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Egypt

Amnesty International submission to the UN Universal Periodic Review

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B. Normative and institutional framework of the state

Positive developments

In recent years, the government has introduced several legal amendments intended to increase human rights safeguards, including by abolishing State Security Courts in 2003 and creating, in 2004, the National Council for Human Rights (NCHR), a non-governmental body mandated to receive complaints from the public, advise the government and publish annual reports on human rights in Egypt. In 2006, Law 145 further regulated the use of preventive detention with a view to restricting its application.

The Child Law was amended in June 2008 to ban female genital mutilation except when “medically necessary” (a qualification many fear could undermine the prohibition) and prescribed imprisonment and a substantial fine for those who break the law.

Legislative developments with serious impact on human rights safeguards

A new law regulating the judiciary, passed in 2006, contains some positive provisions, including reducing ministerial powers, but has been widely criticized as inadequate to guarantee the independence of the judiciary. The UN Special Rapporteur on the independence of judges and lawyers has criticized the law’s lack of clear criteria for selecting and appointing judges and its failure to provide fair trial guarantees in the disciplinary procedures for judges. Judges’ rights to freedom of expression and association have been undermined and several judges have been disciplined or threatened with disciplinary action by the Supreme Judiciary Council (the body that nominates, promotes, and assigns judges) for expressing their views in the media.

Media freedom remains curtailed despite the July 2006 amendments to the Penal Code intended to realize President Hosni Mubarak’s 2004 undertaking to abolish prison sentences for publishing offences. Certain publishing offences, such as insulting public officials, continue to incur custodial sentences and journalists have been sentenced to prison terms and heavy fines as a result. Draft legislation on audio-visual media would further restrict freedom of expression, proposing that journalists found to have damaged “social peace”, “national unity”, “public order” or “public values” should face up to three years in prison. A draft law examined by the parliamentary legislative committee in May 2009 stipulates prison sentences and heavy fines for defaming any of the monotheistic religions or their prophets or the publication of such defamatory statements.

Human rights safeguards have been most seriously undermined by the amendments to Article 179 of the Constitution introduced in March 2007, which state that measures taken to combat terrorism are “not to be hindered” by the protections in Articles 41(1), 44 and 45(2) of the Constitution relating to freedom against arbitrary arrest and detention, police searches without a warrant, and official eavesdropping on telephone calls and other private communications. The President is empowered to bypass ordinary courts and to refer terrorism suspects for trial by any judicial authority of his choice, including military and (Emergency) Supreme State Security Courts (courts established under emergency legislation), which have no right of appeal and a long history of conducting unfair trials.

The President currently exercises such powers under the state of emergency that has been in force continuously since 1981 and which was most recently renewed in May 2008 for a further two years or until a new anti-terrorism law has been enacted. Serious patterns of human rights violations, including

recurrent administrative detention without charge or trial, torture and other ill-treatment, and restrictions on the rights to freedom of expression, association and assembly, as well as unfair trials of suspects prosecuted before military courts and (Emergency) Supreme State Security Courts, have been a characteristic feature of the state of emergency, so it is particularly concerning that such abuses may be replicated in future under the provisions of statutory law.

Since the government announced in March 2006 that a committee had been appointed to draft a new anti-terrorism law to replace the emergency legislation, there has been little transparency regarding the process and no consultation with civil society, despite requests for such consultation and fears that the new law will entrench certain emergency powers currently exercised by state security officials, the Office of the Public Prosecutor and the President. In April 2009, the government said it had finished drafting the new law except for a section dealing with international co-operation, but that it would not be placed before parliament during its current session, and that the state of emergency will remain in force until 31 May 2010.

The government has taken few steps to address recommendations by UN human rights bodies, such as those to amend the narrow definition of torture in the Penal Code in conformity with international law and to reduce the number of crimes punishable by death as a step towards abolishing the death penalty.

Lack of adequate co-operation with UN mechanisms

The UN Special Rapporteur on human rights and counter terrorism conducted a six-day visit to Egypt in April 2009 and the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation undertook a week-long mission in June 2009. However, the government continues to deny access to the Special Rapporteurs on extrajudicial, summary or arbitrary executions, on the freedom of religion or belief, on the independence of judges and lawyers, on the situation of human rights defenders, and on torture, as well as the Working Group on arbitrary detention.

