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The American University in Cairo

School of Global Affairs and Public Policy

**Implications of publication ban orders in Egypt on press journalists' work
and news dissemination**

A Thesis Submitted to the

Public Policy and Administration Department

in partial fulfillment of the requirements for the degree of

Master of Public Policy

By

Reem Mohamed Gehad Fathy

FALL17

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The American University in Cairo

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Implications of publication ban orders in Egypt on press journalists' work and news
dissemination

Reem Mohamed Gehad Fathy

Supervised by Dr. Ghada Barsoum

ABSTRACT

The issue of publication ban orders in Egypt, more commonly known as “gag orders”, has risen to public attention in recent years in Egypt. This attention has reflected in many reports emerging with rich data on the frequency and significance of publication ban orders. This thesis takes advantage of this recent availability of data to broach this topic on which there has been limited past academic research, particularly in Egypt. Such orders have barred the media from covering lawsuits that were mostly of a high public-opinion value, usually involving high and mid-ranking officials of government, security or judicial personnel. This qualitative thesis explores how these orders unfold in reality, and to what degree they affect journalist activity and news dissemination in Egypt. The findings of this study reveal a number of issues of direct practical impact on journalists' activity, including legal dilemmas, an information blackout following such an order, and an increased sense of a limited media sphere. With regards to news disseminations, trends discussing the role of rumors and digital media in spreading news about a banned topic have also been detected.

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1. Chapter 1: Introduction

Egypt has seen a significant number of publication bans issued for local and international media outlets approximately since 2013 barring them from reporting on certain lawsuits. In light of an ongoing state of societal and political change, media practitioners and NGO researchers have shown an interest in the issue through monitoring it and collecting data regarding it. Although such legal action has always existed in Egypt, there has been a recorded sharp increase in its usage in recent years. A Cairo-based legal NGO has documented 37 such orders from mid-2013 to mid-2016 (Mowafy, 2016). Most of these cases involved political or administrative corruption, terrorism or individuals who were judicial figures or police officers. This creates an intriguing debate on the issue. This interest and recent availability of data, offering a window of opportunity exploited by this thesis to investigate the implications of the recurrent issuing of such publication ban orders.

The current state of media and freedom of expression in Egypt also urges the need for addressing this issue, because recent indications have not been favored. This is especially in light of the fact that Egypt already has two laws in existence, one of them recently passed, banning the media from coverage of certain issues altogether. These are law 313 for the year 1956 that bans any kind of publication of any information about Egypt's armed forces, and law 94 for the year 2015, the "counter terrorism law", which prohibits journalists from publishing information that contradict the authorities' version of a terror attack. Moreover, the Egyptian presidency comments regularly on media performance, usually in criticism. Egypt's President Abd El-Fattah El-Sisi told TV anchor Amr Adeeb on 9 January 2017, that it is highly important to pay attention to the context of the exchange of information in Egypt, commenting, "this is not proper, this is not right" [researcher's translation from Arabic] (ON Ent, 2017). As head of state, speaking in public, this creates further interest in investigating the issue in light of the current media status.

This thesis attempts to figure out how these publication ban orders unfold in reality and to what degree they affect news production in current times in Egypt. As demonstrated in the literature review, there has been limited past scholarship on this issue, particularly in the region of the Arab world, let alone Egypt individually. The thesis draws on international research where the debate over freedom of the media and the right to impartial judicial processes has been discussed. It also explores regional research on limitations on the media, and the Egyptian media system.

The thesis adopts qualitative methods in order to answer its main question. Using a non-probability purposive sample, the researcher has conducted in-depth interviews with journalists and legal experts to collect data. The researcher has used qualitative framework analysis method to analyze the collected data and finally gain an insight into the problem in question.

Legal framework for publication bans in Egypt: A background

This section provides a thorough factual background on the topic of this thesis. Four main issues are discussed here: publication ban orders, documenting cases involving publication ban orders, the public prosecution office, and access to information and freedom of expression in Egypt.

1.1. Publication ban orders

When exploring the legal framework of publication ban orders, the researcher found several pertinent issues that have proven to affect the research question of this study. These include: overturning publication ban orders and breaching publication ban orders. Consequently, the said issues are discussed in detail in the findings section of this study. The basic meaning of a publication ban order is discussed here in this background section, while a

more elaborate and rounded discussion of its different aspects is presented in the operational framework section.

Meanwhile, it is important to first clearly establish what is exactly meant by a “publication ban order” at the start of this thesis. While these kinds of decisions are more commonly known in the media as “gag orders” (Aswat Masriya, 2017), this research will use a literal translation of the original Arabic legal term used in Egypt. This would be “publication bans”, originally “*hazr nashr*” in Arabic [a phonetic transliteration]. Therefore, in this context, a publication ban simply means an order, from a respective judicial authority, that prohibits the publication of information or statements in various media about certain cases under litigation; while only publishing official statements released on them (Hafez, 1997; Khalil, 2016). Such orders can be issued either by a judge in court during trial or the Prosecutor-General or a specially-appointed investigative judge during primary investigations (Mowafy, 2016). In both cases, the order expires and no longer applies once the investigations or trial is concluded (Hafez, 1997). It is also essential to point out that publication ban orders are not the same as closed trial sessions on court (Mowafy, 2016).

1.2. Entities responsible for publication ban orders: The Public Prosecution Office *Overview*

The Egyptian constitution, which was ratified in 2014, states that Egypt’s system of government is divided into three powers: the legislative, the executive and the judicial. The public prosecution office is an independent body within the judicial branch of government (Egypt Justice, 2017). Article 189 of the Egyptian constitution stipulates that the public prosecution is an “integral part of the judiciary” (Egypt SIS, 2017). The public prosecution defines itself on its official website as, “a division of the judicial authority; it represents society and the public interest, and implements the rule of law,” (PPO, 2017). The public prosecution office is not subject to direct executive control (Egypt Justice, 2017).

The public prosecution office is led by the Prosecutor-General. Commonly known as the “people’s lawyer”, the Prosecutor-General in Egypt acts as the public defender in court. The office of the public prosecution files criminal charges, and it has the right to initiate legal action even when the plaintiff has relinquished the right to do so (Abdel Wahab, 2012). Among the functions of the public prosecutor are investigating crimes, questioning the accused, issuing search warrants, and ordering the imprisonment of the accused on the account of a crime for a certain a period of time (Abdel Wahab, 2012).

Article 189 of the constitution also defines the role of the Prosecutor-General and states the means by which they are chosen and appointed (Egypt SIS, 2017). It says that the Prosecutor-General is chosen by the Supreme Council of the Judiciary from among those ranked as vice presidents of the Court of Cassation, or from those ranked as presidents of the courts of appeal, or from the assistants to the Prosecutor-General (Egypt Const. Art. 189). The Prosecutor-General is then appointed by a presidential decree. However, it is important to point out that the president has the power only to officially appoint, which is considered to be a ministerial act (Egypt Justice, 2017), and not to select. The Prosecutor-General serves a term of four years, or until reaching the age of retirement, whichever is earlier, and can only serve one time in this position (Egypt Const. Art. 189).

However, this has not always been the case with regards to the public prosecution office in Egypt. Previously, before the January 2011 uprising, the Egyptian president had the power not only to appoint the Prosecutor-General, but also to select the person for this position (Egypt Justice, 2017). In addition, back then, the Prosecutor-General served until they reached mandatory judicial retirement age, or chose to step down from the position; and the president did not have the authority to remove the Prosecutor-General from office (Egypt Justice, 2017). However, as previously demonstrated, this has changed in the 2012 constitution, and was carried on to the 2014 constitution (Egypt Justice, 2017).

1.3. Key cases involving publication ban orders

Even though Egypt has witnessed a sharp increase in issuing publication ban orders over the past three years, this is not a new practice. Closely monitoring and documenting such orders is the relatively recent phenomenon.

Some famous examples from the past exist where publication ban orders have been issued in Egypt's recent history. In 1993, the public prosecution office issued a publication ban order in a case involving Egyptian business woman Lucy Artin where she allegedly had relationships with several high-profile government officials in an attempt to use their power to win lawsuits against her former husband (Sorour, 2015). In 1998, the public prosecution office issued a publication ban in a case involving a nurse in Alexandria accused of allegedly killing patients in the hospital where she worked (Sorour, 2015). In 2008, a publication ban order was issued in a corruption cases involving Egyptian business tycoon Mohamed Farid Khamis, who was also a member of the now-defunct Shura Council [the upper house of Egypt's formerly bicameral parliament] as a representative for the also now-defunct National Democratic Party (Sorour, 2015). Another publication ban order was issued by the Prosecutor-General in 2008 in a case involving businessman Hesham Talaat Mostafa in allegedly murdering Lebanese singer Suzan Tamim (Sorour, 2015).

Moving on to more recent times, a report by the Association for Freedom of Thought and Expression (AFTE), a Cairo-based non-profit independent legal firm run by a group of lawyers and researchers, documents publication bans in Egypt from 30 June 2013 to 30 June 2016. According to the report, there has been 37 orders for publication bans during this period of time, 24 of them issued by the Prosecutor-General in the investigations phase, two by investigative judges, also during investigations, and 11 only issued by judges in court

during trial (Mowafy, 2016). This brings the total of publication ban orders issued during the investigations phase during this period of time to 26 orders (Mowafy, 2016).

In addition, the researcher in this thesis has documented cases beyond this period of time. In July 2016, the Prosecutor-General banned publication in a corruption case involving a judge in Alexandria (JAT, 2017). In November 2016, the Prosecutor-General ordered a publication ban in a case involving a lawyer and a judicial employee allegedly forging judicial verdicts (Qara' a, 2016). And in January 2017, Egypt's Prosecutor-General issued a publication ban in a corruption case involving high-ranking individuals at the State Council, one of which allegedly committed suicide while in custody (Ahram Online, 2017).

This brings the total number of orders from June 2013 up 'til the date of submitting this draft in October 2017 to 40 orders in total, 29 of them issued during the investigations phase, mostly by the Prosecutor-General.

With regards to this documentation, it is important to highlight that out of the 37 recorded by AFTE from 30 June 2013 to 30 June 2016 cases involved political or administrative corruption, or issues putting the political leadership in a sensitive or controversial position, ranked highest. Examples in this category include investigations with the ex-head of Egypt's Central Auditing Organization (CAO) over a report on alleged high-levels of government corruption, and also the case on public demonstrations against giving over the Egyptian government's decision to give over two Red Sea islands to Saudi Arabia (Mowafy, 2016).

Cases related to terrorism came next. These included the case related to the assassination of Prosecutor-General Hisham Barakat, and several others involving illegal violent armed groups. Followed by that were cases involving individuals who are judicial personnel or police officers in cases of corruption or violence (Mowafy, 2016).

1.4. Access to information and freedom of expression in Egypt

Access to information

Discussing the freedom of access to information in Egypt is important in the context of this proposal, because it reflects the general attitude surrounding the exchange of information between government entities and citizens or journalists. News reporters in Egypt face many obstacles in the process of gathering information which constitutes a central part of their work (El-Masry, 2011). Moreover, a culture exists where certain topics are known to be left unpursued, or are tackled with caution due to political and institutional pressures and influences (El-Masry, 2011).

Article 8 of Egypt's Press Law for the year 1996 states that a journalist has the right to obtain and publish the information, statistics and news that are allowed for publication from their sources, whether these sources were governmental or public. However, no law exists in Egypt to date guaranteeing all citizens the right to obtain information freely, and obliging all public institutions to make available public data they have. However, a draft law for the freedom of exchange of information is currently in parliament, and has been pending completion for a long time, sparking criticism from MP's and entities of interest such as syndicates (Abd El-Azeem, 2017).

