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Executive Summary

1. This report is submitted by The Egyptian Initiative for Personal Rights (EIPR). The report examines Egypt's security crackdown on individuals based on real or perceived sexual orientation, gender identity, and sexual practices

National Legal Framework

2. The Egyptian government uses the articles of Law 10/1961 Pertaining to Combating of Prostitution,¹ to criminalise consensual non-commercial same-sex sexual acts and relations between adults, and non-conforming sexual orientations and gender identities (SOGI). The General Directorate for Protecting Public Morality (GDPPM) stretches the articles of this law to specifically target gay men, men who have sex with men (MSM), transgender women, and those who are perceived to be so. Articles of Law 10/1961 are used to accuse individuals with “habitual practice of debauchery,” “incitement of debauchery,” and/or publishing material inciting debauchery. Since the last quarter of 2013, Egypt has witnessed an escalation in the targeting of gay men, MSM, transgender women, and those who are perceived to be so. This escalation reached its peak in the last quarter of 2017 with an organised crackdown on the LGBTQI community and anybody perceived to belong to it, following a concert in Cairo during which the rainbow flag was waved by some members of the audience.
3. Between 2000 and 2013, an average of 14 individuals per year were arrested under Law 10/1961 for charges related to “debauchery.” This average increased more than five-fold from 2014 to 2018, to reach 72 individuals per year, demonstrating a clear escalation in targeting sexual difference in Egypt.^{2,3}
4. From 2014 to 2018, various methods were used to arrest individuals. This report will focus on one particular method: entrapment through fake accounts on LGBTQI dating apps and websites. This report also examines violations of human rights towards victims of these arrests by the police force, the Forensic Medicine Authority and the Public Prosecution.

2014-2018 Continuous Police Crackdown Campaign Against Sexual Difference

¹ “Law No. 10/1961, on the Combating of Prostitution in The United Arab Republic,” Egypt’s Penal Code translation of Law No.10/1961 pertaining to Combating of Prostitution. The translation is an edited, redacted version of the unofficial translation provided by the UNCHR1 and editors at EIPR. https://eipr.org/sites/default/files/reports/pdf/appendix_ii.pdf

² The term “sexual difference” is used in this report to refer to sexual practices, orientations or gender identities that differ from those socially acceptable.

³ The total number of cases 2000-2013 is based on police statistics published by Youm7 Newspaper, the total number of cases 2014-2018 is based on EIPR’s legal support database, Bedayaa legal support database and media monitoring, which means that the actual number of cases in this period is probably higher than calculated, as no official statistics are available.

5. In December 2014, the Egyptian Morality Police Authority, accompanied by a popular TV show host and crew, stormed Bab Al-Bahr, a public bathhouse in Cairo, filming and arresting 30 men who were bathing or working in the bathhouse. The filmed material, which showed the defendants being arrested half naked, was later aired while the host accused them of “spreading HIV.” During the arrest and under detention, 26 defendants were repeatedly insulted, beaten, forced to stay naked, humiliated, and forced to undergo anal examinations at the Forensics Medicine Authority.⁴ They were also filmed again against their will under custody. The police report painted an illogical scene, pairing up the defendants to engage in paid same-sex sexual acts while being arrested. After high profile, sensational, and discriminatory media coverage that showed no respect for the defendants’ privacy, the defendants were all acquitted. However, one of the defendants later attempted suicide as a result of the social stigma that lingered even after his acquittal.⁵

6. In September 2017, the rainbow flag was waved during a concert by the band Mashrou’ Leila in Cairo. Photos of the flag and some audience members went viral online. In the following weeks, the Ministry of Interior (MoI) arrested not only the activists who allegedly waved the rainbow flag, but also 73 other individuals for their actual or perceived SOGI difference. This wave of arrests was the highest ever under Law 10/1961 in Egypt. It was preceded and accompanied by a media campaign of incitement against both the arrestees and “sexual deviance in Egypt” in general.⁶

7. While cases like Bab El-Bahr and the wave of arrests following the Mashrou’ Leila concert raised international human rights attention, our documentation proves that they are highlights of a larger crackdown pattern against perceived or actual sexual difference in Egypt against gay men, MSM, and trans women. The clear escalation in cases since the end of 2013 against perceived or actual gay men, MSM, and trans women under the “debauchery” article of Law 10/1961 points to a security policy of targeting sexual difference, and to specific entrapment strategies developed by the Egyptian Morality Police Authority to actively target private sexual acts.

