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Egypt: The need for effective judicial oversight of prisons

Sherif Hilali

Violation of prisoners' rights pervades Egyptian prisons and detention centers, where there is no real oversight by the Public Prosecution and Judiciary over the prisons administration.

It is noteworthy that most prisons in Egypt are affiliated with the Ministry of Interior and its affiliated Prisons Authority, where there are also prisons that report to various security directorates in governorates, as well as illegal detention centers at the headquarters of the Interior Ministry's National Security Apparatus and the Central Security Sector camps.

However, there are some prisons that are affiliated with sovereign security services or control bodies, such as the General Intelligence Service and Administrative Control Authority.

The flagrant violation of international human rights standards in all these prisons and detention centers necessarily require transference of their affiliation to a civilian body, not a military or a paramilitary one.

Although Law 396 of 1956 on organization of prisons stipulated several rights that should be provided to prisoners and detainees, especially in pretrial detention, yet, these texts are considered dead letters, being completely ignored, as most prisons where political prisoners are held are run by officers affiliated with the National Security Apparatus (NSA), where an NSA officer is, in reality, the one who controls and supervises a prison administration, not the prison's warden.

With regard to the powers granted to the prison warden, he also runs the prison according to his own rules, not the rules or regulations stated by the law, which requires transference of the prison's affiliation to an independent judicial body specialized in punitive enforcement, or at least subordinate to the Ministry of Justice.

Prison is part of the criminal justice system. In democratic societies, people are sent to prison by independent judges appointed by civil authorities. Therefore, prisons should also be under the control of the civil authority.

This necessarily means that there should be a clear organizational separation between the police and prison administration, where the police are generally responsible for investigating crimes and arresting criminals. But, when a person is arrested or detained, this means that he should appear before the judicial power as soon as possible, and then be handed over to the prison administration.

In many world countries, the police administration reports to the Ministry of Interior, while the prison administration reports to the Ministry of Justice, which ensures separation of powers, and emphasizes the close relationship between the judiciary and the prison system.

The police in many countries are actually military units with military ranks and are militarily organized, and can be called by the government, if necessary, to act as a military force, which is not consistent with the civilian characteristics required by the prison staff.

In democratic countries, prison administrations are often a public authority placed under a ministerial authority, where it has become common that the Ministry of Justice is the body authorized to supervise prisons¹.

However, the regime in Egypt still insists on prisons' affiliation to the Ministry of Interior, specifically the Prisons Authority, threatening the rights of prisoners, amid impunity of violators.

Judicial supervision

The Egyptian legal system has stipulated several articles that address the judicial and administrative supervision of prisons, as follows:

There are two types of supervision over prisons: First, judicial supervision from outside the prison, undertaken by the Public Prosecution and the judges of courts of first instance. Second, administrative supervision from within the Prison Authority. There is also a kind of external oversight by governors,

¹ Andrew Coyle: A Human Rights Approach to Prison Management: Handbook for Prison Staff, 2nd. ed., International Center for Prison Studies, 2009.

the National Council for Human Rights, and human rights organizations (that were never addressed by the prisons law).

1- Judicial Supervision: by the Public Prosecution and related Judges

Article 42 of the Code of Criminal Procedure stresses supervision of the Public Prosecution and court chief judges over prisons, stating that members of the Public Prosecution Office and heads and agents of courts of first instance and appeals have the right to visit public and central prisons in their jurisdictions, with the following powers:

- Ensuring that no person is being held illegally,
- Examining prison records and arrest and detention orders, and taking copies of them,
- Communicating with prisoners and receiving their complaints,
- Obtaining the information they request from prison wardens and staff.

Article 42 of the Code of Criminal Procedure states: "Any member of the Public Prosecution and any chief justice of a court of first instance or a court of appeal and any vice president thereof may visit public and central prisons located within the jurisdiction thereof and make sure no person is detained therein illegally. Said may inspect the records of the prison and the warrants of arrest and incarceration and may take a copy thereof. Said may also communicate with any detainee and listen to any relevant complaints therefrom. Prison wardens and employees shall assist said in obtaining any information requested."

The Law on organization of prisons (Law No. 396 of 1956) also approved this principle in a more comprehensive way, adding additional tasks. In this text, the role of the Public Prosecution in supervision over prisons was emphasized through:

- The right of the Public Prosecutor and his deputies to access all locations in prisons at any time (according to Article 85 of Law No. 396 of 1956) in order to ascertain that:

1- orders from the Prosecution, from the investigating judge in cases he is entrusted with investigating and court decisions are implemented in the manner specified in such orders and decisions.

2- no person is illegally imprisoned.