The law is currently being drafted mainly because the current Egyptian constitution ratified in 2014, contains a new article guaranteeing free access to information. Article 68 stipulates that "information, data, statistics and official documents are the property of the people and the disclosure thereof from their various sources is a right guaranteed by the State for all citizens," (Egypt Const.). The article also states several guiding points for the law to be drafted, regulating the access to information. These include that the law shall put down the terms for the availability and confidentiality of information. It shall also regulate the storage of information and also shall state the rules for filing complaints against the refusal to provide

data (Egypt Const. Art. 68). In addition, the constitutional article also states that this law shall “impose penalties for withholding information or deliberately providing wrong information” (Egypt Const. Art. 68). This elaborate article in the Egyptian constitution provides a promising basis for the law in question. However, a draft of the law being prepared has not been released for a social dialogue yet.

Egypt’s previous 2012 constitution had also dealt with access to information in article 47. However, that article was less detailed than its version in the current constitution. It had also stated that the right to obtain and exchange data is a right for all citizens with the condition that it does not conflict with national security, a stipulation that is not present in the current constitution. However, as previously demonstrated in this proposal, other laws exist or have been recently passed in Egypt restricting obtaining or publishing information about certain topics. Thus, due to the presence of Article 47 in the 2012 constitution, Egypt had already previously attempted to produce a law regulating access to information. Former Justice Minister Ahmed Mekki, in the 2012-2013 cabinet during ex-President Mohamed Morsi’s rule, had overseen the procedures of drafting a law for the freedom of exchange of information in his ministry. He had announced that the law would be presented for a society dialogue in early 2013 (El-Sanhoury & Mohamed, 2013). This dialogue would include politicians, media persons, representatives from the defense ministry, the intelligence apparatus and civil society (El-Sanhoury & Mohamed, 2013). However, the Mekki resigned in April 2013, Morsi was ousted in July 2013, and this law was never passed.

With regards to access to information in Egypt, it is important to mention that the Egyptian authorities have started a wave of blocking online websites in May 2017. AFTE has documented that 432 websites were blocked in Egypt between 24 May and 13 September, 2017 (AFTE, 2017). These include news websites, blogs, political groups’ websites, rights’ groups’ websites, and Islamist websites, mainly those associated with the banned Muslim

Brotherhood (AFTE, 2017). On 25 May, news websites in Egypt received a report from an “unnamed high-profile authority” defending this issue (Al-Masry Al-Youm, 2017). The report was published in media outlets and social media platforms. The report claimed that Egypt had blocked websites that contained content supporting terrorism and extremism. Most of it, however, presented at length examples of other countries that have taken the same measure, including China, Syria, Iran, and Uzbekistan (Al-Masry Al-Youm, 2017).

Freedom of expression

Ratings for the freedom of the press by Freedom House in 2016 categorized Egypt in a “not free” category (Freedom House, 2017), ranking 77th out of 100 where 100 is the worst. The Freedom House report documents various limitations on media work in the year 2016, including criminal prosecution, arbitrary detention of journalists, publication bans, and assaults by security agents and civilians (Freedom House, 2017). According to the Committee to Protect Journalists (CPJ), Egypt is the third worst jailer of journalists with currently about twenty-five journalists in prison (CPJ, 2016). The country also ranks 159 out of 180 on the World Press Freedom (RSF) Index 2016, with its media situation described as “extremely worrying” (RSF, 2017). Locally, AFTE has documented 438 violations against journalists over the year 2016, producing statistics that show that 193 of these were “obstruction from work”, 62 were “arbitrary detentions”, 61 were “judicial procedures”, and 42 were “physical assaults” (Abdelsalam et al, 2017, pp 23).

It is also important to note that President Abd El-Fattah El-Sisi comments on the media regularly in his public speeches, criticizing the work of journalists. Most recently, El-Sisi addressed media outlets in April 2017 in the wake of two terrorist attacks on Coptic churches on Palm Sunday leaving dozens killed (BBC, 2017). He expressed his

dissatisfaction at the news coverage of the events, telling journalists that it was enough to announce the news one time only when it first happened (El-Sisi, 2017). On the same occasion, El-Sisi announced forming the Supreme Council to Combat Terrorism and Extremism, which, El-Sisi said, would “implement recommendations to curb the situation on all the aspects we discussed... [including] the media” (El-Sisi, 2017, minutes 05:56-06:30). However, the role this council will play in the media is still unclear.

Meanwhile, it is also important to mention that Egypt passed a counter terrorism law in January 2016 which prohibits journalists from publishing information that contradict the authorities’ version of a “terror” attack (Mourad, 2016). Violators are punished by a fine, a punishment that was amended following local and international criticism after having originally been imprisonment in the draft law (Mourad, 2016). This is not directly related to the focus of this research. However, it is interesting to keep in the background to demonstrate the legal restrictions put in place regarding the media in current times.

1.5. Research Questions

The two primary questions that this thesis has attempted to answer are as follows:

- What are the implications of publication ban orders on journalists’ work in the Egyptian press, if at all?
- How do journalists believe publication ban orders affect news dissemination to the Egyptian public?

Sub questions include:

- What is the process of implementing publication ban orders on the Egyptian press?

2. Chapter II: Conceptual framework

2.1. Framework for publication ban orders

As previously stated in the introduction of this study, a publication ban order is an order, from a respective judicial authority, that prohibits the publication of information or statements in various media about certain cases under litigation; while only publishing official statements released on them (Hafez, 1997; Khalil, 2016).

The meaning of publication in the legal context is put forth in Article 171 of Section 14 “Crimes related to the press” of Volume 2 in Egypt’s criminal code. All references to “publication” in section 14 are defined by this article. In brief, article 171 states that publication can occur through an oral public statement, either by yelling or with the use of a mechanical tool, or it can occur through the distribution of text, drawings, photographs or any other representation in public. In the context of this thesis, publication is mainly concerned with journalists and publication in their media outlets, be they print, broadcast or digital.

Who can issue a publication ban order in Egypt? And when?

Publication bans can be categorized in two manners. Firstly, according to the judicial authority that issues them, or secondly, according to the stage of the judicial process in which they are issued. This is outlined briefly in the table below, and explained in detail after.

| <i>Issuing authority</i> | <i>Stage in the judicial process</i> | <i>What does the ban by this authority cover?</i> |
|--|--------------------------------------|---|
| 1. Prosecutor-General <i>or</i> 2. Investigative judge | Primary investigations | Contents of the investigations |
| 3. Judge in court | Trial in court | Contents related to the trial |

Three authorities have the power to issue publication ban orders of this type in Egypt.

(1) Firstly, and most commonly in recent years in Egypt, there is a publication ban that is issued by the Prosecutor-General while a case is still undergoing primary investigations at his offices. This ban is concerned with all contents of the ongoing investigations. Once the Prosecutor-General finishes investigations, the ban becomes no longer applicable (Hafez, 1997; Mowafy, 2016). It does not carry on to the next stage of the judicial process. The end of primary investigations is marked by either concluding the process at the prosecutor's office, or by transferring the case for trial in court (Hafez, 1997; Mowafy, 2016). Once the ban no longer applies after the conclusion of the investigations, reporters are free to publish truthful accurate information they obtain about the investigation (Hafez, 1997).

(2) Secondly, an investigative judge [in Arabic: “*Qadi Ta'hqeeq*”], who is a judge especially commissioned to carry out investigations for certain cases only, can also issue publication ban orders. When assuming their role, the investigative judge holds the same powers as the Prosecutor-General for this specific case¹ (Egypt Justice, 2017). Similarly, the ban becomes no longer applicable once the investigative judge concludes the investigations and refers the case to court. Again, at this stage, reporters are then free to publish truthful accurate information they obtain about the investigation.

(3) Finally, publication bans can be issued by a judge in court while a trial is taking place. This happens after investigations have been concluded in the prosecutor's or investigative judge's office, and resulted in the case being referred to court. A judge can issue a publication ban order for the whole duration of trial, including all of its contents, or they can issue a publication ban order for one session only, or for certain contents of the trial [Mowafy, 2016]. In all of these cases, the publication ban order expires when the trial ends,

¹ The role, authority and appointment of the investigative judge in Egypt is discussed in further detail in the section on the office of public prosecution later in the findings and analysis.

which is marked by announcing the verdict. Reporters can publish truthful information after the ban no longer applies.

Regarding the first kind of publication ban orders, namely the one issued by the Prosecutor-General or investigative judge during primary investigations, it is important to point out that primary investigations in Egypt are already a secret by law. It is illegal to bring any information about primary investigation to the public light. This law is in place to protect the fairness and impartiality of the investigations while they are taking place. Hence the question arises: then why do the authorities issue publication ban orders at all during this stage?

The answer is simply because journalists are not bound by this already-existing legal prohibition. Article 75 of Egypt's criminal proceedings law states that the investigation's proceedings and the results of these proceedings are a secret; and investigative judges, members of the public prosecution, their assistants including clerks and experts, and others who are involved in the investigations, or attend them due to their job or profession may not disclose their details (Justice ministry portal, 2017). This means that these are the *only* persons held up responsible by this law (Hafez, 1997). It is also important to point out that the persons on this list are not referred to in absolute terms (i.e. not *all* members of the public prosecution), but only are involved or attend the investigation in question due to their duty (Hafez, 1997). Equally noteworthy is that these persons are only bound by this secrecy while the investigations are ongoing, and not after they are concluded (Hafez, 1997).

Journalists, therefore, can – in normal circumstances – publish information about the investigations, while they are ongoing, if they happen to obtain them by some means or the other. If the person who provided this information to them happens to be one of the people bound by article 75 of the criminal proceedings law, then it is that person who could potentially be legally investigated, not the journalist.

Journalists are bound by other laws related to investigations and trials. An example would be article 188 of the criminal code which punishes anyone who publishes, with ill-intentions, false news, statements, or rumors, or counterfeit documents, to disturb public peace, provoke fear among people, or harm the public interest. Also, article 187 of the criminal code punishes anyone who publishes content that affects judges presiding over a certain lawsuit, or members of the general-prosecution investigating a certain case, or witnesses summoned during a trial or an investigation, or content that prevents someone from providing information to the authorities, or that may affect public opinion for or against one party over the other in a lawsuit or an investigation (Articles 187 & 188, Section 14 *Crimes related to the press*, Volume 2, Criminal Code). These are separate laws dealing with issues that are different, even if they are related.

Therefore, the Prosecutor-General issues a publication ban order to extend the secrecy of the investigations to the media sphere, criminalizing news reporters who publish any details related to the investigation, if they happen to obtain them.

Another important point to highlight is that the interest of this study lies where banning publication is made by an order from a respective authority as an uncustomary procedure, not where the prohibition of publication is the norm.

The *concept* of banning the publication of certain information already exists in several laws in the Egyptian legislation. However, these instances are not related to the focus of this research. There are cases where the law stipulates that publication is banned by default, and without the need for a prosecutor or a judge to issue a special order for it. *Some* examples for this include the following:

Article 193 of the criminal code states that it is a punishable offence to publish any information about investigations or trial sessions related to divorce, separation or adultery. Article 116 bis B of the child law states that it is a criminal offence to publish in the media

any information about a child/minor in the case that he/she are standing before the authorities for being in danger or involved in illegal activity. Article 85 of the criminal code states that news and information about procedures taken to expose crimes related to harming government security from abroad, or investigating or trying perpetrators, are a secret. Such crimes are listed in the criminal code under Volume 2, Section 1, and mainly involve espionage cases. Article 85 states, however, that it is permissible for a court to make public what it sees fit in such circumstances. Additionally, there is also Law 313 issued in 1956, amended in 1967, that completely bans any kind of publication of any information about Egypt's Armed Forces without obtaining a written approval in advance (Jurispedia, 2017; Khalil, 2016).

Therefore, the examples mentioned above, and any others similar to them, are not within the scope of interest of this research. As previously stated, this thesis is concerned with such orders when are issued as an exception.

