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## A legal review of Sisi's decision to abolish emergency law

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The Egyptian media have cheered Sisi's decision to abolish the Emergency Law No. 162 of 1958 and its amendments; and many of those who voluntarily listen to the propaganda of Egyptian pro-regime media have rejoiced, hoping that this decision would achieve some justice, freedom and human rights, contrary to the bitter truth in this regard.

In pursuit of the truth about the abolition of the state of emergency in Egypt, the author has reviewed the Emergency Law No. 162 of 1958 and its amendments (the last of which was issued on 6 May / Law 22 of 2020), Law No. 8 of 2015 on identifying terrorist organizations and regulating terrorist lists, and its amendments (the last of which was issued on 3 March 2020 / Law 14 of 2020), and the Anti-Terrorism Law No. 94 of 2015 and its amendments (the latest of which was issued on 3 March 2020 / Law No. 15 of 2020), and Law 149 of 2019 regulating the practice of civil work<sup>1</sup>.

### 1) What is a state of emergency?

There are several definitions for the state of emergency, most notably: "It is a legal system that is based on urgent constitutional laws, to protect national interests, where it is resorted to only on an exceptional and temporary basis to face emergency circumstances that the legitimate government tools fall short of, provided that it ends with the end of its reasons and justifications"<sup>2</sup>.

Therefore, imposition of a state of emergency is aimed at enabling the executive power to face exceptional circumstances that they cannot face via normal legal frameworks, where this empowerment comes through a special law in accordance with the constitution, regulated with controls, most notably legislative and judicial oversight.

According to the above definition, regimes impose a state of emergency in exceptional circumstances, whether related to natural disasters, such as earthquakes, volcanoes, hurricanes, epidemics and

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<sup>1</sup> Egyptian Electronic Government Portal, [link](#); Manshurat (Legal Publications), [link](#)

<sup>2</sup> Mahfouz, Zakaria (1996), The State of Emergency in Comparative Law and Legislation of the United Arab Republic, Ph.D. Thesis, Alexandria University, p. 13.

pandemics; or to man-made reasons, such as wars, revolutions, armed conflicts, military coups, internal turmoil, or others.

A state of emergency is assumed to be a temporary state that ends with the end of the exceptional circumstances or the demise of their causes. In free regimes and democratic countries, the imposition of a state of emergency is only allowed based on real justifications assessed by the legislative power and supervisory bodies, where the executive authority submits to the decision of the legislative and supervisory authorities, and the judiciary if necessary.

As for authoritarian regimes, the executive power can impose a state of emergency whenever it wants, through the legislative power and supervisory bodies that have become a docile tool in the hands of the rulers that brought them.

The situation in Egypt is known to everyone, whether with respect to the pervasiveness of the executive power, controlled by the head of the regime; or the silence of the legislative power and its complete surrender to the orders of the executive power.

## 2) Controls for imposing a state of emergency:

To impose a state of emergency in accordance with international and legal norms, the following is required:

- Occurrence of exceptional emergency events, such as wars, floods, earthquakes and the like.
- That these emergency events threaten the public interests of the state.
- Inadequacy of ordinary laws to deal with exceptional emergency events.
- Identifying the situation that necessitates imposing a state of emergency.
- Determining the area subject to the state of emergency.
- Determining the duration of the state of emergency.

## 3) Egypt's state of emergency

In democratic countries that respect freedoms and human rights, a state of emergency is exceptional, being based on exceptional circumstances. However, in Third World countries, the state of emergency continues most of the time and lacks the most basic rules of freedom and democracy.

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**By reviewing the laws related to the state of emergency in some developed countries such as the United States, England, France, Australia and Germany, as well as the reasons that lead to the imposition of a state of emergency there, and comparing all this with what is happening in Egypt, it becomes clear that:**

- The developed countries impose a state of emergency when real emergency events occur, posing a real threat to the national security of the state and the interests of the country.
- A state of emergency is imposed for a specific period, some of which do not exceed 30 days, such as Australia, and some others do not exceed one year, such as the United States.
- A state of emergency cannot be imposed without a real approval of the Parliament - a real parliament, not a fictitious one, like the parliaments of most of the developing countries, including Egypt.
- The state of emergency in developed countries are closely followed up by civil society and human rights organizations, a real oversight of the executive power to prevent it from exceeding the limits determined by the law.
- The state of emergency in developed countries arouse major concern of observers, legal professionals, and the public in general, lest it may be used to install a dictatorship or to attack freedoms and human rights.