3- no prisoner is in penal servitude without being so sentenced, except in cases specified by law.

4- every category of prisoners is isolated from the other categories and receives the treatment decided for it.

5- registers established by law are used in a uniform way.

According to the prisons law, they may ensure that laws and regulations are followed and take the necessary steps in case contraventions are committed.

They may also receive complaints from prisoners and peruse registers and juridical papers to ascertain that they correspond to the established forms.

The prison's director or superintendent will provide them with all the data they request related to the task they have been entrusted with.

However, the law limited the right of presidents and vice presidents of the courts of first instance and appeal, as well as investigative judges to access to prisons located in the jurisdictions of their courts at any time. However, the law did not include them in the previous tasks (given to the public prosecutor). It would have been more appropriate to give them the tasks given to the Public Prosecutor and his deputies.

- The right of presidents of courts of appeal and courts of first instance, their deputies and investigating judges to access at any time prisons located within the jurisdiction of the courts in which they work (according to Article 86 of Law No. 396 of 1956).

Also according to same article, the president of the court of cassation and his deputy have the right to access all prisons, and that the prison administration will convey their observations to the Director General.

2- Administrative supervision by the Prisons Authority:

In addition, Law No. 396 of 1956 on the Organization of Prisons and its Regulations incorporating the latest amendments by Law 106 of 2015 gave the Assistant Minister of Interior for the Prisons Authority Sector a number of rights related to supervising and inspecting prisons at any time.

- *The right of the Prisons Authority inspectors to visit and inspect prisons (according to Article 83) to ascertain that:*

"cleanliness, health and security requirements are fulfilled inside prisons and that all regulations established for prisons are implemented. They shall submit reports in this regard to the Director General of Prisons."

3- Administrative supervision by local government bodies:

Law No. 396 of 1956 on the Organization of Prisons and its Regulations incorporating the latest amendments by Law 106 of 2015 also provided for another type of supervision by governors and directors, but it is not clear what kind of directors intended by the law.

- *The right of governors and directors to access prisons that fall within their sphere of competence.*

Article 84 states that:

"Governors and directors have the right to access prisons that fall within their sphere of competence at any time. The prison administration shall convey their observations to the Director General of Prisons."

However, there are no media or official indications that the governors use this right to monitor the prisons located in their governorates.

It is also noteworthy that the role stipulated by law for prison inspectors or governors and directors does not include their right to communicate with prisoners or receive their complaints².

4- The National Council for Human Rights access to prisons:

The Prisons Law 396 of 1956, pursuant to the amendments made in 2015, allowed members of the National Council for Human Rights to visit prisons, but it limited these visits by stating several restrictions, including the need for obtaining the Prosecutor General's approval first.

According to Article 73, the law defined the role of council members in receiving complaints from prisoners, preparing reports and submitting them to the Assistant Minister of Interior for the Prisons Authority Sector and the relevant Public Prosecution, in accordance with the procedures and controls specified by the internal regulation.

Article 73 of Law 396 of 1956, pursuant to the amendments made in 2015, states:

“Without prejudice to the competences of the Public Prosecution, the Assistant Minister for the Prisons Authority Sector may supervise and inspect prisons at any time. The procedures are to prevent its serious causes, and to submit a report on important cases to the Minister of Interior and the competent Public Prosecution. Members of the National Council for Human Rights may visit prisons after the approval of the Public Prosecutor, receive complaints from prisoners, prepare reports and submit them to the Assistant Minister for the Prisons Authority Sector and the relevant Public Prosecution, in accordance with the procedures and controls specified by the internal regulation.”

Article 76 bis of the executive regulations of the law on organization of prisons issued in 1961 by Law No. 79 of 1961, stipulated that “With due regard to the provisions contained in Article 42 of Law 396 of 1956 on organization of prisons, which permits an absolute or restricted visitation in relation to the circumstances at certain times for health or security reasons, members of the National Council for Human Rights may visit the prison, inspect its facilities, and receive prisoners’ complaints – based on

² Abdullah Khalil: The prison system in Egypt and rights of prisoners in light of prison laws and regulations and international human rights standards, 1st. guidelines, Human Rights Association for Assistance of Prisoners, Cairo. p. 45

Article 73 which states that "Members of the National Council for Human Rights may visit prisons after the approval of the Public Prosecutor, receive complaints from prisoners, prepare reports and submit them to the Assistant Minister for the Prisons Authority Sector and the relevant Public Prosecution, in accordance with the procedures and controls specified by the internal regulation."