It is also imperative to point out in this section that a publication ban issued by a judge in court is *not* the same as a closed trial session. A judge could order that a certain session be conducted in secret. In such a closed session, only a limited number of individuals can be present. The events of a closed session are private, and it is prohibited to bring them to the public sphere by anyone, in accordance with article 189 of the criminal code.

In conclusion, this thesis is mainly concerned with publication ban orders issued by the public prosecution office as an “exceptional” measure. This is because these publication ban orders are far higher in number than publication ban orders issued by courts in the past three years, as demonstrated in the section below. Additionally, publication ban orders issued by the prosecutor during investigations always bar everything about the investigation, while similar orders from courts do not always necessarily deal with all contents of a lawsuit, but sometimes just a session or specific data only.

2.2. Definitions: Journalism, journalist and news production

At the start of the conceptual framework, several relevant key terms should be clearly defined.

There is a recurrent desire in the academic literature to define journalism normatively, as a profession that has a public mission, and one that plays an integral role in effectuating democracy. Major examples of this liberal school, as Curran (1991) describes it, can be seen in the works of Gripsrud (2000), and Kovach and Rosenstiel (2001), and indeed in a plethora of popular writing about the profession. However, Schudson (2003) criticizes this. This thesis adopts Schudson's (2003) definition of journalism. He says that journalism is the, "business or practice of producing news and disseminating information about contemporary affairs of general public interest or importance" (ibid, pp 11). Such news, Schudson says, are presented as truthful, and are distributed to an audience with the objective of including this audience in a discourse deemed to be publicly important (ibid). Schudson argues against this notion, saying that elaborate media systems exist and operate even where democracy does not, and that journalism serves other functions in such cases (ibid). Schudson does not doubt the important role that the press plays in a democracy, but argues against using democracy to *define* this profession. Journalism is not democracy, and it also does not create democracy (ibid). This thesis adopts this approach, because – as previously demonstrated – while an elaborate press system exists in Egypt, the country is experiencing a regression in issues traditionally integral to the function of democracy such as freedom of expression and press liberties. In addition, Schudson's (ibid) definition provides a more realistic and bias-free approach that allows one to study the actions of journalists impartially.

A journalist, in simple and concise terms, and similar to Schudson's (ibid) approach, is defined as someone who gathers, assesses, creates, and presents news and information (American Press Institute, 2017).

The news production cycle is the series of actions taken by journalists and editors in the process of the creation of news. Domingo (2008) defined it as a five-stage process comprised of: access and observation, selection and filtering, processing and editing, distribution and, lastly, interpretation.

2.3. Theoretical framework

As a theoretical viewpoint for studying and considering the major issues of this research study, two main theories that have been significant in the field of mass communication have been sought. The two theories are highly connected to the focus and question of this research. These theories also offer theoretical guidance in order to understand and assess the issues at hand, providing an analytical ground for studying the topic of this thesis.

Hierarchy of influences theory

Shoemaker and Reese (1996) introduced the theoretical framework of the hierarchy of influences to mass communication literature. This framework proposes that there are five levels of influence on the news production process in mass media, thus treating news content as a dependent variable. From micro to macro, these five levels are: journalists' individual influences, influence of media routines, organizational influences, influence from outside of media organizations, and finally ideological influences (ibid). Influencers from outside media organizations include news sources, the marketplace, technology, and most relevant for this thesis: the government, including its laws and policies. This framework attempts to observe the larger structures within which journalists produce content, rather than study issues at an individual level (Reese, 2001). While this theoretical framework may not offer a comprehensive explanation for new content, it provides a basic structure to tackle the crucial concepts and connections in this area for future research questions (Reese, 2001). This

framework emphasizes the significance of their influencers on news content, and therefore this thesis takes it into consideration when attempting to answer the research question. This is especially with regards to Shoemaker and Reese's (1996) references government controls, which this thesis directly addresses.

Gatekeeping theory

A gatekeeper in the context of journalism is a person who makes the decision of what news items to publish, and what to leave out. For long, gatekeepers in academic literature were people who worked in the media, mainly journalists and editors. Kurt Lewin is often credited with inspiring mass communication scholars with the gatekeeping theory. Lewin devised a model for the channels through which food is transported until it reaches one's dining table (Lewin, 1943), describing the people and jobs that play a role in making the decisions [gates] for moving the food through the channels (ibid). In later work, Lewin (1947) wrote that this model could be used to study the transportation of other products, such as news items. White (1950) applied Lewin's model practically for the first time in the field of mass communication. He carried out a case study where he asked an editor at a daily newspaper to keep all the wire copies² that he rejected to publish in the paper for one week, and make a note of the reasons. In this case study, White (1950) concluded that the choices made by this editor, for whom he gave the name Mr. Gates, were highly subjective, based on the editor's own professional experience and attitudes. However, this was a seminal case study that opened the door for further elaborate research in this area. This included applications of the model to understand more thoroughly the influences affecting the decisions in the gatekeeping process on several editors at once, reporters, women editors, or

² A wire copy is a version of a news item sent by a wire service to newspapers or broadcast channels to be used and/or adapted for publication.

other media such as television, radio, photography or online news outlets (Bro & Wallberg, 2014; Roberts, 2005).

More importantly, however, theoretical developments over the years have expanded the gatekeeping theory to include additional aspects. For example, Bro and Wallberg (2014), discuss the function of gatekeeping in light of new technology, and propose that gatekeeping exists in three models in the digital age. One of these models, they say, is based on a process of elimination and takes place when people outside of newsrooms make the decisions (ibid). Bro and Wallberg (ibid.) mainly discuss the effect of regular citizens who now easily have the means to produce, publish and distribute news on their own (ibid). In a research more relevant to this thesis, however, Barzilai-Nahon (2008) introduces a theory of network gatekeeping. In her theory, the researcher suggests that gatekeeping is a highly dynamic and contextual issue, where gatekeepers are stakeholders who can actually change their gatekeeping roles according to the context they find themselves in and/or the other stakeholders with whom they interact (ibid). The author proposes identifying the gated salience to gatekeepers by four main elements, including the political power in relation to the gatekeeper, and the information production ability of the gated (ibid). Barzilai-Nahon (2008) refers to the government as one dimension of authoritative gatekeepers, saying that both democratic and authoritative regimes install gatekeeping mechanisms to help them maintain legitimacy (ibid). She elaborates by explaining that non-democratic regimes exercise gatekeeping through infrastructure, cost-effect, or censorship mechanisms (ibid).

One can easily draw a connection between the topic of this thesis and the theory of gatekeeping, especially most recent works such as that of Bro and Wallberg (2014) and Barzilai-Nahon (2008). Judicial authorities could be regarded as gatekeepers in the context of this thesis, and publication ban orders a gatekeeping mechanism. The public is the “gated”, as

described by Barzilai-Nahon, but it would be intriguing to see if they would play a role that would affect the gatekeeping process as suggested by Bro and Wallberg.

3. Chapter III: Literature Review

This literature review draws on several areas of research that are relevant to the topic of this proposal. The review first tackles the themes of freedom of speech and public opinion in classical mass communication scholarship. It then attempts to relate these major issues to the topic of this proposal. The traditional rationale behind issuing publication ban orders is to guarantee a fair and impartial trial. On the other hand, press justifies the interest in coverage by advocating accountability and people's right to know. Thus, the review tackles next the debate of a fair trial versus free press. Finally, the literature review attempts to contextualize these themes in an Egyptian framework by drawing on research that characterizes Egypt's media system.

3.1. Freedom of speech & public opinion

When tackling the topic of this proposal, one cannot overlook its connection to politics, government and society. Media often act as a medium of communication for officials and politicians, and they also act as a major source of information for the public (McQuail, 2011). Thus, banning the media to report on a certain issue essentially stops, not only public knowledge, but also freedom of public speech and debate about it.

Meiklejohn (1948) addresses this issue in his philosophy on the First Amendment of the United States Constitution which deals with freedom of expression. He promotes for a concept of democracy that is based on self-governance by the people (ibid). Here, citizens, rightfully and by free consent rather than submissive obedience, talk and reason about their government; and while they are subject to the law, they have all equally taken part in the making of that law (ibid). This philosophy promotes for the completely unabridged freedom of speech that contributes to the good of self-government; and not as an unalienable right for

individuals to speak however, whenever and wherever they choose (ibid). Meiklejohn (1948) devises a town meeting example to clarify this. In a town meeting, citizens assemble, “not primarily to talk, but primarily by means of talking to get business done” (Meiklejohn, 1948, pp 23). They are basically there to discuss matters of public policy for the good of their self-governing society, and this justifies the unabridged freedom of speech in this context. With regards to issues of national security, war or danger, which are reasons that are often cited for censorship or other repressive measures, the author argues that it is indeed in these situations that defending freedom of speech should be at its highest (ibid). Yet he distinguishes between the importance to grant freedom of speech in these situations in order to empower the self-governing society, and between illegal forms of speech such as libel, incitement to commit crimes, slander, sedition, and treason (ibid). However, and most importantly, in order to achieve this, Meiklejohn (1948) states that the freedom of mind which members of a self-governing society should have is not a fixed or a given part of the human nature. He argues that in order for this dynamic to function, there has to be an “unhindered flow of information”, among other things such as education and providing adequate healthcare and security (Meiklejohn, 1948, pp 16). Meiklejohn (1948) stresses, as a major point, the importance of putting no constraints at all on the free flow of information and ideas as an essential condition for this system to function. Thus, adopting Meiklejohn’s approach, one would object to a repetitive and unnecessary use of publication ban orders, especially in lawsuits of high public concern.

Another approach addressing the meaning and limits of freedom of speech, also based on the First Amendment of the United States constitution, is the preferred position balancing theory (Siegel, 2014). Like Meiklejohn (1948), this theory, even though it deals primarily with the United States constitution, it serves as a useful and insightful concept for interpreting freedom of speech in real society. This alternative theory has been favored and employed by

the modern Supreme Court in the United States (Siegel, 2014). Here, courts employ high levels of scrutiny when asked to determine the constitutionality of laws and/or regulations that seem to affect the right to freedom of speech (Siegel, 2014). Using this scrutiny, courts demand that the state has to provide a “compelling interest” for infringing on the right to communicate (Siegel, 2014, pp 49). This theory tilts the balance toward the right to freedom of speech, restricting the state’s power to act otherwise, unless a strong and reasonable justification is provided.

The preferred position balancing theory provides a more realistic perspective than Meiklejohn (1948) towards granting freedom of speech. While Lippmann’s work, and indeed Meiklejohn’s could be considered dated, written many years ago before vast social and technological changes took place, they are undoubtedly classics in their field. They continue to provide major points of reference and themes that are timeless and highly insightful. While Meiklejohn (1948) provides a rather favorable argument for guaranteeing freedom of expression and exchange of information, it can be argued that it is idealistic. A consideration of this critique brings to mind Lippmann’s (1922) extensive scholarship on public opinion. Here, the author argues that public opinion is a highly complex matter that involves political, societal, and psychological factors. Lippmann (1922) famously argues that the pictures people have in their minds of the outside world, in other words their public opinion, can often be misleading. The author attributes this to several factors that restrict access to information such as censorship, limits of social contacts, insufficient time in a day to pay attention to public affairs, distortion due to compressing events into short messages (news), describing a complicated world using small vocabulary (news), and one’s fear of facing facts which would seem to threaten the status-quo of his/her life (Lippmann, 1922). Reading Lippmann (1922) is useful to understand that providing the public with information openly through the media does not necessarily result in a society whose members are equally and properly informed

and capable of making wise decisions. Other factors come to play in this dynamic, rendering it multifold and complex. Critics of Lippmann (1922) often voice that his work adopts an elitist view and questions the mass public's competence to participate in democracy (Schudson, 2008). The public in Lippmann's works seem to be predominantly passive receivers, a product of political and media elites' manipulation, rather than actors (Blumenthal, 2007). Thus, while it is important to take into consideration Lippmann's views on public opinion in order to form a comprehensive understanding of the public's views, it should not be taken as a pretense to justify infringement on communication. An approach based on the preferred position balancing theory or, ideally, Meiklejohn (1948) should be adopted in such matters, even if other conditions – such as education, healthcare and security – discussed by Meiklejohn (ibid) are still not adequately in place. Unhindered flow of information is an integral part of this approach, but not a conditioned issue that cannot happen unless the other factors are in place.

