

Egypt – Systematic abuses in the name of security

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1. Introduction

A shocking video showing Egyptian police raping a male prisoner was posted on the Internet by an Egyptian blogger in November 2006. The victim was Emad Mohamed Ali Mohamed, known as Emad al-Kabir, a 21-year-old taxi driver. He had been arrested the previous January after trying to stop an argument between police officers and his cousin. He was accused of “resisting the authorities” and presented before the Public Prosecutor, who ordered his release on bail. However, police took him back to Bulaq Dakrur Police Station in Giza governorate and the next day – 20 January 2006 – they tortured him.

Emad al-Kabir said officers tied his hands and feet and forced him to sit on the floor. They whipped him and ordered him to call himself degrading names. They then removed his trousers and raped him with a stick, recording the torture on a mobile phone. An officer told him the video would be circulated in Emad al-Kabir’s neighbourhood (which it was) in order to publicly humiliate him and intimidate others.

Emad al-Kabir was subsequently sentenced to three months’ imprisonment for “resisting the authorities” and “assaulting a police officer”. After the video came to light, two officers from Bulaq Dakrur Police Station were charged with the unlawful detention, torture and rape of Emad al-Kabir; their trial began on 3 March 2007.

What happened to Emad al-Kabir was by no means an isolated incident. Torture and other ill-treatment are systematic in detention centres across Egypt, including in police stations, premises run by the State Security Investigations (SSI) services, and military camps.¹ This should come as no surprise – the systematic nature of torture in Egypt has been highlighted by Amnesty International, the UN Committee against Torture and others for many years.² What was unusual about Emad al-Kabir’s case was that the authorities took action against the alleged torturers.

Torture and other ill-treatment, arbitrary arrests and detention, and grossly unfair trials before emergency and military courts have all been key features of Egypt’s 40-year state of emergency and counter-terrorism campaign. The extensive powers granted to law enforcement officials, especially SSI officers, have played a key role in facilitating such abuses, particularly torture. Emergency legislation has also severely restricted the rights to freedom of expression, association and assembly.

In the wake of attacks by armed groups, security police have carried out mass arrests without recourse to due process. Relatives of suspects have been rounded up too, and then threatened and abused. A combination of incommunicado and secret detention has meant that to all intents and purposes, some of those arrested have become victims of enforced disappearance for weeks or months. Some have died as a

¹ The SSI is one of the three main security agencies in Egypt; the others are the General Intelligence (Mukhbarat), attached to the President, and the Military Intelligence of the Ministry of Defence. The SSI is under the direct control of the Minister of Interior. While all three agencies could conduct investigations into matters of national security, the SSI is the main body responsible for investigating matters of domestic security. It also has responsibility for enforcing the state of emergency. The Minister of Interior has control over the paramilitary Central Security Forces (CSF) which maintains public order and supports the SSI when conducting arrest.

² In May 1996 the UN Committee against Torture issued a report summarizing the processes of a confidential inquiry carried out since November 1991. It concluded that “torture is systematically practised by the Security Forces in Egypt, in particular by State Security Intelligence...” UN Doc, Egypt, A/51/44, para. 220. (Inquiry under Article 20), 3 May 1996.

result of torture. Commonly cited methods have included electric shocks, beatings, suspension in painful positions, solitary confinement, rape and threats of death, sexual abuse and attacks on relatives.

Around 18,000 administrative detainees – people held without charge or trial under orders issued by the Interior Ministry – are languishing in Egypt’s jails in degrading and inhumane conditions.³ Some have been held for more than a decade, including many whose release has been repeatedly ordered by courts.

A parallel system of emergency justice, involving specially constituted “emergency courts” and the trial of civilians before military courts, has been established for cases deemed by the authorities to affect national security. Under this system, safeguards for fair trial, such as equality before the law, prompt access to lawyers and the ban on using evidence extracted under torture, have been routinely violated. The result has been grossly unfair trials, including in cases where defendants have been sentenced to death and, in some cases, executed.

Despite Egypt’s long and well-publicized record of such serious human rights violations, governments in other countries, notably the USA, have chosen to send detainees there in the context of the global “war on terror”. These transfers have been carried out unlawfully, without any due process and in clear breach of the principle of *non-refoulement* – the absolute prohibition of sending anyone to a country where they would be at risk of serious human rights abuses such as torture and other ill-treatment, or enforced disappearance. The resultant abuses, as testified by detainees cited in this report as well as many others, have been all too predictable.