8. The expanded use of Law 10/1961 to criminalise consensual sex between consenting adults on the basis that such practices go against societal norms, is a clear violation of the right to privacy and constitutes a form of discrimination based on gender identity and sexual orientation. It is also a violation of Egypt’s commitment to Articles 17 and 26 of the International Covenant on Civil and Political Rights, which are legally binding as per Article 93 of the Egyptian Constitution (2014).⁷ And it is a violation of Article (53) of the constitution that ensures the right to equality before the law and prohibits discrimination.⁸

⁴ “The Trap,” EIPR, November 2017, p. 20-21. https://eipr.org/sites/default/files/reports/pdf/the_trap-en.pdf.

⁵ Ibid, 46.

⁶ “A year after the raising of the rainbow flag incident... and five years after the longest security crackdown against people with different sexual orientations,” EIPR, September 2018, <https://eipr.org/en/press/2018/09/year-after-raising-rainbow-flag-incident-and-five-years-after-longest-security>

⁷ The International Covenant on Civil and Political Rights, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>;

⁸ Unofficial English Translation of 2014 Constitution, <http://www.sis.gov.eg/Newvr/Dustor-en001.pdf>

Entrapment

9. By 2015, a new and ongoing strategy by the MoI's GDPPM to target private sexual acts between adults based on real or perceived SOGI emerged. Our documentation of arrests between 2014 and 2018 shows that electronic entrapment through fake profiles on LGBTQI dating apps was the most common way used to arrest MSM, gay men, and trans women for "debauchery," whether there was an exchange of money or not. These fake profiles were used for up to weeks at a time to lure men and trans women into a meeting for sex. During the online conversations with victims the police encourage the victim to send naked personal photos and initiate an offer for money in exchange for sex. Finally, the police arrange a meeting and asks the victim to bring condoms. When the victim arrives at the agreed time and place, they are arrested even though the actual sex, which should not be criminalised, did not take place. The intimate photos, online conversations, any amount of money on the victim along with female clothing or wigs and the requested condoms are used as evidence against them. In most cases these arrests are not based on an arrest warrant, even when the entrapment took weeks.
10. Once arrested, the victim is often tricked into giving a fake confession to seek lenience, saying that they were subject to rape by a man in their childhood, which lead to them to be "sexually deviant" and have various sexual relations with men later in their life. The police use this fake confession later to meet the "habituality" standard for the habitual debauchery charge.⁹ Sameh's testimony is one example of many:
 - a. "The officer insisted that I confess that something happened to me when I was younger — a sexual assault — that made me regularly practice debauchery. I rejected all that. [...] They took me to an officer of a higher rank who said to me, 'We are doctors and we will treat you,' while pointing at certificates hung on the wall, that said he had experience in curing homosexuality. He was talking in a very condescending way. There was a man with him who kept yelling at me to confess. I continued to insist on what I had already said."¹⁰
11. The entrapment tactic used by the MoI's General Directorate for protecting Public Morality violates the constitutional right provided by Article (57) of the constitution to private communication.¹¹

Evidence: Criminalising Legal Possessions

12. In "debauchery" cases, police reports usually cite the following items as evidence: condoms, wigs, female clothing, make up, lubricants, any money on the person at the moment of arrest, and in the case of transgender women, hormonal medication. None of these items are illegal to carry. Using female clothing, wigs, make up, and hormonal medication as evidence against transgender women is a clear form of discrimination based on gender identity. As in the example of one of the investigation files:

⁹ "The Trap," Annexes.

¹⁰ Ibid, Sameh's Testimony. Annex. Names were changed for confidentiality.

