Egypt is bound, we urge the government of Egypt to take the following steps:

- Immediately release all those detained or imprisoned for protesting without violence;
- Bring charges against those who can be charged with reliable evidence of actual violence or incitement to violence;
- Return jurisdiction over cases involving free expression or assembly to civilian prosecutors rather than permitting prosecution by State Security Prosecutors;

¹¹ Special Rapporteur David Kaye, Promotion and Protection of the Right to Freedom of Opinion and Expression, UN GA, UN Doc. A/71/373 (2016), 49, at 20, *available at* http://www.un.org/ga/search/view_doc.asp?symbol=A/71/373, citing General Assembly report A/HRC/27/72.

¹² *Id.* 38, at 15.

¹³ Egypt Constitution, article 65 (2104), *available at* https://www.constituteproject.org/constitution/Egypt_2014.pdf.

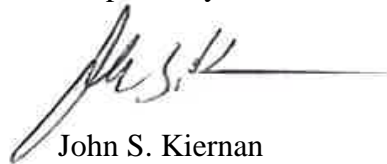
¹⁴ African (Banjul) Charter on Human and Peoples’ Rights, article 9, (adopted June 27, 1981), *available at* http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf.

¹⁵ International Covenant on Civil and Political Rights, article 19, (adopted December 16, 1966), *available at* <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>.

- Amend the protest law to restrict or abolish the discretionary power of the Interior Ministry to ban protests on vague grounds;
- Revise the penal code so that it cannot be broadly used to impinge on the constitutional rights of expression;
- Limit pre-trial detention periods; and
- Take steps to make the judiciary a truly independent body that will fairly rule on the constitutionality of all laws, particularly those enacted in the name of national security.

The Association respectfully requests that you immediately undertake the above reforms to enable citizens to freely express their opinions and the press to report events without fear of governmental reprisal.

Respectfully,



John S. Kiernan

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