C. Promotion and protection of human rights on the ground

Torture and other ill-treatment

Torture and other ill-treatment are systematic in detention centres, including police stations and premises of the State Security Investigations (SSI), throughout the country. The most common methods reported are electric shocks, beatings, suspension by the wrists or ankles, and death threats and threats of rape or sexual abuse of the detainee or a female relative. Many people died in custody in circumstances suggesting that torture or other ill-treatment may have caused or contributed to their deaths. Others were reportedly thrown from tall buildings or shot at by security officers during arrest, which often resulted in serious injury or death. Some allegations of torture by police officers have been investigated, but allegations of torture in SSI premises are systematically ignored. Hundreds of complaints alleging torture have been brought to the attention of the Public Prosecutor's Office, but it has failed to comply with its legal obligation to investigate such complaints, giving rise to a climate of impunity.

Unfair trials before military and emergency courts

For many years, civilians have faced grossly unfair trials before military or emergency courts, particularly in cases involving alleged national security or terrorism-related offences. Trials before these courts violate some of the most fundamental requirements of due process and fair trials in international law, in particular the right to a fair and public hearing before a competent, independent and impartial tribunal established by law; the right to have adequate time to prepare a defence; the right to be defended by a lawyer of one's choosing; and the right to appeal against conviction and sentence to a higher tribunal. Although amendments to the Code of Military Justice in April 2007 introduced a right of appeal by way of cassation before the Supreme Court for Military Appeals, this is not satisfactory as the court only examines the law, its interpretation and procedural issues, and not the evidence itself or the factual basis of the charges.

Under the amended Article 179 of the Constitution, the President can refer civilians to any courts he chooses, including to military courts. This not only interferes with the independence of the judiciary, but also breaches the principle of equality before courts as defendants can be tried in different courts for the same crimes. This lack of judicial independence and impartiality is particularly disturbing considering the

complexity and seriousness of terrorism-related cases and the fact that many defendants before these courts allege that they were tortured to make them “confess”. Sentences as harsh as the death penalty have been imposed.

Administrative detention

Emergency legislation allowing for indefinite detention without charge or trial continues to be used and some administrative detainees have been held for more than a decade, despite court orders for their release. Some of those held under administrative detention have never been charged with an offence or brought to trial. Others are served with administrative detention orders after they have been released uncharged by the Office of the Public Prosecutor or after having been tried and acquitted. Still others are administratively detained after they have completed prison sentences imposed by the courts.

The Ministry of Interior stated in January 2008 that the total number of administrative detainees did not exceed 1,500, but gave no details. Unofficial sources suggest a much higher total, possibly up to 10,000, but the true number remains unknown. Amnesty International has requested the number of administrative detainees from the Ministry of Interior and other Egyptian authorities, but has received no response. Many detainees are reported to be ill due to poor food, poor hygiene, severe overcrowding and a lack of medical care.

The death penalty

The death penalty is prescribed for a wide range of offences under Egyptian law. These include attacks on state security, acts of terrorism, premeditated murder, perjury leading to the sentencing and execution of a person charged with an offence, abduction and rape, drug trafficking, and other offences related to keeping weapons and ammunitions.¹ The death penalty continues to be used extensively and at least 75 people were sentenced to death in June 2009 alone, in comparison to 87 in the whole of 2008. At least two people were executed in 2008. Little official data is available about the number of executions. Amnesty International has requested death penalty and execution statistics, but has received no response from the Egyptian authorities.

There is increasing debate within civil society about the death penalty and a conference of judges and jurists agreed in 2008 to campaign for its scope to be limited; however, the government has taken no steps in this direction. Rather, Egypt led the opposition to the resolution calling for a worldwide moratorium on executions adopted by the UN General Assembly in December 2007 and December 2008.