3.2. Fair trial versus free press

There is a lack of extensive research – particularly in the mass communication discipline – focused specifically on the issue of publication ban orders discussed in this proposal, particularly in the Arab and Middle East regions. However, limited literature, mainly from the law discipline, on the subject exists in a North American context. Nonetheless, it is still beneficial and intriguing to explore the theoretical aspects proposed in these scholarly works.

Since the original legal intent of such publication bans is to guarantee a fair and independent trial, Garry and Riordan (1977), discuss the possibility of a “free press and fair trial” coexisting. They say that while the fairness of trial is a most valued legal right, freedom of the press also plays a role in guarding against “the miscarriage of justice” by holding

police, prosecutors and judges accountable before the public (Garry & Riordan, 1977). They suggest several legal solutions that could allow the media to gather information about the case while not violating the judge's and jury's need for impartiality. They point out that, "Criminal cases are not controversial because they are publicized; they are publicized because they are controversial," (Garry & Riordan, 1977, p.6). They argue that in such controversial cases the people involved and the case details are naturally connected to social, political or religious values of the society in which the case arises (Garry & Riordan, 1977). A comparative law review by Resta (2008), tackles the same ideas providing technical legal alternatives to a total publication ban during investigations and trial. However, it makes an important note about how controversial trials are tackled in the media. It states that while media scrutiny is considered important for democracy, sometimes trials turn into a "spectacle" in the press with an entertainment value for the audience who are curious about crime news especially when involving prominent persons (Resta, 2008). This in turn, according to Resta, gives the media a strong commercial – rather than professional – incentive to cover the case (Resta, 2008).

Meanwhile, more recently and regionally closer to Egypt, Landau (2016) explores the legal framework, causes and scope of similar publication bans in Israel. Through archives, interviews and numerical data, Landau (2016) points out to two causes for the rise of publication bans in Israel. These are what she describes as the decline in the role of traditional censorship and the digital revolution. Landau establishes that various authorities in Israel now use gag orders as a "bypass route" to block information in light of the two aforementioned factors (ibid). The paper also provides interesting perspectives on the reality of how a publication ban is issued and what it means. Police have to apply to a judge for a publication ban order request during investigations. An interviewee tells Landau that judges frequently agree without much consideration to issuing publication bans due to a "high

security ethos” in the culture there (ibid). It also points out to the attitude of government officials who tend not to want to share information with the public; and police officials who desire to control the narrative of a certain case and also publication timing (ibid). These two points in particular could easily be witnessed in Egypt where the media sphere is significantly affected by control or influence of security apparatuses (Elmasry, 2011). Thus, this paper potentially provides a similar case for study and comparison when looking at Egypt with regards to this kind of publication bans. It also leaves a gap for further research because Landau (2016) lacked a clear and solid connection between publication bans and an issue it could affect such as newsgathering for journalists. The research question in this paper aims to address that.

3.3. Literature on the Egyptian Media System

In order to relate the aforementioned themes to the topic of this proposal, one has to situate and/or connect these issues to the Egyptian context. This literature review, therefore, draws on research on the Egyptian media system in an attempt to define its main characteristics and accordingly understand how the aforementioned themes come to play in this context.

Major media systems’ theories have often been criticized for their lack of universality due to a strong bias for the western world, or their disregard of certain aspects, rendering them inapplicable in other contexts such as in the Arab region. Siebert et al’s (1956) normative *Four Theories of the Press* categorize global media into four systems: libertarian, authoritarian, social responsibility and Soviet. Critics argue that these systems are too simplistic and historically-specific (Nerone, 1995), and that they did not consider economic realities such as media ownership (Merrill & Lowenstein, 1979). By the same token, Hamdy (2006) argues that it is not possible to categorize Egypt using Siebert et al’s *Four Theories of*

the Press as a sole reference, but instead as a consideration alongside other research, saying that Egypt's system is authoritarian in some way or another. Meanwhile, another highly-influential work in this regard is Hallin and Mancini's (2004) model for *Comparing Media Systems*. Here, the researchers devise a model for classifying media systems based on four factors: development of commercial mass circulation press, professionalism, political parallelism, and state intervention (Hallin and Mancini, 2004). However, Hallin and Mancini (2004) base their model on eighteen countries that are all in Europe and North America, making the model difficult to apply in a Middle-Eastern, let alone Egyptian, context. Despite that, El-Masry (2011) uses Hallin and Mancini's (2004) work as a basis to form his own matrix for characterizing the Egyptian media system. He includes three of Hallin and Mancini's (2004) classification factors, takes ownership from Merrill & Lowenstein (1979), and adds his own aspect of dominant culturological orientation (El-Masry, 2011). According to this matrix, Egypt's media system is characterized by low professionalism, low corporatization, mixed ownership, medium state intervention and a pseudo-Islamic culturological orientation (El-Masry, 2011). This provides a very systemized and useful guide for Egypt's media, which can act as a reference point situated in a certain point in time.

However, a realistic depiction and significantly relevant research on the Arab World's media systems, including Egypt, is produced by Rugh (2004). The researcher places Egypt, along with three other Arab countries, in what he describes as a "transitional" system (Rugh, 2004). A system like that, according to Rugh (2004), is transitional because it has undergone steady changes for over a decade; and also, because the system is still unsettled and under debate (ibid). In addition, this complex system includes evident elements of government control, but also elements that allow relative freedom of expression and diversity (ibid). For example, and this is very evident in Egypt, although the constitution addresses free speech and media, there are actually many laws and regulations that give the state power to take

action against journalists (ibid). It is also important to indicate that changes in legislation and official policy regarding the media depend a lot on the changing local circumstances (ibid). But they are also symptomatic that there is no fixed consensus on the role of media in society (ibid). Hence, these systems are in flux, and are described as transitional.

This transitional quality can easily be witnessed in research on Egypt's media landscape over the past decade, heightened by the societal and political upheaval that took place. It has been argued that Egypt's media had been suffering a case of schizophrenia (Iskander, 2006). This is because of a wide gap between loud critical voices present in less-influential alternative media outlets, and the wide-reaching state-biased national media, in addition the absence of true democratic practice (ibid). Similarly, others argued that this paradox has created a situation where media acted as safety valves for the public's frustration, substituting, instead of promoting, real democratic participation (Seib, 2007). However, a few years after, researchers account for the emerging pluralist and commercialized character in the Egyptian media (Khamis, 2011). Here, the author argues that this gradual shift could possibly safeguard freedom of expression and media freedom (ibid). However, in current times post the 30 June 2013 events, the media landscape has significantly changed in Egypt with predominantly uniform and less critical voices heard (Mada Masr, 2016).

There has been a lot of research on various issues regarding media in Egypt after the January 2011 uprising. Egyptian media outlets – broadcast, print and digital – have been swept by many developments after 2011 and researchers have studied these changes closely. However, for the most part, such research either describes and accounts for new phenomena, or analyzes recent changes. Apparently still affected by the potential for change the 2011 uprising has created, scholarship in this area lacks a critical study of the reality that the media scene lives today. While journalists could have witnessed potential chances for reforming

their institutions and practice in the aftermath of 2011 (Sakr, 2013), this view becomes questionable now.

Therefore, in conclusion, this paper aims to fill this gap by looking at one potential obstacle related to Egypt's media in current times, namely publication bans issued by the judicial authorities, taking into account the transitional nature of the local media system (Rugh, 2004). In addition, past scholarship on the theoretical debates regarding balancing the role of justice and media, in addition to theories on the right to freedom of expression, be they the Meikeljohnian theory or the preferred position balancing theory, mainly draw on classic American perspectives. Despite being highly insightful, this thesis aims to provide an Egyptian case to this scholarship, with its own context and challenges, through exploring the specific issue presented. This is also particularly so because this particular issue has not been discussed independently in great detail before in a mass communication, and not a legal, context.

4. Chapter IV: Methodology

4.1. Genre and overall strategy

The researcher has adopted a qualitative research design in order to address the questions in this study. A qualitative approach is very useful in the case of this research for several reasons. Firstly, a qualitative methodology is valuable when the research aims to delve deeply into complex processes, and also when the relevant variables in the research are yet to be identified (Marshall & Rossman, 2006). In addition, a qualitative approach is also useful when the research aims to address informal and unstructured linkages and processes (Marshall & Rossman, 2006). This is highly relatable and applicable in this study for two main reasons. Firstly, the issue involves different actors and stakeholders [journalists, judicial bodies, and the public]. Thus, it occurs and unfolds in a complex setting with linkages that cannot be identified in a straightforward manner ahead of carrying out the research. Secondly, there is very little next to no research on this specific topic, especially in the Arab World and Egypt. In cases such as these, a qualitative approach offers the researcher a wide scope to explore and describe a certain issue. In addition, qualitative research has proven to be more helpful for policy-makers and practitioners in this field of study, because it could be difficult for them to derive meaning and useful findings from experimental quantitative research (Marshall & Rossman, 2006). Therefore, a qualitative approach was considered best to address the questions in this paper.

4.2. Population and Sampling

The researcher has used a purposive nonprobability sampling technique for this qualitative study. In a purposive sample, the researcher employs several methods to locate all possible cases of a highly specific population (Neuman, 2000), with the goal of locating as many cases as possible that fit the criteria of the research. This is particularly helpful when conducting in-depth investigations, which is the case in this research. The researcher has identified suitable participants through studying relevant data for the research such as media

reports and official statements. She then proceeded to contact them through publicly-available contact data such as office telephone numbers or emails. In addition, the researcher has also used a snowballing technique, asking some participants to recommend others.

The researcher has interviewed journalists, lawyers and high-ranking judges. Interviewing these three groups, who are all part of the topic but represent different aspects and interests, allows for triangulation. This will in turn help the researcher view the issues from more than one angle, improving accuracy and richness of data (Neuman, 2000).

In total, the researcher has conducted 17 interviews for the purposes of this study. Eleven of the interviews were conducted with Egyptian journalists working in Egyptian news outlets. Out of these, seven were journalists specialized in reporting on judiciary issues, while one was a judicial news stringer, one was a political news reporter, and two were journalists who are current or were former members of the Journalists' Syndicate board of directors. The workplaces of this group of 11 Egyptian journalists varied between local privately-owned newspapers, state-owned newspapers, partisan newspapers, and the state news agency. Meanwhile, the researcher also interviewed three journalists working in the bureaus of international media outlets in Cairo. These included international news agencies and newspapers. Finally, the researcher interviewed two Egyptian lawyers, and a judge in the State Council. The researcher has sought interviewing officials from the public prosecution office, but was still unsuccessful to the date of producing this draft in October 2017.

4.3. Data collection methods

As a primary data-collection method, the researcher conducted in-depth interviews. Also referred to as intensive interviews or one-on-one interviews, this mode of data collection is known for several advantages. One main benefit is that they provide room for easy questioning, thus allowing the researcher to access answers in more depth and detail (Dominick & Wimmer, 2014). In addition, the presence of the interviewer in the process

helps minimize the risk of participants' misunderstanding the questions, and it also helps the researcher observe the participants as well as ask them questions (Babbie, 2013). Observation can provide as much valuable data as asking direct questions.