This report is based on research conducted in Egypt and elsewhere, interviews with victims of human rights violations and their relatives, and communications with government officials. It is published at a time of increased repression of the opposition and free speech in Egypt, and when the authorities are considering new anti-terrorism legislation that threatens to entrench patterns of abuse witnessed in the past 40 years.

In March 2007 members of parliament were asked to approve amendments to 34 articles of the Constitution proposed by President Mubarak in December 2006 and thereby to write into permanent law emergency-style powers that had led to serious human rights violations for decades. The vote was held on 19 March in the absence of opposition MPs, who had staged a walk-out to protest against the amendments and the government’s moves to rush through constitutional reforms. The amendments were approved.

Amended Article 179 is particularly draconian and paves the way for a proposed new anti-terrorism law. It states that measures taken to combat terrorism will not be constrained by the protections in Articles 41(1), 44 and 45(2) of the Constitution, which provide legal safeguards against arbitrary arrest and detention, police searches without a warrant, and eavesdropping on telephone calls and other private communications. It also allows the President to bypass ordinary courts and refer people suspected of terrorism to any judicial authority he likes, including military and emergency courts which have no right of appeal and a long history of conducting unfair trials.

³ In a statement to the Ministry of Interior, the Egyptian Organization for Human Rights (EOHR) said that up to 18,000 detainees are currently in Egyptian prisons. See “Statement to the Ministry of Interior”, EOHR, 23 February 2006.

Other amendments to the Constitution appear to be politically motivated. One amendment bans the establishment of political parties based on religion – apparently targeting the opposition Muslim Brotherhood following its success in the 2005 elections, when it won 88 seats. Another reduces the role of judges in supervising elections and referendums – apparently a response to what happened in 2006, when two senior judges denounced the government’s failure to act in response to evidence of electoral fraud during the 2005 elections. Another allows the President to dissolve parliament unilaterally.

A week after the parliamentary vote, on 26 March, the government held a referendum on the constitutional amendments. The opposition, led by the Muslim Brotherhood, called for a boycott on the grounds that the lightning referendum prevented an effective “no” campaign. Armed police were deployed in the streets in response to a wave of protests around the country.

According to the authorities, the amendments were approved by more than three-quarters of voters in a turnout of 27 per cent. Independent national monitoring groups put the turnout at no more than 10 per cent.

Amnesty International fears that the constitutional amendments and the planned anti-terrorism law will be used to further stifle peaceful political dissent, as well as cement patterns of serious abuses by security forces.

This report ends with a list of detailed recommendations. In particular, Amnesty International calls on the Egyptian government to:

- repeal all emergency legislation that allows for human rights violations, particularly unfair trials before emergency and military courts, and cease such violations;
- ensure that the planned new anti-terrorism law complies fully with international human rights law and standards;
- condemn torture and other ill-treatment, ensure that all allegations of such abuses are promptly and independently investigated, and bring the perpetrators to justice;
- end incommunicado and secret detention;
- end administrative detention; and
- make public the names of all alleged terrorist suspects who have been unlawfully transferred to Egypt from US custody and other countries, and end all participation in unlawful transfers into and out of Egypt.

Background

Since the 1970s violence by armed Islamist groups and counter-violence by police and security forces have blighted Egypt and resulted in gross abuses of human rights. The violence, which included the assassination of Egyptian President Anwar Sadat in October 1981, peaked in the 1990s. Armed groups targeted government officials and security forces as well as intellectuals, Egyptian Coptic Christians and tourists. One of

the deadliest attacks, in Luxor in 1997, left more than 50 people dead, most of them foreign tourists.⁴

The rise in armed violence was accompanied by a shift in government policy. In December 1992, President Hosni Mubarak started referring civilians suspected of security or terrorism-related offences to military courts for trial.⁵ The same year, a new law on combating terrorism (Law No. 97 of 1992) was introduced, which included a vague definition of terrorism and widened the scope of activities considered to be of a terrorist nature. Both the legislation regulating trials before military courts and the new law provided for the death penalty. Hundreds of people were convicted by military tribunals and many of them were sentenced to death, some *in absentia*. In the face of such repressive measures, many members and sympathizers of unauthorized Islamist groups went underground or fled abroad.

