



Public Prosecution and digital transformation: An introduction to mass surveillance of the internet

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Executive summary

In 2019, the Public Prosecutor issued a decision to establish the Communication, Guidance and Social Media Department (CGSMD), an affiliate of the Public Prosecution. Since then, the Monitoring and Analysis Unit (MAU) of the newly-created department has filed a number of lawsuits against users of social networking sites. This means that the Public Prosecution has been officially monitoring internet users under the pretext of protecting national security, national social security, and values of the Egyptian family.

The Public Prosecution needs to stop monitoring internet users out of respect for the privacy of citizens. The decision to establish the MAU contradicts a number of laws and legal principles, not to mention the lack of transparency about the way it conducts its work.

Introduction

Since the Public Prosecutor, Counsellor Hamada al-Sawy, assumed his post, he has been keen to strengthen the Public Prosecution's official presence and interaction online. He issued a decision to establish the CGSMD, less than two months after his appointment¹. The new department has started functioning through three units: first, the Media Communication Unit; second, the Electronic and Social Media Unit; and third, the MAU². The Public Prosecution stressed that its presence on social media aims to safeguard "social national security"³, asserting that the incidents included in its statements are only announced after being circulated among "the public and non-specialists". Therefore, the Public Prosecution publishes statements "to protect

1. Public Prosecutor's Decision No 2376 of 2019, issued on 12 November 2019, last accessed: 27 June 2021, link: <https://www.facebook.com/photo/?fbid=2575831292524757&set=pcb.2575831352524751>

2. Ibid.

3. "A statement by the Public Prosecution to set matters right," 29 July 2020, last accessed: 27 June 2021, link: <https://www.facebook.com/100044365962152/videos/301050614466268>

investigations and refute rumours and inaccurate news”.

The Public Prosecution’s interest in being present on social media started in 2018 when former Public Prosecutor, Counsellor Nabil Sadek, assigned the Attorneys General and Chief Prosecutors, each within their jurisdiction, the task of following up on the lies and fake news published on social media to target “the country’s security and safety” and taking the necessary legal action against the owners of these online posts⁴. This follow-up has created a pattern of accusations levelled at owners of social media accounts over the content of their posts. Accordingly, internet users have to take into consideration that they may be legally held accountable if the Public Prosecution monitored their activity and considered the content, from its point of view, a threat to any of the national security, national social security, or the values of the Egyptian family.

In a related note, the current Public Prosecutor reiterated that the digital transformation is one of the most important issues that have recently topped the Public Prosecution’s agenda. He also pointed out that the Public Prosecution is working to strengthen the necessary technical infrastructure, facilities and logistics. This appeared, for example, in a statement by the Public Prosecution in which it announced that it would replace paper transactions with digital means to reduce “manifestations of corruption” and preserve public health given the spread of the Covid-19 virus⁵.

After the establishment of the CGSMD, which aims to enhance the digitisation of the Public Prosecution’s work, and by following up its performance on the ground, it has become clear that the Public Prosecution does not only aim to carry out its duties in terms of initiating and investigating judicial cases⁶, but it has assumed a new role establishing a pattern of mass surveillance of the internet as well.

4. Mohamed Gomaa, *Public Prosecutor assigns [a unit tasked with] tracking lies of the ‘forces of evil’ in the media and social networking sites*, Al-Shorouk newspaper on 28 February 2018, last accessed: 27 June 2021, link: <https://bit.ly/3w15TzV>

5. Al-Youm al-Sabi newspaper, *Public Prosecutor: Digital transformation issue was and will remain the most important issue for the Public Prosecution*, 3 March 2021, last accessed: 12 July 2021, link: <https://bit.ly/3e9mH1Q>

6. Ibid.

Background: Public Prosecution monitors internet users

The Public Prosecution represents the people's interests and acts on their behalf in establishing justice and enforcing the law. According to Article 189 of the Egyptian Constitution, the Public Prosecution is part of the judiciary and does not belong to the executive branch in any way⁷. Now, the Public Prosecution has the power to level charges with a view to file lawsuits, as well as assumes the authority of investigation at the same time. This represents an existing problem that violates the principle of impartiality that should be adopted by the investigation body⁸.

On 28 September 2019, the Public Prosecution announced that it was in the process of opening extensive investigations into "incidents of incitement to demonstrations in public squares and streets". In its statement issued at the time, the Public Prosecution indicated that it was browsing the social media accounts of the accused and that it assigned experts from the Ministry of Interior's department for fighting crimes related to computers and information networks to list the pages and accounts in question to take legal action against them, as stipulated in the Anti-Cyber and Information Technology Crimes Law⁹.

However, the Public Prosecution overlooked the fact that its explicit announcement of browsing citizens' social media accounts violated the right to privacy, whose broad concept includes all of the metadata that, when collected and analysed, gives an overview of an individual's behaviour, social relationships and preferences down to everything that constitutes their identity¹⁰. This has already become clear in the Public Prosecution's new performance in dealing with social media users.