Abuses in the name of national security and counter-terrorism

Security police have carried out mass arrests without recourse to due process in the name of countering terrorism and suspects' relatives have been rounded up, threatened and abused. Some detainees are initially subjected to enforced disappearance for up to several months; they are detained incommunicado and in secret and often allege that they were tortured or otherwise ill-treated during this period. Some are reported to have died as a result of torture or other ill-treatment. Such detainees are then either held in administrative detention for long periods, often despite court orders for their release, or are tried in unfair trials before military courts or (Emergency) Supreme State Security Courts. Many have been convicted and sentenced to lengthy prison terms or to death by such courts.

Restrictions on the rights to freedom of expression, association and assembly

Legal restrictions and government controls limit the activities of political parties, NGOs, professional associations, trade unions and the news media. The authorities continue to prosecute journalists for defamation and other offences, to censor books and editions of foreign newspapers, and to impose restrictions on the Egyptian media. Several foreign satellite television stations have been required to close their offices in Cairo or have had their transmissions suspended, while websites are blocked and bloggers and others who criticize the government have been arrested and intimidated, and in some cases detained and tortured.

¹ The death penalty is prescribed in the Penal Code for attacks on the external security of the state (Articles 77 to 80, Penal Code), attacks on the internal security of the state (Article 83, Penal Code), crimes and offences introduced under anti-terrorist legislation (Articles 86 to 102, Penal Code), committing premeditated murder or being an accomplice to it (Articles 230 to 235, Penal Code), abduction and rape of a person of the female sex (Article 290, Penal Code), and perjury leading to the sentencing and execution of a person charged with an offence (Article 295, Penal Code). It is also prescribed under Article 33 of the Law on Drugs (Law no. 182 of 1960 as amended by Law 122 of 1989) and under the Law on Weapons and Ammunition (Law 394 of 1954).

Harassment of human rights defenders and organizations

Human rights defenders and organizations that seek to expose violations of human rights or assist torture victims are frequently harassed by the authorities. In March 2008, however, the non-governmental Centre for Trade Union and Workers' Services, which was closed by the authorities in 2007, was allowed to register as an NGO and to resume its work, and in October 2008, the Association for Human Rights and Legal Aid won a court case overturning an official order for its closure. The government is reported to be preparing to amend the restrictive law on NGOs (Law 84 of 2002), although without actively consulting relevant civil society organizations, raising fears that the law will be made even more restrictive on ostensible national security grounds.

Arrest, detention and imprisonment of suspected gay men

People continue to be arrested, tried and convicted for their imputed sexual orientation. Some 34 men are known to have been arrested and held in this connection during the past two years. In a crackdown which began in October 2007, 24 men were arrested in Cairo and Alexandria on charges of the "habitual practice of debauchery", a criminal charge used to prosecute consensual sexual acts between men. Twelve of them who were suspected of being HIV-positive were arrested in Cairo, then tortured or otherwise ill-treated by police, including with beatings, and tested for HIV/AIDS without their consent. Those testing positive were kept chained to their hospital beds until February 2008, when the Ministry of Health and Population ordered them to be unchained after international protests. Most of the men were forcibly subjected to anal examinations to "prove" that they had engaged in same sex sexual conduct; such examinations conducted without consent constitute torture. Nine of the men were later sentenced to between one and three years in prison; charges against three others were dropped. Four of those sentenced to one year in prison were granted an early release in September 2008 after serving three-quarters of their sentence.

In January 2009, 10 men were arrested, some of whom allege that they were ill-treated by police while detained at the Morality Police Department. They were detained for five months for investigation and released on bail at the end of May 2009.

Violations against migrants, refugees and asylum-seekers

In December 2005, 27 Sudanese refugees and migrants were killed and others injured when police brutally dispersed what had been for three months a peaceful sit-in close to the offices of the UN High Commissioner for Refugees (UNHCR) in Cairo. Police were said to have aimed water cannons at protesters and subjected them to indiscriminate beatings. The demonstrators, whose numbers had swelled to around 2,500, were calling for improvements in their living conditions, protection from return to Sudan, and resettlement in Europe or North America. Investigations into the killings were closed by the Dokki Prosecution's Office, which found no evidence of police or official misconduct. No further investigations were carried out despite criticism by local and international NGOs that the initial investigation had serious shortcomings and appeared to absolve police officers of any wrongdoing.