In late 1997, the leadership of al-Gama‘a al-Islamiya (Islamic Group), the main group responsible for armed attacks in the 1990s, renounced violence and called on its members to stop launching attacks in Egypt and abroad. For the next few years Egypt was virtually free of such violence.

From 2004 onwards, however, there was a string of bombs attacks in the Sinai Peninsula that were blamed by the authorities on Tawhid wal Jihad (Unity and Holy War), an armed political group that allegedly has links with al-Qa’ida. The attacks, which killed and injured hundreds of civilians, included:

October 2004 – three bomb attacks in the Red Sea villages of Taba, Nuweiba and Ras al-Shitan which killed 34 people.

July 2005 – simultaneous bomb attacks in the Red Sea resort of Sharm al-Sheikh which killed at least 88 people.

April 2006 – bomb attacks in the Red Sea resort of Dahab which killed at least 23 people.

In addition, in **April 2005** there were three attacks on crowded tourist destinations in Cairo that the authorities said were committed by a separate group of individuals. On 7 April, a suicide bomber killed three foreigners in Khan al-Khalili market in al-Azhar district. On 30 April, a man carrying an explosive device jumped from the bridge in ‘Abd al-Mun‘im Riyad Square; his fiancée together with his sister fired at a tourist bus in Sayyida ‘Aicha Square on the same day.

Amnesty International unreservedly condemns such attacks against civilians and calls for those responsible to be brought to justice.⁶ It recognizes the Egyptian government’s responsibility to maintain public safety and to punish crime, including by preventing, investigating and punishing acts of terrorism. In carrying out its responsibilities, however, the Egyptian authorities must abide at all times by relevant

⁴ See, for example, Amnesty International’s report *Egypt: Human rights abuses by armed groups* (AI Index: MDE 12/022/1998), September 1998.

⁵ The first presidential decree was Decree 370 of 1992 based on Article 6(2) of Law No. 25 of 1966 (the Code of Military Justice). This Article stipulates that “during a state of emergency, the President of the Republic has the right to refer to the military judiciary any crime which is punishable under the Penal Code or under any other law”.

⁶ For example, *Egypt: Amnesty International condemns attacks against civilians in Taba* (AI Index: MDE 12/011/2004); *Egypt: Amnesty International condemns attack against civilians in Cairo* (AI Index: MDE 12/017/2005); *Egypt: Amnesty International condemns attack against civilians in Dahab* (AI Index: MDE 12/006/2006).

international human rights law and standards, including the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture) and other treaties to which Egypt is a state party. These treaties set out standards to which governments must adhere at all times, even after the most heinous crimes. Any law, policy or practice aimed at countering terrorism must never undermine the rule of law or fail to comply fully with international human rights law and standards.

The Egyptian authorities have failed in this respect. In their persistent attempts to eradicate what they call “terrorist cells”, they have carried out mass arbitrary arrests and tried, convicted and sentenced people using unfair proceedings and with little evidence to substantiate the charges. Many other people continue to be held in administrative detention by the security authorities although their release has been ordered on numerous occasions by the (Emergency) Supreme State Security Courts (henceforth, emergency courts).

At the international level, the Egyptian government has blamed governments in Europe and north America for harbouring Egyptian terrorist suspects and has sought their return. Many of those who have been returned, however, have then reportedly suffered human rights violations, including arbitrary arrest and detention, torture and other ill-treatment, and unfair trials at the hands of the Egyptian authorities. Some of them appear to have been victims of enforced disappearance.

Several transfers of Egyptian nationals from abroad have been carried out in collaboration with US, European and Arab governments. In some cases, the return has followed an extradition request by the Egyptian authorities. In others, the return has been the result of what the US authorities call “renditions” – the transfer of people between countries without due legal process – or of a failed asylum claim. All these returns have violated the principle of *non-refoulement* and have been carried out despite documentation provided by national and international non-government organizations to highlight the high risks of torture and other abuses that face those threatened with forcible return.