This announcement by the Public Prosecution has legalised to the mass surveillance of the internet as one of its functional roles. The Public Prosecution has proceeded

7. Hoda Nasrallah, Egyptian Initiative for Personal Rights, *For Whose Benefit Does the People's Attorney Work?*, August 2014, last accessed: 27 June 2021, link: https://eipr.org/sites/default/files/reports/pdf/prosecution_study.pdf

8. Maha Youssef, Egyptian Association against Torture, *Public Prosecution between the Judiciary and the Executive*.

9. A statement by the Egyptian Public Prosecution, issued on 26 September 2019, published on 28 September 2019, last accessed: 10 May 2021, link: <https://www.facebook.com/ppo.gov.eg/photos/pcb.2483459088428645/2483458748428679>

10. United Nations, Human Rights Council 39th Session, annual report of the United Nations High Commissioner for Human Rights, *The Right to Privacy in the Digital Age*, 3 August 2018, last accessed: 1 August 2021, link: <https://undocs.org/A/HRC/39/29>

with its new approach in a more organised manner after Mr Sawy had announced the creation of the CGSMD in November 2019¹¹, thus assuming a role resembling that of the Ministry of Interior's department for fighting crimes related to computers and information networks.

The Public Prosecutor's Decision No 2376 of 2019 that established the CGSMD consists of five articles¹² clarifying the goals and tasks of the new department. The CGSMD operates through three main units with the aim of achieving seven objectives, mainly including "working on social guidance to prevent the causes of crimes and achieve security and social peace for the interest of society". It also assigns exclusive and specific tasks for each of the three units. Putting the articles of the decision against the Egyptian legislation on the one hand and reviewing the Public Prosecution's performance in implementing the decision on the other, some problems emerge and make the legality of the new department's measures questionable.

According to the decision, the MAU has become exclusively in charge of two tasks. The first is to monitor the Public Prosecution-related content published in the media and social networking sites. The second is to "monitor and analyse comments and opinions on the published news related to the Public Prosecution and express an opinion whether the news requires the Public Prosecution to release a statement, make an announcement or respond to the news with remarks by the Department". The decision did not, however, specify how the monitoring tasks will be carried out or define the Department staff who will conduct such operations, and whether they are prosecutors or technical personnel¹³. Nor did the decision define the scope of posts relating to the Public Prosecution. Therefore, the Public Prosecution may monitor everything it considers relating to it or pertaining to the commission of crimes.

Thus, the Public Prosecution has become a body that monitors crimes and violations before it receives reports or complaints from individuals. In other words, the Public

11. Op. cit.

12. Op. cit.

13. AFTE, *TikTok Cases, Analysis of the Public Prosecution Discourse*, link: <https://afteegypt.org/en/analysis-of-the-public-prosecution-discourse>

Prosecution's powers have expanded to include tracking crimes and carrying out preliminary investigations, which are supposed to be conducted by the police that are part of the executive branch¹⁴.

Therefore, the MAU's work not only violates the internet users' privacy and freedoms of thought and expression, but it is also inconsistent with the Egyptian Constitution, which provides for the separation of powers. The Public Prosecution is carrying out tasks that are supposed to be within the police powers within specific contexts and not collectively.

14. Mada Masr, *The Public Prosecution's crusade against social media*, 24 September 2020, last accessed: 27 June 2021, link: <https://cutt.ly/IQE4RbN>.

MAU between continuation or abolition

The incidents monitored by the Public Prosecution on social networking sites can be divided into two types. The first includes posts about incidents that have already occurred away from the internet, such as murders, torture or rapes, which are crimes punishable by penal laws or the Child Law. The second includes posts that are related to the nature and content directly published online by social media users. This means that online activity is the basis of any incident that the Public Prosecution deems as violating the law.

AFTE followed up on the statements published by the Egyptian Public Prosecution on its official Facebook page, including the measures it has taken in response to monitoring reports of the MAU during the period from February 2020 to May 2021. AFTE reviewed 58 official statements, in which the Public Prosecution announced its intention to investigate a number of these incidents, in addition to status updates on other cases under investigation.

When the Public Prosecution announces that it is in the process of initiating an investigation into a new case, it begins its statement by saying that “the Monitoring and Analysis Unit at the Communication, Guidance and Social Media Department in the Public Prosecutor’s Office has monitored a video clip, text conversations, or posts on a social networking site”. This would be sufficient for the Public Prosecution to start the investigation, without the presence of an official report from an injured party or even a judicial officer, such as police officers who are supposed to search for and collect crime-related evidence, to conduct the investigation. This means that the MAU is the body that carries out this task and collects preliminary inferences.