The process of conducting in-depth interviews for this study was inspired from techniques used in qualitative field-research interviews. For example, the researcher usually began by building rapport with the participants through striking friendly conversation, and maintaining good self-presentation (Neuman, 2000). In addition, due to the sensitivity of the topic and in an effort to elicit as much details as possible, the interviewer was attentive to show interest in responses and encourage elaboration (Neuman, 2000). Needless to say, however, the interviewer has kept a neutral disposition towards the topics of discussion, presenting an attitude of understanding of the participants' various responses.

The researcher began with speaking to journalists, because they are the group that is most involved in the field of the study, and the one primarily affected by publication ban orders. Next, the researcher interviewed lawyers and judicial personnel. The researcher considered it more effective to approach this group after enough data has been collected from the field about the issue. This has equipped the researcher with the required knowledge and ability to thoroughly discuss and properly question the issue with persons of high legal expertise, and potential previous experience of speaking to the media or researchers.

The interviews were mainly conducted in a semi-structured manner, as opposed to structured interviews and unstructured interviews. Semi-structured interviews contain open-ended questions that do not limit the participant to a certain set of answers, yet they provide him/her with a guideline for discussing the topic (Srivastava & Thomson, 2009). The central goal of the semi-structured interview is to create a setting where the interviewer and interviewee are able to discuss the topic in detail (Creswell, 2003). The researcher had a set of open-ended questions and points to discuss with the interviewees each time. However, she

allowed space for the participants to elaborate on issues that were not anticipated before the interview, but have proven relevant for the research. In addition, the researcher prepared a different set of questions and/or points depending on: a) whether the interviewee was a journalist or a lawyer or a judge, and b) the stage of the research process. As the research progressed, more focused and detailed questions were directed.

The questions for the in-depth interviews mainly revolved around the following issues: the participants' understanding of a publication ban order, their experiences (if at all) with covering a story for which a ban has been issued, effects of publication ban order on the news cycle, adaptation strategies for dealing with ban orders, breaching a ban order, the kind of role that social media plays (if at all) in case of a ban order, describing the relationship between journalists and the judiciary, general difficulty/ease of obtaining data for news production, levels of professionalism versus sensationalism in news coverage.

The researcher prepared for conducting these in-depth interviews by carrying out two pilot interviews with journalists of the same criteria as the research sample. These interviews aimed to help the researcher refine the focus of the research, and develop relevant questions for data collection. These pilot interviews, especially the first one, were longer and mainly conducted in an unstructured manner. This is where the conversation does not necessarily have a pre-determined set of questions which gives the interviewer the chance to explore and discover issues about the topic of interest (Babbie, 2013). It is essentially a mutual production of the researcher and the interviewee (Babbie, 2013). Here, the researcher only had general aspects and themes in mind to open the conversation.

All interviews were conducted face-to-face, mainly in the interviewees' place of work, except for two interviews. One of these, conducted with a reporter from an international outlet, was carried out by exchange of text over the internet, and the other, with a reporter from an Egyptian newspaper, through a mobile telephone call. This was due to the

interviewees' personal circumstances at the time. In both cases, the interviewees were given a chance to read/hear the contents of the consent form, and confirm voluntary participation.

The second method of data collection was a content review of several relevant texts. The researcher has also obtained and reviewed 14 original publication ban orders issued between by the public prosecution office between 2015 and 2017. She has also obtained five original court verdicts from the State Council on appeals against publication ban orders, and one original text of lawyers' appeal case against a publication ban order. In addition, the researcher reviewed news items published about: a) publication ban orders, b) cases where a publication ban order has been breached, and c) news analysis on the topic of publication bans.

4.4. Data management

All interviews were audio-recorded by the researcher. The researcher then transferred the audio-files onto her personal password-protected computer. She then transcribed the interviews using an online transcription tool on “www.transcribe.wreally.com”. Transcriptions were then deleted off the researcher's account on this website (even though the account is private, but additional safety was sought), and transferred onto text files on her computer.

All interviews were conducted in Arabic [colloquial Egyptian Cairene dialect], except for two that were conducted in English. The researcher transcribed the interviews in their original language. During analysis, she read the Arabic transcriptions, but produced themes in English, and translated key quotations herself into English.

4.5. Data analysis strategy

For data analysis, the researcher used the qualitative framework analysis method. This approach involved a systematic process of “sifting, charting and sorting” data material into key issues and themes (Ritchie & Spencer, 1994). Framework analysis is very similar to the concept of “grounded theory” where the qualitative researcher develops theory during the data collection process (Neuman, 2000). This inductive method means that theory is built from the data itself; it is grounded in the data (Neuman, 2000). However, framework data analysis is more suitable for research that has certain questions, a limited time-frame and priori issues (Srivastava & Thomson, 2009). And while framework analysis could generate theories, it is primarily concerned with interpreting what is taking place in a particular setting (Srivastava & Thomson, 2009). It is also important to note that the framework analysis method is flexible in that it allows the researcher to collect all the data and then conduct the analysis or start the analysis during data collection (Srivastava & Thomson, 2009).

The five basic steps of qualitative framework analysis will be carried out in this research study: 1) familiarization, 2) identifying a thematic framework, 3) indexing, 4) charting, and 5) mapping and interpretation (Ritchie & Spencer, 1994). In brief, familiarization is when the researcher becomes familiar and immersed in the data by studying the field, listening to the audio tapes, and reading the transcripts. In this stage, the researcher will gradually become aware of the key ideas and themes and can take note of them (Srivastava & Thomson, 2009). The second stage, identifying a thematic framework, takes place when the researcher will recognize and set specific themes or issues in the data. It is important that the researcher keeps an open mind during this process, allowing the data to dictate the themes. This is then considered as the basis of a thematic framework used to filtering and classifying the data (Ritchie & Spencer, 1994). Thirdly, indexing involved identifying sections of the data that fit into to a certain theme. Next, charting is when the indexed data is arranged in a chart of themes, or more simply, when the data is basically

taken out of its original text and placed into the thematic chart consisting of headings and subheadings (Ritchie & Spencer, 1994). Lastly, mapping and charting involves analysis of the key characteristics presented in the thematic charts.

Attention to context is also vital for qualitative data analysis (Neuman, 2000). The researcher will take into account the context in which an action is taking place or a statement being said in order to obtain a more accurate understanding of the findings.

4.6. Ethical considerations

The researcher obtained approval of the International Review Board (IRB) at The American University in Cairo (AUC) on 4 May 2017, with case number 2016-2017-134, before starting conducting interviews for this study.

This study has protected the confidentiality of all participants. The research mentions a particular interviewee's identity, for example: journalist, lawyer, etc., but it does not mention any names or specific details about identity, such as gender or age, or a participant's workplace. Confidentiality is important to protect sources' personal and professional lives (Babbie, 2013). Yet, it is also important to exercise the concept of informed consent. Subjects of the research will also be made aware of their voluntary participation, the research purposes and any possible risks involved (Babbie, 2013).

On the field, the researcher made sure that participants were aware that participation is voluntary and that refusal or acceptance to participate does not involve any risks or loss of benefits. Informed consent for participation and for audio-recording was obtained orally ahead of the interview. Consent has been audio-recorded in the same audio file as the interview. The researcher opted for oral consent because participants may be reluctant to sign a material document due to the sensitivity of the subject, and a general culture of avoiding signing documents in Egypt. Before obtaining consent, the interviewer made the participants aware, on record, of the following: the purpose of the research study, where it will be

published, the approximate duration of the interview, that participation is voluntary, that there will not be risks associated with the research, that there will not be benefits to the participant from this research, and that the identity of the participant is confidential for this research.

Finally, the researcher did not face any conflict of interest in pursuing this study.

4.7. Limitations

While most participants have easily and willingly spoke to the researcher, with some even mentioning that they were not keen on remaining anonymous, others have vehemently refused to speak. One such participant, a journalist in a managerial position, told the researcher that they did not trust the confidentiality of the study, especially given the sensitivity of the topic. Journalists working in subordinate positions in this media outlet have subsequently also refused to talk to the researcher.

Another limitation that the researcher has faced is obtaining all of the original copies of publication ban orders. This is because they are not made publicly available by the Prosecutor-General office, even though they are non-classified material. Some participants interviewed in this study have provided the researcher with a number of random orders of which they had copies. However, none of the participants had the time or the ability to give the researcher every publication ban order they have received over a given period of time.

The same difficulty was experienced with regards to other public documents sought by the researcher. For example, the researcher was told that she needed to provide lawsuit numbers to facilitate finding complaints by journalists pertaining to breaching publication ban orders filed with the Journalists' Syndicate. She was told that the files were kept numerically. Since the researcher did not know of any such complaints, and hoped to gain this information through the sought documents, this pursuit failed. This is also especially because the researcher communicated with a source in the syndicate who communicated with

archival staff on her behalf, which made the process more difficult. However, in some other cases the researcher was met with refusal or reluctance to provide data. For example, when trying to obtain verdicts from the archival offices of the State Council, the researcher was told that the digital archives could only produce “two results”, when she had actually already obtained three previously from another source. When she pressed for more, referring to cases she knows of, she was frustratingly told that the employees “could not help her”.

5. Chapter V: Findings and analysis

The analysis of interviews conducted for this thesis has revealed that the data presented by the participants could be divided into two major categories. Firstly, many participants mentioned a number of similar issues of direct practical impact that publication ban orders have on journalists' activity. The researcher has categorized this batch of interconnected issues under the same umbrella. Secondly, the data from the various participants has also revealed similar trends regarding views on information dissemination in society when publication ban orders have been issued.

When studying the first category, participants interviewed for this thesis have expressed their understanding and acceptance for the justification behind issuing a ban order, but they have criticized: the lack of a legal framework to appeal it, alleged inconsistency in prosecuting those who breach it, the information blackout that follows issuing a publication ban, and the recent sharp increase in issuing such orders. As an added layer, they have connected these issues to what they describe as an increasingly restrictive media environment. To place this issues into a more rounded perspective, the researcher has provided an analysis of the entity responsible for issuing this large number of publication ban orders, namely the public prosecution office, backed up by primary data from the participants and secondary research.

When looking at the second category, two main themes are highlighted. Firstly, that most participants believe that issuing a publication ban order in a case of high-public-opinion value can backfire and fuel rumors and inaccurate information. Secondly, many interviewed also believe that digital media platforms have the potential to defy the purpose of a publication ban as many private citizens (who are not held up to the ban) exchange information and opinion freely on such networks.

A detailed account of these findings is provided below.

5.1. Category one: Issues of direct practical impact on journalist activity

As explained above, this category deals with the following issues: legal dilemmas pertaining to the implementation of a publication ban order, the information “blackout” that follows issuing such an order, the effect of the sharp increase in issuing such orders, and an analysis of the main entity responsible for issuing this large number of publication ban orders, namely the public prosecution office.

5.2. Legal dilemmas

The legal aspect attached to publication ban orders cannot be overlooked when addressing the question of this thesis. Publication ban orders are a legal act, with legal repercussions and consequences. Through the interviews, the researcher has found certain legal issues, such as appealing a publication ban order or breaching it, to affect the question of this thesis.

How can one appeal a publication ban order?

A publication ban order directly impacts journalists’ work, stopping them from producing news about a certain case, and in turn disseminating information about it to the public. Like any citizens harmed by a decision from an authority, journalists seek to appeal such publication ban orders. However, this has proven to be a difficult endeavor.

Lawyers and the State Council judge interviewed in this thesis explain that the issue of appealing a publication ban order is a subject of intellectual debate in the judicial sphere. The main point of contention is whether a publication ban order issued by the Prosecutor-General is an administrative or a judicial act. The nature of the decision determines how and where to appeal against it³. As one lawyer puts it,

³ Publication ban orders issued by judges in court straightforward in this regard – they are judicial decisions and can be appealed in court.