Some foreign governments have argued that the use of bilateral measures such as “diplomatic assurances” (or “diplomatic contacts”) eliminates the risk that Egyptians suspected of involvement in terrorism either abroad or in Egypt will be arrested and tortured or otherwise ill-treated in Egypt. Such bilateral agreements between governments, however, are not binding in international law, unlike the treaties prohibiting torture to which Egypt is a party but has consistently breached. Amnesty International has fundamental concerns about the use of “diplomatic assurances” to justify the return of foreign nationals who are considered to be a security threat. In the case of Egypt, Amnesty International is additionally concerned that, in practice, no judicial control can be exercised over the conduct and activities of the General Intelligence (Mukhbarat) and the SSI, who would most likely be responsible for detaining the returnees.

After the attacks in the USA on 11 September 2001, US political leaders praised Egypt’s record of dealing with terrorism. For instance, on 26 September 2001, Colin Powell, then US Secretary of State, expressed his “appreciation for the commitment that Egypt has made to working with us as we move forward to deal with the scourge of terrorism. Egypt, as all of us know, is really ahead of us on this issue. They have had to deal with acts of terrorism in recent years in the course of their

history. And we have much to learn from them and there is much we can do together.”⁷

In exchange for the return of wanted Egyptian nationals from abroad, Egypt became a key destination in the US-led global “war on terror”. Scores of individuals suspected of links to terrorist groups have been sent back to Egypt so that information could be obtained from them. According to persistent and consistent allegations by such returnees and others, torture and other forms of ill-treatment were routinely used against them both during their interrogation at the General Intelligence and SSI detention facilities and when they were transferred to prisons.⁸ The torture methods described included blindfolding, beating, suspension in painful positions, electric shocks, drugging, rape, death threats, solitary confinement and sleep deprivation.

In May 2005, while visiting the USA, Egyptian Prime Minister Ahmed Nazif stated that 60 or 70 people had been transferred to Egypt by US intelligence services since September 2001. When questioned about this statement during a visit to London in March 2006, he stated that: “[t]hat number would vary over time, so it is very difficult to pin it down”. Neither statement clarified which authorities were responsible for the arrests and detentions, where the detainees were being held, whether they had access to the outside world, or whether there were plans to charge and try the detainees. The Egyptian authorities have also failed to divulge the identities of those concerned and the circumstances of their return.

The Egyptian government continues to support the US-led “war on terror”. In its first message to the newly elected UN Secretary-General Ban Ki-moon, it stressed the importance of encouraging the UN to mobilize and co-ordinate international efforts to fight terrorism.⁹ At the same time, however, Egypt refuses to allow the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism to visit the country to assess Egypt’s human rights record in the “war on terror”, despite repeated requests by the Special Rapporteur to do so. Egypt also continues to refuse access to the Special Rapporteurs on torture and the independence of judges and lawyers.

Egypt’s counter-terrorism laws

Egyptians have lived under a state of emergency for most of the past 40 years.¹⁰ The current state of emergency has been in force continuously since 1981. The emergency provisions have been renewed regularly without any proper review and in violation of international law, in particular the ICCPR.¹¹ In April 2006 the state of emergency was

⁷ US Department of State, “Remarks with Egyptian Minister of Foreign Affairs Ahmed Maher”, 26 September 2001, see <http://www.state.gov/secretary/former/powell/remarks/2001/5066.htm>.

⁸ Typically, terrorist suspects returned from abroad are detained first in the General Intelligence and later in various SSI detention facilities and prisons.

⁹ “Egypt urges new UN chief to continue fight against terror”, AFP, 14 October 2006.

¹⁰ The state of emergency was imposed in 1967 because of the Arab-Israeli war that year and was only lifted between May 1980 and October 1981. It was re-imposed on 6 October 1981 following President Anwar al-Sadat’s assassination.

¹¹ Article 4 of the ICCPR states: “In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”

renewed once again for a further two years, despite repeated calls by human rights groups for it to be lifted.

The emergency legislation confers wide powers on security officials and the executive authority. These powers facilitate numerous violations of human rights, including arbitrary detention, torture or other ill-treatment and unfair trials, violations that have been perpetrated with impunity over many years. The legislation also severely restricts the rights to freedom of expression, association and assembly, and allows people charged with certain offences to face grossly unfair trials before military and emergency courts.