The second type of posts monitored by the Public Prosecution is often related to the publishing per se. The expected initial penalty in the event of conviction will be based on the Anti-Cyber and Information Technology Crimes Law No 175 of 2018, specifically Article 25 on threatening values of the Egyptian family, as well as the Penal Code. Therefore, the Public Prosecution decides to interrogate social media users based on their published content it deems as threatening family values. Other charges may

include contempt of religion, advocating temptation or harming public modesty.

The first statement issued by the Public Prosecution regarding the first in a series of TikTok cases was related to the Public Prosecutor's order to remand TikTok star Haneen Hossam in custody. The statement emphasised that the order came as a result of monitoring the online interactions and receiving "requests for investigation" with Hossam, despite the absence of a single official report against her at the time¹⁵. It should be noted that the Public Prosecutor's order to jail Hossam was based on an investigation report that post-dated her arrest¹⁶.

During 2020, the Public Prosecution issued at least two statements on two separate incidents to the effect that the CGSMD detected circulating content on social media which it deemed as a crime of contempt of Islam. In addition to the fact that such charges as contempt of religion are not commensurate with the guarantees of the freedoms of belief and expression enshrined in the Egyptian Constitution, the Public Prosecution appeared, in the two incidents, to have taken a some steps that have gone beyond its scope of powers¹⁷. That is, the Public Prosecution's MAU has collected evidence and identified suspects without receiving direct investigation reports, relying on its monitoring of the content circulating on social media. Moreover, the MAU lacks the evidence to verify the authenticity of the published posts or whether a circulated post is related to the person in question.

The Public Prosecution has allocated material and human resources to monitor social media users, according to its perceptions of the ideal shape of morals. This is inconsistent with the United Nations Guidelines on the Role of Prosecutors, according to which prosecutors shall "carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination".

It is not known what tools the Public Prosecution uses to monitor social media as part of its new tasks. This could be through the creation of social media accounts for this

15. A statement by the Public Prosecution in Case No 4917 of 2020, Sahil Misdemeanours, 23 April 2020, last accessed: 12 July 2021, link: <https://www.facebook.com/ppo.gov.eg/photos/pcb.2928785787229304/2928781557229727>

16. AFTE, *Reading in the case papers of Hanin Hossam and Mawada Al-Adham*, link: <https://afteegypt.org/en/read-tiktok-case-papers-en/2021/05/20/22397-afteegypt.html>

17. *The Public Prosecution begins an investigation into the incident of contempt of Islam*, Facebook post, 11 November 2020, last accessed: 27 June 2021, link: https://www.facebook.com/permalink.php?story_fbid=3490457894395421&id=1999202686854290

purpose, the official verified page of the Public Prosecution, or even programmes and tools that monitor social networking sites. Accordingly, the continuation of the MAU's work constitutes a serious threat to the judicial nature of the Public Prosecution, weakens the citizens' confidence in it, and raises Egyptian internet users' concerns that they may be legally held accountable for expressing their opinions.

The Public Prosecution's continuation of its monitoring work, within its official duties, will definitely create a new type of mass surveillance that threatens the privacy of citizens who use social networking sites. Given the scarcity of information on the nature of the MAU work, as well as the unknown monitoring tools and ways of implementation, we warn that the Public Prosecution performance suggests that it is in the process of developing social engineering mechanisms capable of mapping the online presence of social media users. Thus, the current performance of the Public Prosecution poses a direct threat to digital activity in Egypt, due to the violations of the right to privacy and the freedoms of thought and expression.

Moreover, the abolition of the MAU in its current form would restore the citizens' confidence in the Public Prosecution as an independent judicial body, promotes the freedoms of thought and expression, enhances political participation and stimulates public debate. The abolition of the MAU would also prove good faith in the Public Prosecution by ending the collective surveillance approach in a way that protects the privacy of citizens, which is an obligation on all state bodies under the international treaties that Egypt has ratified.

If the MAU is abolished, the Public Prosecution can re-employ the human resources it had earlier recruited in a way that supports its attitude towards communicating with the public opinion and disseminates information related to the cases it handles and can draw public attention. It should be noted that the Public Prosecution did not provide information on the number of employees working in the MAU and the amount of expenditure it spends on it.

Conclusion and recommendations

The Public Prosecution's continuation of the mass surveillance policy will have a profound impact on its success in adhering to its role as an entity affiliated with the judiciary that must ensure fair trials and maintain integrity of criminal procedures. Its continuation also violates the digital transformation experience. At a time when it is increasingly important to encourage the Public Prosecution's interest in publishing information on social media about the investigations it conducts, as well as receiving complaints online, the MAU in its current form continues to violate the privacy of social media users and makes the Public Prosecution act as a censor over citizens and their freedoms of expression and opinion.

Therefore, AFTE calls on the Egyptian Public Prosecution to:

- 1) Stop the mass surveillance policy and commit to protecting privacy in accordance with the law and constitution.
- 2) End the MAU at the Public Prosecution's CGSMD.
- 3) Re-employ the MAU staff in the CGSMD to enhance the Public Prosecution's ability to provide information to citizens on issues of interest to public opinion.