¹¹ Unofficial English Translation of 2014 Constitution, <http://www.sis.gov.eg/Newvtr/Dustor-en001.pdf>

- a. “We confiscated 11 condoms, several lubricants, a cherry flavoured massage gel, several wigs, as well as one blister pack of Amitril, containing six tablets, some clothes used in sadistic sex, a full and unopened bottle of ID alcoholic drink, a half full bottle of Chivas Regal whiskey and two laptops belonging to [] and [].”¹²
13. Criminalising sex between men and using condoms as evidence jeopardises HIV prevention strategies and efforts. This is especially relevant in Egypt, one of few countries whose rate of new HIV infections is increasing rapidly. The trend of new HIV infections from 2010 to 2018 rose 101%, while the regional MENA change was 12% and the global change was -18%.¹³ And where the rate of change of AIDS-related deaths from 2010 to 2018 is 66% in Egypt, the MENA rate is 11 %, and the global rate is -34%.¹⁴ Using condoms as evidence against MSM, gay men, and trans women puts individuals at high risk in a country where there is already a concentrated HIV epidemic¹⁵ among gay men and MSM, and where HIV prevalence within this key population is 6.2%.¹⁶
 14. The environment of criminalisation “impedes an effective response: Strategies to address the epidemic are hampered in an environment where human rights are not respected. For example, discrimination against and stigmatization of vulnerable groups such as injecting drug users, sex workers, and men who have sex with men drives these communities underground. This inhibits the ability to reach these populations with prevention efforts, and thus increases their vulnerability to HIV.”¹⁷ Furthermore, criminalising the possession and use of condoms violates many HIV/AIDS-related human rights as listed by OHCHR, including the right to life, the right to liberty and security of the person, and the right to the highest attainable standard of mental and physical health.¹⁸
 15. The use and possession of condoms is not a crime but condoms were used as evidence against arrested individuals in at least 10 cases documented by EIPR.¹⁹ Criminalising condoms jeopardises a person’s right to make their own sexual and reproductive health choices. When condoms are used as criminal evidence against a particular group, this puts that group at a higher risk of sexually transmitted infections and prevents them from exercising their right to make choices regarding their sexual and reproductive health.
 16. In implementing its HIV strategy 2012-2016 the Ministry of Health cited MSM as one of its main target groups and claimed to implement prevention activities targeted to MSM. The Ministry also cites low condoms usage in Egypt as a source of risk. However, the MoI is targeting MSM and criminalising their possession of condoms. This reveals not only a lack of coordination between different governmental authorities, but a disregard for the rights to

¹² Ibid, Case no. 20248 Zahraa Madinat Nasr Misdemeanours 2014.

¹³UNAIDS Data 2018, UNAIDS http://www.unaids.org/sites/default/files/media_asset/unaids-data-2018_en.pdf; AIDS Info. <http://aidsinfo.unaids.org/>.

¹⁴AIDS Info. <http://aidsinfo.unaids.org/>

¹⁵ According to the definition and key terms reference of the World Health Organization, <https://www.who.int/hiv/pub/guidelines/arv2013/intro/keyterms/en/>

¹⁶ UNAIDS DATA 2018, UNAIDS. http://www.unaids.org/sites/default/files/media_asset/unaids-data-2018_en.pdf

¹⁷ HIV/AIDS and Human Rights, OHCHR. <https://www.ohchr.org/en/issues/hiv/pages/hivindex.aspx>

¹⁸ Ibid.

¹⁹ “The Trap.”

health and bodily autonomy of MSM and trans women. Additionally, the unavailability of PrEP (Pre-exposure prophylaxis) puts male and female individuals at a higher risk of infection.