In January 2004, in an attempt to limit the use of emergency legislation, President Mubarak ordered the abolition of most military orders issued under the emergency provisions since 1981 – except those purportedly aimed at protecting public security. The previous year, in 2003, the State Security Courts had been abolished. However, the exceptional powers given to the Public Prosecution under ¹ Law No. 105 of 1980, which established these courts, were reinstated through amendments to the Code of Criminal Procedures (CCP).

The Emergency Law (Law No. 162 of 1958, as amended) gives sweeping powers to law enforcement officials, in particular SSI officers. Under Article 3, a suspect may be detained for a prolonged period without charge or trial.¹² The Ministry of Interior orders detentions. In urgent cases, these orders can be made verbally, provided that they are supported by a written order within eight days. Anyone held in administrative detention under Article 3 has certain rights of appeal, but the process is complex and regularly abused by the authorities.

The law stipulates that detainees must be informed immediately of the reasons for their arrest, be given access to a lawyer, and be allowed to contact anyone they choose to tell them of their arrest. In practice, however, those detained are often not informed of the reason for their arrest, and they are not permitted family visits for 30 days. Furthermore, Article 6 does not require law enforcement officials to abide by the arrest and detention procedures specified in the Constitution and other Egyptian laws when apprehending people who have breached orders issued under the Emergency Law or are suspected of crimes mentioned in those orders.

The Emergency Law gives the Egyptian President the power to transfer any case involving a crime listed in the Penal Code or other law to an emergency court. It also empowers the President to determine the composition of emergency courts, including by nominating military officers to act as judges.¹³ The President is also entitled by virtue of Article 6 of the Code of Military Justice to transfer any case to a military court. Sentences handed down by these courts are considered final and subject only to a presidential review, thus preventing defendants from appealing before a higher tribunal, as required by international law.¹⁴

The Emergency Law also empowers the executive to order the detention without charge or trial of anyone suspected on the basis of the vaguely defined offences of endangering “national security” or “public order”. Thousands of people continue to be held under administrative detention orders even though courts have

¹² For more details, see section on administrative detention below.

¹³ Articles 7, 8 and 9 of the Emergency Law.

¹⁴ Article 12 of the Emergency Law. In March 2007, President Mubarak proposed a law to set up an appeals court for suspects tried before military courts.

acquitted them or repeatedly ordered their release. This practice of “recurrent detention” is frequently used by the Egyptian authorities to detain individuals, mainly members or sympathizers of unauthorized Islamist groups, without charge or trial for prolonged periods. Some have been held since the early 1990s.

The Anti-Terrorism Law (Law No. 97 of 1992) gives even greater powers to security bodies and the Public Prosecutor, and further limited individuals’ rights, including by restricting freedom of expression, association and assembly. It too has been used as the legal basis for trials of civilians before military courts, a practice that violates international standards.

Shortly after the Anti-Terrorism Law was introduced, the UN Human Rights Committee concluded that it contravenes a number of rights enshrined in the ICCPR, in particular Articles 6, 7, 9 and 15.¹⁵ The Committee also stated that the “definition of terrorism contained in that law is so broad that it encompasses a wide range of acts of differing gravity”. It called on Egypt to review the law, especially those provisions that widened the scope of the death penalty.¹⁶ Until 2003, when the law that abolished the State Security Courts was passed,¹⁷ the Anti-Terrorism Law allowed the judicial police to detain suspects for up to seven days before referring them to the office of the Public Prosecutor.¹⁸

In March 2006, the government announced that a committee had been charged with drafting a new anti-terrorism law to replace the emergency legislation. Amnesty International sent a memorandum to President Mubarak and other members of the Egyptian government which urged them to ensure that the new law does not entrench powers that have for many years facilitated torture and other ill-treatment, arbitrary detention, unfair trials and other serious human rights violations. Amnesty International asked for an opportunity to see and comment on the draft law and sought information on a number of cases of individuals detained in connection with alleged terrorist activities. A copy of the memorandum was also handed to the Minister of Interior by Amnesty International’s Secretary General during a visit to Cairo in September 2006. In December Amnesty International again sought a response to the memorandum during a meeting with officials from the Ministry of Foreign Affairs. At the time of writing, Amnesty International had not received a response.