“People [object] to publication ban orders [issued by the Prosecutor-General]. In this case what should they do? ... Is it an administrative decision? Shall they go to the State Council⁴? ... Or if it’s a judicial decision, where do they go? A question mark lies here. We do not know what to do in this case.” (Interview, August 2017)

Journalists interviewed in this thesis, especially those who are or were involved in the Journalists Syndicate, have spoken about the issue from a position of grievance. One journalist commented on this by saying,

“[Publication ban orders] should not be a form of absolute power. Such orders are present in countries worldwide. However, there must be a means for appealing them, especially in cases where they are used arbitrarily.” (Interview, June 2017)

While journalists expressed frustrations at this issue, sometimes expressing belief that this is an intentional tactic targeting their right to work freely, legal experts interviewed have revealed a more complex explanation behind this problem.

The main reason for this dilemma is mainly due to the absence of a law or a legal framework outlining how to appeal a publication ban order issued by the Prosecutor-General. Thus, citizens, including journalists, who wish to appeal such publication ban orders are left confused.

The interviews conducted for this thesis have also indeed witnessed this administrative/judicial dilemma. One lawyer argued that publication ban orders are a judicial decision. This lawyer compared such orders to travel ban decisions which are also issued by the Prosecutor-General. This is because in June 2015, Egypt’s Supreme Constitutional Court, ruled that the ordinary judiciary⁵ (the courts of appeal and the Cassation Court) hold the jurisdiction of reviewing travel bans issued by the Prosecutor-General in the context of

⁴ The term “State Council” in Egypt refers to the country’s entire administrative court system (Egypt Justice, 2017)

⁵ Egypt has a dual judiciary system – the ordinary and the administrative (El-Morshedy, 2011).

criminal investigations; and that the State Council does not have the jurisdiction to review travel bans (Bassal, 2015). Like appealing publication ban orders, appealing travel bans has for long been an issue of debate (ibid). Thus, this lawyer believes that they should both be treated the same, especially that they both pertain to criminal investigations. However, the State Council judge interviewed for this thesis believed that publication ban orders are an administrative action. He justifies this by saying that,

“Administrative courts already look into such appeals... Judges still differ on whether a ban in a certain case of appeal is an administrative or a judicial decision...

However, it is important to keep in mind that each case is looked upon depending on its circumstances, [so it's] on a case-by-case basis.” (Interview, October 2017)

Indeed, there are several recorded cases where lawyers and citizens have appealed publication ban orders in the administrative courts of the State Council. Some have been rejected for legal reasons, such as the appeal against the publication ban in the investigations into the murder of Lebanese singer Suzan Tamim involving Egyptian business tycoon Hesham Talaat Mostafa.

However, one case has been very significant - the appeal against a publication ban order in the investigations regarding alleged fraud in the Egyptian presidential elections of 2012. On 19 January 2016, the first department (specialized in public rights and freedoms) of Egypt's administrative court, headed by Judge Yehia El-Dakroury, vice president of the State Council, ruled to cancel the publication ban order issued in the aforementioned case. The reason for revoking this decision, however, was – interestingly – based on an *administrative* mistake. The official court verdict states that the ban was issued by the public prosecutor even though an investigative judge had been especially commissioned to investigate the case (Nabelyoun, 2016). This meant that the public prosecutor no longer had the authority to carry

out any actions relating to this case. Thus, Judge El-Dakroury ruled that it was illegal for the Prosecutor-General, from an administrative perspective, to issue the ban (Nabelyoun, 2016).

However, the detailed reasoning [in Arabic: ‘*Haytheyat*’] of this verdict is the more intriguing aspect of this incident. The verdict explains the rationale behind this ruling by saying that, “News and data pertaining to public affairs are a tool of forming public opinion. Citizens and media outlets have the right to access the correct sources of information to obtain the data, exchange it, and create a dialogue and a debate over it. This is so that every citizen can form his/her opinion in light of the truth and without forbidding freedom of thought” (Nabelyoun, 2016).

Lawyers comment that the administrative mistake in this case is what provided the court with the chance to issue such a verdict. Many journalists interviewed in this study have referred to this verdict as the rationale that justifies their opposition to the recent sharp increase in publication ban orders.

Meanwhile, other appeals against publication ban orders are currently being considered at the State Council. An example would be an appeal against a publication ban order in the investigations involving former Chairman of the Central Auditing Agency Hesham Geneina for releasing data on state corruption levels.

Breaching a publication ban order

The researcher has attempted to investigate to what degree do Egyptian media outlets follow publication ban orders, and – in response – to what degree do the authorities apprehend those who breach the orders. This is mainly because several journalists interviewed for this thesis, and a lawyer, have reported that publication ban orders are breached by some media personalities on Egyptian television, and they are left unquestioned, while this is not the approach taken with press journalists who breach such orders. However,

the researcher could only trace one example that could be considered the closest to this kind of scenario.

On 16 March 2016, Egypt reopened investigations into case number 173 of the year 2011, which looks into the funding of non-governmental organizations (NGO) operating in Egypt. Three investigative judges were mandated to conduct the investigations. On 21 March 2016, the investigative judges issued a publication ban order regarding the investigations of this case. However, official decisions – as previously explained – remain public. On 17 September 2016, Cairo Criminal Court issued a verdict where it upheld a decision by the investigative judges to freeze the assets of a number of those accused in the case, mainly Egyptian rights activists. On the same day, television host Ahmed Moussa, who appears on Sada El-Balad TV station owned Mohamed Abo El-Enein, businessman and former member of parliament (MP) of the now-defunct National Democratic Party (NDP), commented on the issue (Sada El-Balad, 2016). Moussa legitimately announced the public court verdict (ibid). However, while he was doing so, he continued to make clearly biased and impartial comments about the people accused in the ongoing investigations (ibid). For example, he repetitively referred to them as “subversive”, and he described the method by which they allegedly received funding in their organization as “thuggery” (ibid). Additionally, he emphasized and repeated phrases like, “illegitimate”, “harming Egypt”, “undermines national security” by repeating them, and pausing before them, asking the audience to pay attention (ibid).

Moreover, on 16 November 2016, Moussa hosted current MP’s Mohamed Sadat and Osama Sharshar live on his show, in addition to MP Mostafa Bakry via a telephone connection (Sada El-Balad, 2016). This section of the episode was originally discussing parliament passing a new NGO law. However, for at least eight continuous minutes, while Bakry was on phone, they discussed case 173. At one point, Sharshar produced documents

that he independently obtained, and announced monetary figures that certain organizations have allegedly received (ibid). Moussa encouraged him to reveal more by saying, “ You have [parliamentary] immunity, Mr. MP , go on, tell us” (ibid). Sharshar then commented that these documents should have been with the team of investigative judges to help them, “ stop foreign funding”, because such funds would be against, “ Egypt’s national security” (ibid). For the rest of this segment, they continued to subjectively comment on the performance of NGO’s and their funding, including one time when Bakry criticized a legal punitive measure regarding the case (ibid).

The researcher is no place to legally judge whether these instances elicit legal action in the context of what this thesis tackles. However, both instances are closely related to an ongoing case where a publication ban order is issued. The first instance is subtler than the second. It mainly involves Moussa commenting subjectively and in a biased manner on an ongoing legal case. This clashes with professional media ethics, but it could also be impacted by article 187 of the criminal code (previously explained in detail) about media content that could affect judges or citizens during ongoing investigations or lawsuits. However, Moussa was not questioned for his performance regarding this case on his television show.

On the other hand, in a different case, the Prosecutor-General has summoned and questioned two journalists for allegedly violating a publication ban order. This was a case in May 2016 where journalists were being questioned after police forces broke into the Journalists’ Syndicate while journalists were staging a sit-in in protest of Egypt giving over two Red-Sea islands to Saudi Arabia. On 2 May 2016, Egypt’s Prosecutor-General issued a publication ban order in the investigations pertaining to this case. After the publication ban order was issued, lawyer Mohamed Hamed Salem filed an appeal against it in the administrative court in the State Council (Saad, 2016). Samia Farouk, a judicial reporter who covers the State Council at Al-Wafd partisan paper, published the text of the lawyer’s appeal

against the ban, but nothing on the investigations in the case itself. Farouk and Sayed Abd El-A'aty, chief editor of the paper, were summoned for interrogation at the general prosecution offices for publishing the text of the lawyer's appeal. Later, they were let go after the questioning (Qara'a, 2016).

Interestingly, Moussa, on 3 May 2016, the same day the publication ban order was issued in this case, strongly called on journalists on his show to abide by this order, saying that it was "no joke".

Journalists, particularly judicial reporters, interviewed for this thesis have commented on this apparent trend, but have commented on it rather reservedly. One reporter said,

"[The issue of taking legal action against those who breach publication ban orders] falls in the hands of the public prosecution's assessment. This is my own personal deduction, not a fact. Maybe a case was not that important... Or at other times, he takes action to deter others." (Interview, July 2017)

Other journalists note in their interviews that they believe that judicial authorities in Egypt occasionally use the media to their benefit – exercising the law when it serves their objective best. One journalist said,

"By law, investigations are secret while they are ongoing. However, it is well-known that the prosecution informally leaks investigations' details sometimes. Crime reporters basically live on that... especially cases involving sex scandals for example, which in fact enjoy extra secrecy in the law because they deal with private lives, but we see them leaked perhaps to distract the public at a certain point in time."

(Interview, May 2017)

Therefore, journalists seem to believe either that the authorities make judgement calls on when to take action against someone who breaches a publication ban order, depending on the nature of the case, and the potential advantages or consequences of such punitive measures.

The researcher has attempted to view or obtain copies of complaints filed by journalists in the Journalists' Syndicate related to being accused of breaching publication ban orders, but was unsuccessful.

International media "above the fray"

Another perspective closely related to alleged inconsistency in holding up all journalists to the ban order is the situation of journalists working for international media outlets in Egypt. However, it is important to point out that any inconsistency here carries a different meaning and takes place in a different context, at least in the data collected for this thesis.

A typical publication ban order mentions international media outlets as entities that should abide by the order. However, a lot of the time this does not take place.

Out of the three journalists working in international news outlets in Cairo, one said that they did not follow such orders, or take them into consideration while collecting data or writing reports. Another said that he was not aware of such orders at all.

When asking about the reason for Egypt's authorities not pursuing international outlets that breach publication bans, one answered frankly, simply saying that this is because,

*"No one wants another Al-Jazeera trial. It would attract a lot of negative press for Egypt to put an international news organization, especially a western, not an Arab one, on trial."*⁶ (Interview, May 2017)

⁶ Three journalists from Qatari-based international news channel Al Jazeera English, Australian Peter Greste, Canadian Mohamed Fahmy and Egyptian Baher Mohamed, were detained and put on trial in Egypt between 2013 and 2015 for allegedly spreading false information and cooperating with the banned Muslim Brotherhood. They were all eventually released, after an internationally heavily-reported trial.

This journalist also pointed out that international outlets address a different, wider, and more international audience that is uninterested in details, but more so the bigger picture of what is happening in Egypt. Thus, while they can and do write about local lawsuits, it is not something that recurs a lot or receives great focus often.

The third journalist, who produces content in Arabic at his international outlet, said that the team at his outlet's office in Cairo follows the order, but offices elsewhere do not, and continuing to write freely about topics under media ban in Egypt. One of the three other journalists made a similar comment about the Cairo-based reporters at his outlet who produce reports in the Arabic language. He said that additional caution is exercised with these reporters, as opposed to reporters at the outlet who rotate between international offices and produce articles in English.

Meanwhile, several Egyptian journalists working in local outlets commented on the foreign outlets' disregard for the ban orders with a sense of discomfort. In fact, one criticized the coverage of international media, saying that local reporters are more knowledgeable and familiar with the Egyptian context. This reporter argues that this in fact goes against the objective of the publication ban order from the perspective of the authorities. This reporter said,

“You better let your journalist cover the truth instead of foreign reporters who are sometimes [inaccurate] in their coverage, and provide sensational and orientalist information.” (Interview, May 2017)

A relationship of mild friction can be detected between local journalists and others working for outlets based abroad. Egyptian local journalists tend to feel that they have more of a right to cover the events of their own country, especially that they regard themselves as the ones with the better local knowledge and understanding.