Security forces have also used excessive and lethal force against individuals who attempt to cross the border from Egypt into Israel. Most are from Sudan and Eritrea and some are likely to be refugees or asylum-seekers. At least 39 people have been shot dead and scores more injured since mid-2007. Hundreds have been tried and sentenced by military courts for "attempting to exit unlawfully the Egyptian eastern border"; none has been allowed access to UNHCR representatives in Egypt to seek asylum. At least 900 people, including many from Eritrea and Sudan, have been forcibly returned to their home countries by the Egyptian authorities despite fears that this would place them at risk of serious human rights violations and in disregard of UNHCR guidelines.

D. Recommendations for action by the state under review

Amnesty International calls on the government:

Legislative developments with serious impact on human rights safeguards

- To ensure that new legislation being developed to combat terrorism takes full account of international human rights law and Egypt's obligations under international human rights treaties, and does not

entrench under statute law emergency or other provisions that currently facilitate serious human rights violations, including violations of freedoms of expression, association and assembly, torture or other ill-treatment, and unfair trials;

Co-operation with UN mechanisms

- To implement recommendations by UN treaty bodies and special procedures, to issue a standing invitation to all UN human rights experts, and to facilitate immediately the visits requested by the UN Special Rapporteurs, especially that of the Special Rapporteur on torture;

Torture and other ill-treatment

- To modify the definition of the crime of torture in national law to bring it into full conformity with the definition in Article 1(1) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in particular by explicitly prohibiting all forms of cruel, inhuman or degrading treatment or punishment, and making clear that the prohibition is absolute and must not be suspended under any circumstances, including during a state of war or other public emergency;
- To investigate all allegations of torture and other ill-treatment promptly and thoroughly and to promptly bring to justice any officials found responsible for torture or other ill-treatment;

Unfair trials before military and emergency courts

- To stop referring security-related cases involving civilians to military and emergency courts, to halt immediately all pending trials before such courts, and to transfer the cases to ordinary civilian courts for a new trial, as well as order retrials, in proceedings that meet international fair trial standards, for all those convicted on the basis of evidence obtained or suspected to have been obtained by means of torture or other ill-treatment;

Administrative detention

- Pending repeal of the Emergency Law, to review and revise its provisions relating to court review of the legality of detention in order to ensure that anyone detained by order of the Minister of Interior appears in court without delay after being taken into custody, and that court orders for release are not circumvented by issuing new administrative detention orders;

The death penalty

- To impose an immediate moratorium on executions, commute all death sentences and progressively reduce the number of crimes punishable by death with a view to abolition of the death penalty;

Abuses in the name of national security and counter-terrorism

- To end incommunicado and secret detention in SSI and any other premises, where security detainees are at risk of torture or other ill-treatment and where detention conditions may in themselves constitute a form of cruel, inhuman or degrading treatment or punishment;

Restrictions on the right to freedom of expression, association and assembly

- To repeal or review all laws that criminalize the legitimate exercise of freedom of expression, association, assembly and other human rights;

Arrest, detention and imprisonment of suspected gay men

- To end the arrest and prosecution of people for their real or alleged homosexuality and release immediately and unconditionally anyone imprisoned solely on the basis of their imputed sexual orientation;

Violations against migrants, refugees and asylum-seekers

- To ensure that the security forces use force only in strict accordance with relevant international human rights standards and are instructed that they may not use firearms or other lethal force except when this is strictly necessary to protect their own lives or the lives of others;
- To investigate promptly, thoroughly and impartially all cases in which Egyptian border guards or other security forces have opened fire on people seeking to cross Egypt's borders with Israel or other countries, to bring to justice those responsible for killings or other excessive use of force, and to provide reparations to those whose rights have been abused;

- To ensure that Egypt respects its obligation to allow asylum-seekers meaningful access to asylum procedures and to UNHCR and to ensure that individuals who are fleeing persecution are afforded international protection.