



The Death Penalty in Egypt

A Legal Analysis in Light of the African Charter on Human and Peoples' Rights and International Standards

Shady Amin

El Hak Foundation for Freedom of Expression and Human Rights (EFHR)

Introduction

The death penalty remains one of the issues in criminal justice most closely connected to the right to life and the fundamental guarantees of a fair trial. Egypt is among the States that retain the penalty in their legislation, while at the same time, as a State Party to the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights, it is under an obligation to ensure that deprivation of life resulting from a judicial sentence does not amount to an arbitrary deprivation of life. Egypt deposited its instrument of ratification of the African Charter on 3 April 1984, making its provisions directly relevant to the assessment of the domestic legislative framework and national practice.¹

This paper focuses on three interrelated elements: the scope of offences punishable by death under Egyptian law; the international and African standards governing States that have not abolished the penalty; and the adequacy of the procedural safeguards surrounding the imposition and execution of death sentences. It does not revisit the general philosophical or jurisprudential arguments concerning retention or abolition. Rather, it proceeds from a practical legal question: does the scope of application of the death penalty in Egypt comply with the “most serious crimes” standard and with the guarantees of the right to life and a fair trial?

First: The African and International Framework Governing the Death Penalty

Article 4 of the African Charter provides that human beings are inviolable, that every human being is entitled to respect for his or her life and the integrity of his or her person, and that no one may be arbitrarily deprived of this right. This is complemented by Article 5 on dignity and the prohibition of torture and cruel, inhuman or degrading treatment or punishment, and Article 7, which enshrines the right to have one's cause heard by a competent and impartial court, the presumption of innocence, the right to defence, and trial within a reasonable time. Accordingly, in States that continue to apply the death penalty, its legality is not measured merely by the existence of a domestic legal provision authorising it, but by the consistency of the law, the proceedings and the execution with these safeguards taken together.

The African Commission's General Comment No. 3 on Article 4 clarified an important aspect of this assessment. The Commission stated that the African Charter contains no provision recognising the death penalty, even within a limited scope, and that the course to be encouraged is progress towards abolition or, at a minimum, a moratorium on executions. For States that have not yet abolished the penalty, the Commission held that its use must be restricted to the “most serious crimes”, namely crimes involving intentional killing, and that where a death sentence is imposed following proceedings that do not strictly meet the highest standards of fair trial, carrying out the sentence constitutes a violation of the right to life. It also held that mandatory death sentences are impermissible; that a person sentenced to death has the right to seek clemency, pardon or commutation; that military courts should not have jurisdiction to impose the death penalty; and that transparency and reasonable notice to the sentenced person, his or her family and counsel must be ensured before execution.²

The Commission reinforced this approach in Resolution ACHPR/Res.416 (LXIV) 2019, which called on States retaining the death penalty to establish a moratorium on executions with a view to abolition, abolish mandatory death sentences, and support the proposed African protocol on the abolition of the death penalty. Of particular relevance to Egypt, the African Commission's Concluding Observations on Egypt's 18th and 19th Combined Periodic Reports, issued in May 2026, again recommended a moratorium on executions and movement towards abolition in law, consideration of commuting the sentences of persons under sentence of

¹ African Charter on Human and Peoples' Rights, arts 4, 5 & 7; ACHPR Ratification Table, Egypt.
² ACHPR, General Comment No 3 on the right to life (article 4) (2015) paras 22-26.



death, and continued reduction of the scope of the death penalty to the most serious crimes within the framework of the National Human Rights Strategy.³⁴

At the international level, Article 6 of the International Covenant on Civil and Political Rights provides that, in countries which have not abolished the death penalty, a sentence of death may be imposed only for the “most serious crimes” and pursuant to a final judgment rendered by a competent court, while guaranteeing the right to seek pardon or commutation of sentence and prohibiting the imposition of the death penalty for crimes committed by persons below eighteen years of age or its execution on pregnant women. The Human Rights Committee has interpreted this standard narrowly in General Comment No. 36, limiting it to crimes of extreme gravity involving intentional killing. Accordingly, drug offences, economic and political crimes, attempted offences, kidnapping and sexual offences—however serious—do not suffice to justify the death penalty under Article 6.5

Second: The Scope of the Death Penalty in Egyptian Legislation

Article 93 of the Egyptian Constitution gives the force of law to international human rights conventions, covenants and charters ratified by Egypt after their publication, while Articles 95 and 96 establish the principle of legality of crimes and penalties and the guarantees of a fair trial. Nevertheless, provisions authorising the death penalty are spread across a wide range of legislation, including Penal Code No. 58 of 1937, the Narcotics Control Law No. 182 of 1960, the Military Judiciary Law No. 25 of 1966, the Arms and Ammunition Law No. 394 of 1954, and Counter-Terrorism Law No. 94 of 2015. The Penal Code provides that execution is to be carried out by hanging.⁶⁷

The principal concern is not that the penalty exists for intentional homicide alone, but that it extends to conduct that does not require an intentional killing to have occurred. This is particularly clear in the Counter-Terrorism Law: Article 12 permits the death penalty or life imprisonment for creating, establishing, organising or managing a terrorist group, or assuming its leadership, without requiring that a death occur; Article 13 provides for the death penalty for certain forms of terrorist financing; and Article 14 permits the death penalty where the terrorist offence forming the object of the solicitation or communication is committed or attempted. These formulations reveal a direct gap between certain forms of domestic criminalisation and the African and international standard that links the death penalty to an actual intentional killing.