On 26 December 2006, in a statement before the People’s Assembly, President Mubarak announced his proposal to amend 34 articles of Egypt’s Constitution. As

¹⁵ UN Doc, CCPR/C/79/Add.23, 9 August 1993, para. 8. These Articles guarantee the right to life (Article 6), the right not to be subjected to torture or other ill-treatment (Article 7), the right not to be arbitrarily detained and deprived of liberty (Article 9), the legality of the offence (that is, the requirement to limit both criminal liability and punishment to clear and precise provisions in the law that existed and were applicable at the time when the offence was committed, except in cases where a later law imposes a lighter sentence) (Article 15).

¹⁶ Article 86 of the Egyptian Penal Code as amended by Law No. 97 of 1992 defines the offence of “terrorism” to mean “any use of force or violence or any threat or intimidation to which the perpetrator resorts in order to carry out an individual or collective criminal plan aimed at disturbing the peace or jeopardizing the safety and security of society and which is of such nature as to harm or create fear in persons or imperil their lives, freedoms or security; harm the environment; damage or take possession of communications; prevent or impede the public authorities in the performance of their work; or thwart the application of the Constitution or of laws or regulations.”

¹⁷ Law 95 of 2003 abolishing State Security Courts and amending certain provisions in the Penal Code and CCP.

¹⁸ See Article 7*bis* of Law 105 of 1980 establishing State Security Courts; this Article was added by the Anti-Terrorism Law of 1992.

highlighted above, of particular concern is amended Article 179, which paves the way for the introduction of a new anti-terrorism law. In March 2007, the amendments were adopted in parliament and endorsed in a referendum that was boycotted by the political opposition and others and widely criticized by independent national monitors as fraudulent.

On the eve of the vote in parliament and before the referendum, Amnesty International warned that the amendments would entrench existing practices of arbitrary arrest and detention, torture and unfair trials, and further erode human rights protection. It also stated that they would violate Egypt's international human rights obligations.¹⁹

Amnesty International renews its calls on the Egyptian government to ensure that the planned anti-terrorism law complies fully with international human rights law and standards. UN bodies, including the Commission on Human Rights, the General Assembly and the Security Council, have repeatedly affirmed this principle.²⁰ Most recently, this commitment was renewed in the World Summit Outcome document adopted by the High-level Plenary Meeting of the UN General Assembly in September 2005, in which Foreign Minister Ahmed Aboul Gheit participated on behalf of the Egyptian government. The document states that:

*"[I]nternational cooperation to fight terrorism must be conducted in conformity with international law, including the Charter and relevant international conventions and protocols. States must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law."*²¹

Amnesty International acknowledges that there is no internationally agreed definition of terrorism. However, any definition must conform with established principles of criminal law, in particular the principle of the *legality of the offence* (that is, the requirement to limit both criminal liability and punishment to clear and precise provisions in the law that existed and were applicable at the time when the offence was committed, except in cases where a later law imposes a lighter sentence),²² and the principle of *individual responsibility* (that is, criminal responsibility must be individual, not collective).

Amnesty International calls on the Egyptian authorities to ensure that the new anti-terrorism law defines "acts of terrorism" clearly and in unambiguous terms, in a manner that does not impinge upon or criminalize acts that are consistent with the exercise of rights and freedoms guaranteed under international human rights law, including freedom of expression, association and peaceful assembly. The organization also urges the Egyptian authorities to review the definition of terrorism in the Penal

¹⁹ See Amnesty International, *Egypt: Referendum must not be used to legitimize erosion of human rights* (AI Index: MDE 12/009/2007); and *Egypt: Proposed constitutional amendments greatest erosion of human rights in 26 years* (AI Index: MDE 12/008/2007).

²⁰ See in particular Commission on Human Rights, Resolution 2003/68 of 25 April 2003, para. 3; Resolution 2004/87 of 21 April 2004, para. 1; and Resolution 2005/80 of 21 April 2005, para. 1. Also UN General Assembly Resolution 57/219 of 18 December 2002, para. 1; Resolution 58/187 of 22 December 2003, para. 1; Resolution 59/191 of 20 December 2004, para. 1; and Resolution 60/158 of 16 December 2005, para. 1. Also UN Security Council Resolution 1456 of 20 January 2003, para. 6.

²¹ See World Summit Outcome, UN Doc. A/RES/60/1 of 16 September 2005.

²² See report by the UN Independent Expert on the Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, E/CN.4/2005/103, 7 February 2005, para. 33.