However, this article requires obtaining a prior permit from the Public Prosecutor specifying the prison authorized to visit and the names of the visiting members, along with provision of necessary facilities to carry out such visits, on dates determined by the prison administration and during official working time. Also, visiting prisoners is based on prior approval of the Public Prosecution, specifying names of the prisoners to be visited and specifying the purpose of the visit, provided that the visitors adhere to the security procedures followed within each prison.

The article starts with referring to observance of Article 43 of the Prisons Law, which allows for an absolute or restricted visitation ban in relation to circumstances at certain times, for health or security reasons - which leads to the addition of multiple restrictions on this right and almost completely aborted it through:

- That this type of visitation requires obtaining two permits from the Public Prosecution Office by members of the National Council for Human Rights: First, a prior permit for the visit, including the names of visitors. Second, if the council members wanted to communicate with prisoners, they must obtain another permit from the Public Prosecution, defining names of prisoners to be visited, and the need to obtain the prisoner's approval to complete the visit, while adhering to the security procedures within each prison. Accordingly, the prison administration may refuse to allow meeting the prisoner in the first place, despite the approval that the council may have obtained, in addition to the fact that the text ignored the right of the council members to directly communicate with prisoners during their visit and receive their complaints - where the text intentionally put multiple restrictions to abort the objective of the visit.

Also, the reference to Article 43 of the Law on organization of prisons, in relation to the prison administration's right to prevent visits in certain prisons, indicates the impossibility of council members' visits to such prisons, where the Ministry of Interior has the right, to invoke security or health reasons to prevent these visits.

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Accordingly, there have been numerous references in the recent annual reports of the National Council for Human Rights indicating persistent refusal by prison officials to allow council members to visit prison wards, on the grounds that this requires permission from the public prosecutor's office.

For example, the council reports refer to some remarks in this regard, as follows:

** During the council members' visit to the Minya maximum security prison on 4 December 2019, the council faced several obstacles, including:*

- Denial of visits to the prison wards, as the Assistant Minister of Interior confirmed that it was not allowed to enter wards without the prior approval of the Public Prosecutor.

- Absence of complaints from inmates, as well as presence of a large number of the Ministry of Interior and the Prisons Authority officials, which hindered members of the delegation from visiting all prison parts at the time of the visit. The council called for the need to coordinate with the concerned authorities before the visit to obtain a permit to enter the wards to meet the largest number of prisoners, define their problems, and monitor the condition of the wards.

* Regarding the visit to Gamasa High Security Prison on 13 November 2019, the council noted that:

- Failure of the prison administration and the council delegation to inspect the prison wards and cells of inmates to determine the extent of the prison's capacity, claiming that the Public Prosecution alone had the mandate, although the head of the council delegation made it clear that the Public Prosecution's approval to visit the prison included the wards and prison cells to achieve the purpose of the visit.

- The existence of preparations to receive the council visits via presence of the media and a new painting of walls.

- Absence of prisoners at the place prepared for the visit, where the hall was vacant except for only one or two people.

- A frequent presence of some inmates in various prison facilities, from workshops to school to literacy classes.

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The same remark regarding the administration's denial of the delegation's visit of wards during visiting Port Said Public Prison on 30 October 2019, and El-Marg Prison on 23 October 2019, and the Qanater Female Prison on 16 October 2019 by not allowing the delegation to access wards of female prisoners on the grounds that this required prior permission from the Public Prosecution Office, despite the fact that the approval of the Public Prosecution to the delegation's visit to the prison entails permission to access all the prison facilities, communicate with prisoners and enter the prison wards without discrimination

The National Council for Human Rights also stressed that there are centers of detention that are not subject to any supervision from judicial authorities, such as mental hospitals, recommending the need to allow civil society organizations to visit prisons and centers of detention, and responding to requests to visit prisons by the International Red Cross .

It is clear that the visit of some members of the National Council for Human Rights, as well as representatives of human rights organizations, was only intended to be just a media propaganda to highlight the prison administration's respect for the rights of prisoners, which is contrary to reality.

To sum up, we are in urgent need for several amendments to Law 396 of 1956 on organization of prisons, to be in line with the provisions of Mandela rules on treatment of prisoners, as well as abolition of prisons' affiliation to the Ministry of Interior, and the establishment of an independent body affiliated with the Ministry of Justice to manage the prisons sector, with a department for receiving complaints from lawyers or families of detainees and the provision of guarantees for investigation into these complaints under the supervision of a judicial administration, and finally conducting a change in the philosophy of prisons currently established from closed up prisons to mixed prisons, to be in line with the perspective of the prisoner's rehabilitation.³.

³ The views expressed in this article are entirely those of the author's and do not necessarily reflect the views of the Egyptian Institute for Studies