However, it is still noteworthy to point out that while international journalists may not follow ban orders, they still experience other forms of restrictions and harassment while working in Egypt. In addition, fueled by a culture of xenophobia, frequent claims are made against foreign figures in Egypt, including journalists, that they are spies or agents meddling in the country's internal affairs. One journalist interviewed in this study said that he was once included in such news reports.

5.3. It is not the order, it is what happens next

Moving on to another issue, while some journalists express a stronger opposition than others to curtailing information under the legal premise of a publication ban order, almost all journalists have criticized a total blackout where, in addition to the ban order, no official statements are issued on the case.

The public prosecutor states at the end of every such order that the ban applies except for statements that would be issued by his office. However, journalists report that this rarely happens. One reporter said,

“The extensive use of publication ban orders is generally restrictive. However, the judicial authority [could] provide me with information in a manner that... balances between the public's right to know and the impartiality of the investigations.”

(Interview, July 2017)

Thus, some journalists appeal to the language used by the authorities' themselves, in spite of its vagueness, to help make the best out of a restrictive situation. They call on the Prosecutor-General to use the option of issuing these official statements to provide some permissible data on an important ongoing case, especially ones that continue over a long period of time.

Another journalist also comments on this, calling for a framework that would regulate the issue of publication ban orders,

“There has to be a mechanism that obligates [the judicial authority to disseminate information], including having an official spokesperson, and an official website with data published on it. They’d also be obligated to issue official statements in the important lawsuits. A publication ban order should not mean a total blackout on information.” (Interview, June 2017)

This is especially emphasized as journalists point out to the fact that some cases go on for a prolonged period of time that could extend over years. By the time the publication ban order issued by the Prosecutor-General no longer applies (when investigations are concluded), journalists say that the cases lose a considerable weight of their newsworthiness as the public forget or are concerned about newer matters. This, for journalists, effectively means silencing the issue.

This is exacerbated by the lack of an operating freedom for exchange of information law in Egypt. Journalists have complained about this, saying that even after a publication ban is lifted, difficulties to obtain information can continue. In the same light, many also said that being a good journalist who can access information usually depends on the journalist’s personal relations and ability to win worthwhile sources and contacts.

Thus, the reluctance to release information, and the reality of the general framework to obtain information, are added problems faced by journalists when a publication ban order is issued, resulting in a total blackout of the official and/or true accounts of a certain case.

5.4. Why so many orders?

As previously stated, journalists interviewed in this research have not blindly opposed the issuance of all publication ban orders. Many express their understanding for the authorities’ need to use it in certain circumstances, and have also shown their readiness and support to comply with it without frustration.

As one reporter puts it,

“In some cases, publishing information, especially in criminal lawsuits, could truly harm the judicial process. They are right to ban publication in such cases, and I support them.” (Interview, August 2017)

Another journalist similarly says,

“I understand publication ban orders in cases where people’s lives could truly be harmed, for example sectarian issues... but this should be used only in necessities, not as a first resort.” (Interview, May 2017)

However, journalists have criticized what they have described as “too many” publication ban orders recently. One says,

“I can accept [the justification of protecting the impartiality of the investigations] in a case or two, but not forty cases [in the past three years]. It is not logical at all!”
(Interview, August 2017)

Journalists link this to what they perceive as an increasingly restrictive media environment in recent years post the June-July 2013 events when President Mohamed Morsi was removed by the army with the support of political coalitions and the public. Egypt witnessed a wave of terrorist attacks and instability thereafter. Media freedoms also witnessed a regression as previously explained in the background chapter. Journalists in this thesis have related to this pattern, viewing the increase in publication ban orders part of it.

One journalist said,

“There is a desire to stop people from talking. This can be seen in the kind of cases where publication ban orders are issued... These are cases that the state does not want people talking about. So no one talks about government negligence, or officials’ negligence, or why things happened.” (Interview, June 2017)

Interviewed reporters have said that this has directly impacted their ability to work as they should. One journalist expressed his disappointment at what he believes this restrictive environment has made of journalists. The journalist said,

“Sadly, this has indirectly made journalists receivers of official statements that they publish as is. This has got nothing to do with journalism, research and investigation. It has impacted the role of journalists... In fact, it has not only harmed journalists’ work, but has also affected citizens. When we defend press freedoms, we also defend people’s right to know... which is a constitutional right.” (Interview, August 2017)

This reflects the role journalists believe their work plays in society, and how it could be gravely impacted by the repercussions of publication ban orders at their rate and in the current fashion in which they are issued and implemented. Journalists tend to express sentiments of not being to fulfill their jobs to their potential in an environment of restrictions exacerbated by the use of publication ban orders recently in Egypt. This job is simply portrayed in terms of searching freely for true accounts of events, and disseminating it freely to the public.

However, one journalist expressed more tolerance for the issues, saying that he believes that the increase in publication ban orders is relative to time and circumstances, pointing to the fact that the past few years in Egypt witnessed intense societal and political upheavals, producing many lawsuits that were sensitive by nature.

Another highly important pattern that several journalists have commented about is that the increase in issuing publication ban orders, and the general restrictive atmosphere, has led many reporters to avoid writing anything at all about a certain case, even though technically the order bans investigations’ details only. An example of what could be published is background information. However, the researcher has asked each journalist she interviewed to explain to her their understanding of a publication ban order, and none of them

seemed to have a wrong understanding of what it prohibits. In addition, the real implementation of this understanding could also not be traced.

5.5. Where the public prosecutor office stands

When tackling the aforementioned themes relating to the direct and practical implications of publication ban orders on the work of journalists in Egypt, it is imperative to also shed light and analysis on the entity involved in this legal action. Despite the seemingly ideal and independent position of the public prosecution office outlined in the Egyptian constitution, reports exist that indicate otherwise, highlighting the challenges facing this particular judicial entity. The independence of Egypt's public prosecution office comes to question when addressing three aspects: its institutional position, its relationship with the executive power, and the trend by which it has tackled cases related to human rights violations. These challenges are important to address in this thesis in order to understand the reality of the problems existing within the internal operations of the public prosecutor office, and that affect its role in this dynamic.

Under Egypt's judicial authorities' law (JAL), the country's justice minister, who is part of the executive power, is in fact responsible for the supervision and the administrative oversight of prosecutors and the public prosecution office, including the provision of health and social services for the prosecutors (ICJ, 2016; JAL, arts. 125 & 92)⁷. In addition, the Prosecutor-General can initiate disciplinary actions against prosecutors, at his or her own initiative, or actually upon a referral from the justice minister (ICJ, 2016; JAL, Art. 129).

⁷ The International Commission of Jurists (ICJ), is an organization established in 1952, headquartered in Geneva, composed of sixty prominent judges and lawyers from around the world. It works on promoting and protecting human rights through the rule of law.

This legal and administrative framework constitutes a lack of institutional independence for the public prosecution office (ICJ, 2016; Nasrallah, 2014).

In addition, the appointment of an *investigative judge* for a certain case is also a relevant issue when discussing the institutional independence of the public prosecution office. It is important to mention first that there are no standing investigative judges in Egypt. They are appointed to investigate certain cases, in place of the Prosecutor-General, on an ad-hoc basis as needed (Egypt Justice, 2017). According to Egypt's criminal procedures law, the Prosecutor-General is not the only person who has the power to request that an investigative judge conduct a certain investigation. The minister of justice also holds the same authority in this regard. This can even take place after investigations had been started by a prosecutor (ICJ, 2016). Moreover, there are no criteria in the law to regulate when the minister of justice can make such a request. In cases where the Prosecutor-General himself considers it necessary to appoint an investigative judge instead of himself for a certain case, it is usually due to special circumstances of the case or the specialized knowledge of the investigative judge (ICJ, 2016).

Secondly, the public prosecution office also experiences informal influences from executive powers, marring its independence. Collected anecdotal evidence suggests that it is accepted common practice for the president of the republic, or another high-ranking executive to attempt to influence the public prosecution office through suggesting dropping an investigation or starting one (IBA, 2014)⁸. Not only that, but on a subtler level, sometimes a prosecutor acts in a certain manner without a direct command, but with a certain understanding of what he/she is expected to do (IBA, 2014). In addition, regardless of the public prosecution office specifically, presidents of Egypt over the years have tried to control

⁸ The International Bar Association (IBA), established in 1947 with headquarters in London, is a leading global organization of legal practitioners, bar associations and law societies present in over 160 countries.

the judicial branch in general, viewing this as a crucial issue for their rule (ICJ, 2016). A most recent example is the controversial amendments to the JAL in April 2017 giving President Abd El-Fattah El-Sisi more power to select heads of certain judicial bodies, but it did not include the public prosecution office (Aziz, 2017).

The third aspect of concern when discussing the independence of the public prosecution office in Egypt is how the office tackles cases relating to human rights violations. Studies indicate that the public prosecution office has “ facilitated impunity” for human rights violations (ICJ, 2016, p. 119). Investigations into these matters have often faced delays, were hasty in nature or lacked impartiality (ICJ, 2016). Many such cases were closed, citing lack of sufficient evidence, or were referred to trial and eventually resulted in acquittals (ICJ, 2016). Meanwhile, while accountability on crimes involving security forces and government officials has been low, prosecution of regime opponents has been pursued actively (IBA, 2014).

The framework within which the public prosecution office works in Egypt and its independence from the executive power is vital when discussing the topic of this research study. This is because journalists in Egypt have faced restrictions and pressures from the executive power over the years, affecting their work, and shaping the systems of their institutions (El-Masry, 2011; Sakr, 2010; Sakr, 2013). Thus, the influence of the executive on the public prosecution office is important to consider. It is also relevant in light of the documentation mentioned above that shows a rise in issuing publication ban orders recently, and also demonstrates that they are mostly issued in cases implicating government, police officials or judicial personnel. Hence, it is worthwhile to explore the reasons behind the increase in these bans and their implications.

Current Prosecutor-General

Egypt's previous Prosecutor-General Hisham Barakat was killed in a bomb attack on 29 June 2015 (Ahram Online, 2015). Barakat had served as Prosecutor-General from July 2013 until his assassination. Following, his death, the public prosecution office, under the leadership of those who came after him, became seen by the respondents in this research as increasingly restrictive with the media.

Many journalists interviewed in this thesis have remarked a relatively more restrictive manner with which the public prosecution has been dealing with the media at current times. Some attribute this to the personal nature of those in leading positions, others to the broader political and media environment.

One of the most notable issues under the current leadership regarding the media is the absence of a spokesperson for the office. Any statements coming out of the office are released via email to journalists registered with the prosecutor's office. A spokesperson for the public prosecution office has usually played an active role in the past, with some Prosecutor-Generals, such as Maher Abdel Wahed and Abdel Meguid Mahmoud, even holding "press conferences" to communicate information to the media (Abdelaziz, 2003; Samir 2011).

The data collected in this part of this thesis have reflected the theories discussed in the conceptual framework. The first category of the findings, which discussed issues of direct practical impact on journalists' work, provides an example for the hierarchy of influences theory (Shoemaker and Reese, 1996). As demonstrated, influences from outside of Egyptian press organizations – which is one level of influence proposed by the theory – have had a strong effect on media content. This has included the legal system and judicial decisions. Such decisions or mechanisms put in place by the authorities has curtailed journalists' ability

to publish certain content, or has obliged reporters to publish only certain items about a topic, namely official statements.