**In Egypt, it goes without saying that imposition a state of emergency does not meet the minimum international standards for imposing a state of emergency, in terms of:**

- The situation that requires its imposition,
- The mechanisms of its imposition, including the approval of Parliament - due to the sham Parliament and its complete subordination to the executive power,
- The monitoring tools of emergency procedures,
- The objectives of imposing it, which is often to install the pillars of dictatorship and protect it from the anger of the people; and is always used to suppress its opponents.



- The duration of its imposition and renewal, and
- The powers conferred on the executive power.

#### 4) Emergency Law and the alternative repressive laws

In spite of all this, the articles of the Emergency Law - whose abolition was accompanied by a big media frenzy as if it were a victory for freedoms and human rights - have been replaced by similar, if not severer, articles, in new notorious laws, most notably the Terrorist Entities Law (Law No. 8 of 2015) and the Anti-Terrorism Law (Law No. 94 of 2015), where some articles and provisions contained in these laws are much harsher than the articles of the Emergency Law that has recently been repealed, in addition to provision of additional articles to perpetuate repression and ensure protection and impunity of the executive power organs and members, as follows:

Article 3, items 1, 2, 6, 13 of the Emergency Law includes:

- 1- Imposition of restrictions on the freedom to meet, move, reside and pass.
- 2- Monitoring messages of any kind as well as newspapers, bulletins, publications, editorials, drawings and all means of expression, publicity and advertisement.
- 6- Eviction of or isolating some areas, organizing means of transportation, and limiting transportation between different areas. It is also permissible, upon a presidential decree, to expand the scope of the executive power's authority indicated in the previous paragraph.
- 13- Banning public meetings, processions, demonstrations, celebrations and other forms of gathering, and restricting private meetings.

**However, these restrictions have been doubled in terms of the procedures and who is covered by these procedures in five complete articles in the two alternative laws referred to above (Terrorist Entities Law and Anti-Terrorism Law), as follows:**

Article 7 of Law No. 8 of 2015 on defining terrorist entities and regulating terrorist lists (noting that the law has so much expanded the identification of the terrorist entity and terrorists, making anyone who seeks to oppose the existing regime a terrorist), states that:

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- 1- Banning the terrorist entity and stopping its activities.
  - 2- Closing its places and banning its meetings
  - 3- Banning the financing or raising money or materials for the entity either directly or indirectly.
  - 4- Freezing funds owned by the entity, or its members when they are used in the practice of terrorist activity.
  - 5- Prohibition to joining the entity, call for that, or promoting it or raising its slogans.
  - 6- Enlisting on travel ban and arrival anticipation lists, and preventing the foreigner from entry.
  - 7- Withdrawing or cancelling passports, or preventing the issuance of a new passport.
  - 8- Losing the condition of good reputation necessary for holding public and parliamentary positions.
  - 9- Banning appointing or contracting for public jobs or public sector companies or the public business sector, as the case may be.
  - 10- Suspension of work, with payment of half the wage.
  - 11- Freezing funds or other assets owned by a terrorist, whether wholly or in the form of a share in joint ownership, the proceeds generated therefrom, or controlled directly or indirectly by the terrorist, and the funds or other assets of the persons and entities operating through him.
  - 12- Banning all civil or advocacy activities under any name.
  - 13- Prohibition of financing or raising funds or things by a terrorist, whether directly or indirectly, as well as the prohibition of receiving or transferring funds, or any other similar financial services.
  - 14- Suspending membership in professional syndicates, corporate boards, associations, institutions, or any entity in which the state or citizens are shareholders, the boards of directors of clubs, sports federations, and any entity designated for public benefit.
- Article 8 bis of Law No. 8 of 2015 on identifying terrorist organizations and regulating terrorist lists (and its amendments) states that: "If there is serious information or evidence of the existence of

immovable or movable funds obtained from the activities of any terrorist or terrorist entity listed or not listed on terrorist or terrorist entities lists, or used in financing it in any way or in financing its affiliates or associates, the Public Prosecutor may order seizure of these funds or assets and prevent their owners or holders from using them.”