Anal Examinations

17. Another violation committed by the Public Prosecution and the Forensic Medicine Authority within the context of the crackdown against arrested individuals is anal examinations. Anal examinations at the Forensic Medicine Authority are repeatedly ordered by the Public Prosecution to determine if the defendant is “subject to penetration by a penis in the anus, and whether they are subject to repeated use from the anus.”²⁰
18. In June 2016, the UN Committee Against Torture said that it is crucial to ban anal examinations, asserting that they have no medical justification.²¹ And as the Independent Forensic Expert Group (IFEG), composed of forensic medicine experts from around the world, states:
 - a. “Forcibly conducted anal examinations have no medical or scientific value in determining whether consensual anal intercourse has taken place; these examinations are inherently discriminatory and, in almost all instances, result in significant physical and mental pain and suffering. It is our opinion that forcibly conducted anal examinations constitute cruel, inhuman, and degrading treatment, and may amount to torture depending on the individual circumstances.”²²
19. Commenting on the arrest of 10 men for the “habitual practice of debauchery,” the Working Group on Arbitrary Detention said: “the arrest and detention of these 10 persons is arbitrary, as forced anal examinations contravene the prohibition of torture and other cruel, inhumane and degrading treatment, whether if, like in the present cases, they are employed with a purpose to punish, to coerce a confession, or to further discrimination. In addition, they are medically worthless for the determination whether or not a person has engaged in same-sex sexual conduct or whether the person has been involved in the practice of habitual debauchery or the prostitution of men.”²³
20. Moreover, anal examinations are in violation of Egypt’s own constitution, violating a person’s right to dignity and the state’s obligation to its protection (Article 51), as well as a person’s rights during arrest or detention (Article 55). Furthermore, the practice of anal

²⁰Prosecution report Case No. 1691 year 2019, Ras El Bar.

²¹ “Concluding Observations on the Third Periodic Report of Tunisia*”. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 10 June 2016. Accessed 15 November 2017.
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsn%2fe41KqfmX3PaT%2bm8PgpNo5NjKcle3LmgsB0Zj6X3G7hKyOYjYgCjxbJTJcGfX5P711QBTOiq9CnTmai4iQRXnfFK4Gx%2fr7C%2b3zGfNoMP3>

²² “Statement on Anal Examinations in Cases of Alleged Homosexuality,” Independent Forensic Expert Group,
<https://irct.org/assets/uploads/Vol9%2026%20No%202%20Statement%20on%20anal%20by%20Independent%20Forensic.pdf>

²³ A/HRC/16/47/Add.1, opinion no. 25/2009 (Egypt), paras. 24, 28-29
<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/115/98/PDF/G1111598.pdf?OpenElement>

examinations violates the right to bodily integrity as protected in international agreements, which have the force of law as per Article 93 of the constitution.²⁴

21. Finally, these tests violate medical ethics when they are performed by medical doctors. The Principles of Medical Ethics, adopted by the UN, bans physicians from “participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.”²⁵

Denial of civic rights of protection

22. The state’s crackdown on sexual difference from the social norm in Egypt has left the LGBTQI community and MSM without legal protection in many cases. When LGBTQ individuals are victims of theft, blackmail, assault, or rape, they are not able to seek police and legal protection in fear of being accused under Law 10/1961. In 2018 alone, EIPR documented 4 victims of sexual assault and/or blackmail with private videos who felt unsafe seeking police protection, even when they were able to identify the assailant, as they had to identify the conditions under which they met the assailant, or were blackmailed with videos or photos that would expose their private sexual lives. The criminilisation of sexual acts and identities creates a condition that precludes these individuals from accessing their right to equal protection under the law equal.

Recommendations

23. For the Egyptian Ministry of Interior to:
 - a. Stop the campaign of arrests against men who have sex with men, gay men, transgender women and those who are perceived to be so.
 - b. Stop the entrapment through LGBTQI dating apps and websites.
 - c. Cease presenting condoms as evidence in habitual practice of debauchery cases. This practice presents a major threat to the health of gay men, transgender women and men who have sex with men.
24. For the Public Prosecution and the Forensic Medicine Authority to immediately stop and ban the order and practice of anal examinations as they constitute a form of degrading, harsh and inhumane treatment.

²⁴ Unofficial English Translation of 2014 Constitution from the website of the state information service.

<http://www.sis.gov.eg/Newvtr/Dustor-en001.pdf>

²⁵ “Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” - Adopted by General Assembly resolution 37/194 of 18 December 1982, <https://www.ohchr.org/en/professionalinterest/pages/medicaethics.aspx>.