Similarly, the gatekeeping theory was also very relevant to the first category of the findings. The data collected has reflected Barzilai-Nahon (2008) contribution to this classic theory in her own theory of network gatekeeping. It was evident from this thesis' findings that gatekeeping (namely issuing publication ban orders) was a highly dynamic issue that involved various stakeholders. The salience of the information (namely the topic of the investigations/lawsuits) was thought to be a highly-determinant factor in the gatekeeping process. And the stakeholders involved in the process acted differently depending on the context of the circumstances.

5.6. Category two: Views on information dissemination

As previously outlined, two main themes are discussed in this category of the findings. Firstly, the notion that issuing a publication ban order in a case of high-public-opinion value can back fire and fuel inaccurate information. Secondly, that digital media have the potential to defy the purpose of a publication ban as many private citizens use them freely. This is presented in elaboration and analyzed below.

5.7. Protecting the truth versus fueling rumors

An argument for issuing publication ban order reasons that the objective behind such bans is to ensure the impartiality of the investigations or the trial, away from the potential influence of the media, and consequently the public. However, almost all Egyptian journalists working in local newspapers have argued against this reasoning, especially in light of today's increasingly digitized society where information and opinions are spread at a fast pace and over a wide reach.

Journalists argue that in the absence of true and accurate public information, rumors and allegations reign alone, and are easily spread online. This, they say, could have a much more adverse effect on the lawsuit, and could have been avoided if a truthful account was made available by the relevant authorities.

A journalist interviewed for this study cites a statement issued by the Prosecutor-General on 12 February 2015, banning publication in lawsuit number 805 for the year 2015 where a policeman was under investigation for shooting unarmed protestor Shaimaa Al-Sabbagh in a demonstration in downtown Cairo. In his statement, the Prosecutor-General said that he has decided to issue the publication ban order in light of observing that a lot of inaccurate information has been circulating. The journalist comments on this by saying,

“This was all the more reason for not ordering the ban, not the opposite. It was imperative for the Prosecutor-General at that point to issue an official account of the course of the investigations. The Prosecutor-General should have countered the rumors, and said to the people that the truth was X, Y, Z.” (Interview, June 2017)

An overwhelming majority of journalists have expressed this bafflement at the authorities’ resort to hide the information completely in face of rumors, instead of providing a truthful account, while calling for prosecuting those who violate the law and/or codes of journalism ethics. The researcher could not unfortunately obtain a counter view for this issues from the authorities.

Another journalist cites lawsuit number 75 for the year 2016, where now-former-Chairman of the Central Auditing Agency Hesham Geneina was being interrogated for releasing shocking data on state corruption levels. The journalist devises a scenario to illustrate this issue,

“A high-profile government official is being interrogated for speaking about corruption, and a publication ban has been issued. A regular citizen might think that

there is something that the state is trying to hide. Is the state against this person? Is the state complicit in corruption? Is it protecting certain figures? Etc. So one can see that a publication ban order easily backfires, with endless rumors spreading as a result.” (Interview, August 2017)

It is noteworthy to state that many journalists interviewed have sought Judge El-Dakroury’s aforementioned verdict [in the appeal against the publication ban pertaining to alleged rigging of 2012 presidential elections lawsuit] as a basis for their argument in this regard. This is mainly due to the verdict’s reasoning, as detailed previously.

A journalist eloquently concludes this issue by saying,

“It is a very easy and simple equation. You have a large amount of circulating data. Let’s say that fifty percent is inaccurate or exaggerated. Offer me the correct piece of information. That’s it, nothing more.” (Interview, June 2017)

Participants in this study have also indicated that sensationalist and false journalistic reports should be countered on a case-by-case basis using the law, but stressed that they believed that it was not acceptable to ban all media for the actions of an unprofessional group.

5.8. In the age of digital social media: Is the ban still a ban?

Another equally significant issue with regards to publication ban orders and the existence of digital social networks is the degree to which the ban is effective in these circumstances. Some journalists participating in this study agree that social media has rendered publication ban orders. This is because it is difficult to monitor and control them, in addition to their wide and easy accessibility to all people, not only journalists. One journalist exclaimed in their interview,

“I do not think that the person responsible for issuing a publication ban order fathoms the nature of digital networks... and how social media has made nothing secret anymore.” (Interview, August 2017)

It is important to indicate that private citizens are not included in those held up to abiding by publication ban orders. While this could mean that citizens, who do not have the information channels available to journalists by profession, it could also mean that they are free to defy a publication ban if they somehow obtain correct information. For example, political activists or independent online bloggers could fall into this category.

One extremely relevant and eye-opening example took place during the first trial of ex-President Hosni Mubarak over the deaths of protestors in the January 2011 uprising. This incident is beyond the time-frame of this thesis. However, it has been well-documented and is extremely related to the topic at hand. In the trial stage of this case, Cairo Criminal Court summoned Field Marshal Hussein Tantawi, then-head of the Supreme Council of the Armed Forces that was ruling the country, to give a witness account. This was an incident of high public interest, particularly in the wake of the 2011 uprising when society, that raged the demonstrations, was keen to follow the consequences of their revolution. However, Cairo Criminal Court banned publication for this trial session only. In response, a social media campaign was launched and quickly spread calling for breaking the publication ban. It was called “The popular campaign for breaking the publication ban... Breaking the publication ban is a national duty” (Abdelrahman, 2011). The trial session was attended by journalists, but they were not allowed to report its contents in their respective newspapers and media outlets. One journalist participating in this study said that he took note of what happened in the session and then published it in a news report at his newspaper when the trial was over, a year later in 2012.

However, one journalist who was present during the trial session published Tantawi's testimony on his private Twitter account on the same day. Within hours, activists, citizens and even some news websites had circulated the testimony. It became a social media sensation, provoking debate and discussion among Egyptian citizens. Indeed, as one journalist participating in this study comments about the effect of social media and its significance,

"I have social media accounts and can, in just a second as I am sitting with you, go online and write whatever I want in public. And I can equally read what thousands of people are writing. A complete ban is an impossible idea." (Interview, August 2017)

This reflects not only the potential power of social media of rendering a publication ban order ineffective, but the power these digital networks can give the people to defy an order themselves, if they collectively decide to protest it in favor of their perceived right to know.

The second category of the data collected, focusing on views on information dissemination in society, was also insightful. As demonstrated, journalists reported that social media networks can play both a negative and an empowering role after a publication ban order has been issued. While journalists call on authorities to address the former, they support the latter. This, in turn, could be read in light of Meiklejohn (1948), as discussed in the literature review, who argued for the completely unabridged freedom of speech that contributes to the good of self-government. As demonstrated in the findings, in some cases, like that of Tantawi's testimony, citizens and some journalists have decided that the public's right for information is a priority that is essential for the good of their society. By the same token, they also call on the authorities to counter the effect of misinformation, also caused by social media, through providing a truthful and public flow of information. This was also an argument that Meiklejohn (1948) set forth in his writings.

6. Chapter VI: Conclusion & Recommendations

This thesis has attempted to determine and explore the implications of publication ban orders in Egypt on journalists' activity and news dissemination. This thesis was in fact driven by a recent availability of rich data on the issue of publication ban orders, opening the door for further deeper research. While this is not a new legal measure or phenomena in Egypt, there has been a recorded sharp increase in the use of publication ban orders by the authorities in Egypt. And this has been mostly happening in cases of high public opinion value, usually involving government officials or persons affiliated with the police or judiciary.

Limited scholarship on this specific area of study, particularly in Egypt, has allowed for a deep and thorough qualitative study conducted to answer the questions put forth by the researcher. This qualitative study was conducted through a series of semi-structured in-depth interviews with journalists and legal experts. This has allowed for triangulation and helped ensure space for elaboration on complex issues related to the question of the thesis, including legal matters, multiple stakeholders and levels of impact.

Yet, for a theoretical framework and guide for conducting this thesis, the researcher has sought two classic and significant mass communication theories. These were the gatekeeping theory and the hierarchy of influences theory. The data revealed in the findings of this thesis has proven to reflect some significant ideas put forth by these theories or by scholarship that built on them. The researcher also sought a non-ideological definition for the profession of journalism and for journalists to define the basic concepts in this thesis. This has allowed for a more accurate and objective understanding and analysis of the data presented by the participants. The literature review of this thesis drew on research from classic scholarship on freedom of expression and public opinion, theoretical debates on the right to a fair trial and also a free press, in addition to an overview of research on the

Egyptian media system. The review of the literature has produced a need to explore the question of the impact of curtailing information using this legal action in specific in the Egyptian context. This particular area of research as uncovered and needed further exploration.

The findings have revealed that the potential negative effects of increased frequency of issuing publication ban orders in Egypt are accentuated by other contextual factors. These include absence of a legal framework to appeal such orders, lack of will to provide an alternative official narrative, absence of a law to allow for the freedom of exchange of information, extensive use of this judicial measure, and inconsistency and vagueness regarding pursuing those who breach orders, whether from local outlets or international. Addressing these issues by the Egyptian authorities will help resolve much of the controversy surrounding publication ban orders. This is especially so in light of the fact that participants in this thesis have expressed the adverse effect these problems have on their work as journalists and the public's constitutional right to access knowledge and information.

In light of this, the government should at least take some essential steps to help alleviate the adverse impact of curtailing information. This could include pushing for passing the much needed and delayed law for the freedom of exchange of information. The entities responsible for issuing public ban orders, be they the public prosecution office or a judge in court, should provide an explanation for issuing such an order. In addition, they should provide the press and the public official statements of the proceedings – that could be published – either during a ban or after it expires in order to avoid a blackout, especially in light of very lengthy legal processes in Egypt. Moreover, a clear legal framework for appealing a publication ban order and ensuring more consistent in questioning those who breach it will help ensure justice and trust in the authorities' intent and transparency.

Solutions can also be proposed to address the challenges faced at the public prosecution office, a major entity involved in the dynamic of issuing publication ban orders in Egypt. Some argue that the complete separation between the prosecution entity and the executive power is not a necessary determinant for ensuring independence (IBA, 2014). While it is essentially an issue for governments to decide, the state has a duty to provide safeguards in order to help prosecutors conduct investigations impartially (IBA, 2014). In conclusion, it is recommended that the role of the justice minister is amended in the law to remove or reduce his/her power over the public prosecution office (IBA, 2014; ICJ 2016; Nasrallah, 2014). In addition, prosecutors should receive adequate training on international standards relating to the importance of independence from the government, consideration of initiating cases that are in the public interest, publishing explanations regarding actions taken or not taken in controversial and sensitive cases (IBA, 2014). The status and work of the public prosecution office could also benefit from developing transparent prosecutorial guidelines requiring prosecutors to give attention to crimes involving public officials, including corruption and human rights violations (ICJ, 2016). Similarly, a code of conduct for prosecutors that follows international standards would also play a role in improving the standards of independence and efficiency of the public prosecution office (ICJ, 2016).

This thesis has faced some limitations that have had an effect on the data collected, and subsequently the analysis produced. One of the most significant limitations was the researcher's inability to interview an official from the public prosecution office. This would have provided a more well-rounded and balanced picture of the issues at stake. The researcher was also unable to interview a judge with a more specialized knowledge in the issues at question, or for that matter a number of judges to provide greater accuracy.

This thesis has provided an overview, in an explanatory and descriptive approach, of the issues at stake with regards to publication ban orders and journalists' work in Egypt.

Future research should adopt a more evaluative and analytical approach, assessing specific critical aspects of the issue. This could include, for example, a systemized study on journalists' understandings of what could and could not be published under a publication ban order, and whether this contributes to a more repressive press culture. Participants in this research have indicated this trend, but the researcher was not able to firmly establish it. They could be due to the relatively small size of the research sample, and the sampling technique used. The role social media plays, if at all, in cases where publication ban orders have been issued is also another intriguing aspect that could be investigated in a separate and detailed study, tracking digital content. It would be important to assess to what degree can the public make an effect using digital networks. Such future research will provide a focused and more comprehensive understanding and discussion of the topic

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