The same concern applies to the continued availability of the death penalty for certain drug offences and certain military and security offences that do not in themselves entail the death of a person. El Hak Foundation previously raised this issue before the Human Rights Committee in 2023, pointing to the broad range of offences that may result in a death sentence and the need to narrow that range and link it exclusively to the most serious crimes. The Human Rights Committee’s Concluding Observations on Egypt likewise stressed that the death penalty must be non-mandatory and limited to crimes involving intentional killing, with pardon or commutation available in all cases and with safeguards ensuring that no reliance is placed on evidence obtained through coercion or torture.⁸⁹

The use of broad expressions in State security and counter-terrorism legislation—such as public order, national unity, the safety of society or its interests—raises an additional concern where the penalty, once carried out, is irreversible. The broader or more ambiguous the elements of criminalisation become, the greater the need for strict compliance with the principles of legality and proportionality, particularly where the potential consequence is the final deprivation of life.

ACHPR, Concluding Observations - Egypt: 18th & 19th Combined Periodic Report, 2019-2024 (21 May 2026) 10.

ACHPR, Resolution on the Abolition of the Death Penalty in Africa, ACHPR/Res 416 (LXIV) 2019.

ICCPR, art 6(2), (4) & (5); Human Rights Committee, General Comment No 36, CCPR/C/GC/36 (2018) paras 35, 37 & 41.

Egyptian Penal Code No 58 of 1937, art 13; Counter-Terrorism Law No 94 of 2015, arts 12-14.

Constitution of the Arab Republic of Egypt 2014, arts 93, 95 & 96.

Human Rights Committee, Concluding observations on Egypt, CCPR/C/EGY/CO/5 (2023) paras 21-22.

El Hak Foundation for Freedom of Expression and Human Rights, Submission to the UN Human Rights Committee, 137th Session (29 January 2023) 5-6.



Third: Procedural Safeguards in Egypt and Their Limitations

Egyptian law subjects the imposition of a death sentence to a number of procedural safeguards, foremost among them the requirement that the court panel be unanimous before imposing the sentence, review of the judgment by the Court of Cassation, and a prohibition on execution before the legal procedures have been exhausted and the case papers have been referred to the President of the Republic for consideration of the exercise of the power of pardon or commutation. In the follow-up report submitted to the Human Rights Committee in March 2026, the State asserted that the death penalty is an exceptional and non-mandatory punishment in the Egyptian legal system, that courts may choose alternative penalties, and that judicial review and family-notification procedures precede execution.¹⁰

These safeguards are important, but they do not by themselves resolve the problem created by the broad substantive scope of the penalty. Judicial unanimity does not make a death sentence compliant with the Charter if the offence itself does not meet the intentional-killing threshold. Likewise, African General Comment No. 3 links the lawfulness of an execution to the quality of the trial as a whole, not merely to the completion of formal procedures. This requires ensuring effective legal representation from the earliest stages, adequate time and facilities for the preparation of the defence, exclusion of evidence obtained through torture or coercion, avoidance of mass trials that result in death sentences, and an effective and transparent avenue for seeking clemency or commutation.

This issue is especially significant at the present legislative juncture. The new Criminal Procedure Law No. 174 of 2025 has been promulgated and is due to enter into force on 1 October 2026; in other words, this paper is being submitted immediately before its entry into force. The forthcoming implementation phase therefore provides an opportunity to review the rules and procedures governing death-penalty cases in light of Article 4 of the African Charter and General Comment No. 3, so as to ensure that procedural reform is not separated from a review of the scope of the offences themselves.¹¹

Fourth: Recommendations

- Establish a formal moratorium on executions as an interim measure, in line with the recommendations and resolutions of the African Commission, pending the completion of a comprehensive legislative review.
- Amend the Penal Code, the Counter-Terrorism Law, the Narcotics Control Law, the Military Judiciary Law, and the Arms and Ammunition Law so that, for as long as the death penalty remains in force, it is limited to the most serious crimes involving intentional killing, and remove the penalty for offences that do not directly and intentionally result in death.
- Establish an explicit legislative prohibition of any mandatory death sentence, and ensure that courts are always able to individualise punishment and take into account mitigating circumstances, the personal circumstances of the accused, and the degree of his or her participation in the offence.
- Strengthen fair-trial guarantees, in particular effective legal assistance from the moment of arrest, adequate time and facilities for the defence, the exclusion of any confession or evidence obtained through torture or coercion, and a prohibition on imposing death sentences in mass trials that do not permit an individualised assessment of responsibility.
- Establish a clear and transparent procedure for clemency and commutation applications, available in all cases, and stay execution until all appeals and applications have been determined, with reasonable advance notice of the time of execution to the sentenced person, his or her family and counsel, and with secret executions prohibited.
- Review the sentences of persons currently under sentence of death, commute sentences imposed for offences that do not fall within the intentional-killing standard, and publish accurate periodic data on death sentences, executions, commutations and pardons in order to strengthen oversight and transparency.

Human Rights Committee, Egypt follow-up report, CCPR/C/EGY/FCO/5 (2026) paras 11-13 & 20.

Law No 174 of 2025 issuing the new Criminal Procedure Law, Official Gazette No 45 bis D (12 November 2025), effective 1 October 2026.



- Continue implementing the objective of the National Human Rights Strategy relating to the review of the “most serious crimes”, publish the results and criteria of that review, consider accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, and support the adoption of the African protocol on the abolition of the death penalty.

The paper concludes that the practical point of convergence between the paths of retention and abolition begins with a non-negotiable legal minimum: narrowing the scope of the death penalty to the greatest possible extent, restricting it exclusively to intentional killing, and guaranteeing the highest standards of fair trial; then moving from a temporary moratorium on executions to a serious policy and legislative review that places the right to life and human dignity at the centre of criminal justice policy.