- Article 46 of the Anti-Terrorism Law states: “The Public Prosecutor or the relevant investigating authority in a terrorist crime, according to the case, may authorize a reasoned warrant for a period not exceeding thirty days to monitor and record the conversations and messages received on wired, wireless, and other means of modern telecommunications, record and film what is happening and being written in private premises or across communication and information networks or websites, and seize ordinary or electronic correspondence, letters, publications, parcels, and cables of all kinds.”

- Article 47 of the Anti-Terrorism Law states: “The relevant authorities shall take the necessary measures, including the freezing of funds, prevention of disposition or management of funds, or travel bans, provided that they adhere to the provisions and measures set forth in the articles mentioned in the first paragraph of this Article.”

- Article 49 of the Anti-Terrorism Law states: “With regards to the crimes set forth in Articles (12), (15), (19), and (22) of this Law, the Public Prosecutor or the relevant investigating authority, according to the case, shall issue an interim order to close headquarters, premises, housing, and residencies, provided a decision is issued by at least a chief prosecutor. Luggage and furniture seized shall be considered items seized administratively as soon as they are seized until a final decision is issued in the case. After an inventory is prepared and they are recorded in a report, they shall be handed over to the guard assigned to guard the seals placed on the closed headquarters, premises, housing, and residencies...:

- Article 53 of the Anti-Terrorism Law states: “In the event of danger of terrorist crimes or consequent environmental disasters, the President of the Republic may issue a decree to take appropriate measures to maintain security and public order, including the evacuation or isolation of some areas or imposition of a curfew, provided the decree identifies the region it applies to for a period not exceeding six months.”

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- Article 3 bis "b" of the Emergency Law stipulates that: "When a state of emergency is declared, judicial officers may seize anyone whenever there is evidence that he has committed a felony or misdemeanor, and seize what he may possess by himself or in his home, and all places where he is suspected of hiding any dangerous or explosive materials; or weapons, ammunition or any other evidence for commission of the crime, as an exception of the provisions of other laws, provided that the Public Prosecution is notified within 24 hours of detention."

- Article 3 bis "c" of the Emergency Law stipulates that: "The state security magistrate's court - emergency- may, upon the request of the Public Prosecution, detain any person whenever there is evidence of posing a danger to public security for a one-month renewable period."

However, Article 37 of the Anti-Terrorism Law completely meets this, and may even be much more severe, stipulating that: "In relation to any terrorist crime, and in addition to imposing the prescribed penalty, the court may impose one or more of the following measures:

- 1- Deportation of foreigners.
- 2- Prohibition of residence in a particular place or specific area.
- 3- Obligation to reside in a particular place.
- 4- Prohibition from approaching or frequenting certain places or areas.
- 5- Obligation to be in certain places at certain times.
- 6- Prohibition of work in certain places or in specific activities.
- 7- Prohibition of the use of certain means of communication or prevention of their acquisition or possession..."

The serious matter, which was not stipulated by the Emergency Law, is Article 8 of the Anti-Terrorism Law, which states that: "Enforcers of the provisions of this Law shall not be held criminally accountable if they use force to perform their duties or protect themselves from imminent danger to lives or properties, when the use of this right is necessary and adequate to avert the risk."



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For all this, there is no need for the existence of an emergency law, given the fact that the restrictions provided by alternative repressive laws are severer and much worse. However, a free person cannot accept to live shackled in this way, nor be deceived by the trick of canceling the emergency law, while he should enjoy his human rights in light of social, economic and political justice, where people are all equal, without any discrimination.

In conclusion, let me provide some excerpts from an article by Stephen Cook recently published by Foreign Policy<sup>3</sup> which shows how far the world views us in light of the abolition of the Emergency law, where the writer says, commenting on Abdel Fattah al-Sisi's authority to take any measures to protect national security:

"No doubt the Egyptian authorities will define the preservation of security and public order as broadly as possible. The result is a law to combat terrorism that will likely be more expansive than the emergency measures the Egyptian leadership had lifted a week before..."

The writer concludes his article wondering about the need to repeal the Emergency Law in light of existence of much more repressive laws:

"Why do authoritarians who are hostile to virtually every aspect of democratic politics so often feel that it is necessary to pantomime democratic practices? What is in it for them? Actually, quite a lot."

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<sup>3</sup> Cook, Stephen. Why Dictators Always Pretend to Love the Law, Foreign Policy, 10 November 2021, [link](#)