Code in light of the principles specified above, if it is to be used in the new anti-terrorism law; or repeal Article 86 of the Penal Code.

Furthermore, Amnesty International urges the government not to use the definitions of terrorism provided in the Organization of African Union Convention on the Prevention and Combating of Terrorism and its Protocol, or the Arab Convention for the Suppression of Terrorism, as these are too vague and could be used to criminalize the legitimate exercise of freedom of expression and other human rights.²³

The Egyptian authorities must ensure that the new anti-terrorism law will not in any way facilitate torture or other ill-treatment, and will include the safeguards against such abuses spelled out in international standards such as the Convention against Torture. To date, such safeguards have been signally lacking in Egyptian legislation. In addition, to ensure the fairness of any trial of those charged with terrorism-related offences, the new law must afford the accused with the facilities to defend themselves effectively, including the right to be assisted by legal counsel promptly and during interrogation.

Finally, Amnesty International urges the Egyptian authorities to ensure that the new anti-terrorism law does not include the death penalty as a punishment for any offence.

2. Arbitrary arrests and unlawful detention

Arbitrary arrests followed by incommunicado and secret detention have been a persistent feature of the Egyptian government's counter-terrorism measures for decades. State security forces have carried out mass arrests in the aftermath of bomb or armed attacks, increasingly including in their haul the wives, sisters, elderly parents and sometimes even children of those suspected. Many of these relatives have effectively been held as hostages by the SSI for up to several months in order to force their wanted relatives to surrender or to gather information about suspects. In scores of cases, male relatives of suspects are reported to have been tortured, including with electric shocks, during detention. The detainees suspected of terrorist offences themselves have been held incommunicado for periods of weeks or months during which they have been tortured or otherwise ill-treated.

Mass arbitrary arrests

Mass arrests have usually followed attacks by armed groups. For instance, thousands of people were detained after the 2004 attacks in Taba and Nuweiba, the 2005 attacks in Cairo and Sharm al-Sheikh, and the 2006 explosions in Dahab. Government officials declared that such sweeping raids were a necessary part of an effective investigation.

Typically, arrests have been carried out in the early hours of the morning by SSI officials assisted by officers from the paramilitary Central Security Forces (CSF) without recourse to due process. Suspects' relatives have often reported being threatened and intimidated by the arresting authorities. In cases where the suspect was absent at the time of the SSI raid, family members have frequently been detained

²³ See Amnesty International, *The Arab Convention for the Suppression of Terrorism: a serious threat to human rights* (AI Index: IOR 51/001/2002), 9 January 2002, and International Commission of Jurists, *Terrorism and Human Rights: New Challenges and Old Dangers*, March 2003, pp. 61-65.

instead, not as suspects themselves but in order to exert pressure on the suspect to surrender to the authorities, to obtain information on the suspect's whereabouts, or to extract information about someone else already in detention.

Many suspects arrested during such raids state that they were not informed of the reasons at the time of their arrest. Their families were often told by the security officers making the arrest that the detainee would be taken to a local SSI office or police station. However, on arrival at the place of detention, detainees were not permitted to inform a person of their choice about their detention and circumstances, nor were they informed of the charges against them or of their right to be assisted by a lawyer.

In such cases, the arrests have violated the CCP and the Constitution, both of which stipulate that anyone arrested or detained shall be informed of the reason for arrest or detention, be allowed to communicate with the outside world and be assisted by a lawyer immediately following their arrest.²⁴

In general, the only detainees who have been informed of the reason for their arrest have been those taken into custody simply because they were related to a suspect. In some cases, such relatives have then been released but told that they should find the wanted person and convince them to surrender to the authorities in order to stop the torture or other ill-treatment of other relatives still in detention. Many relatives of suspects in the Taba bombing case, for instance, were detained for up to five months and tortured or otherwise ill-treated in order to force them to give information about the whereabouts of those being sought by the authorities or to induce the fugitives to surrender themselves to the authorities.

The imprisonment of relatives and associates of people suspected of a crime as "substitute prisoners" constitutes arbitrary arrest and detention and is a violation of international human rights law. Indeed, it may amount to the crime of hostage-taking under the International Convention Against the Taking of Hostages, which Egypt ratified in 1981.

[CASE BOX]

Usama 'Abd al-Ghani al-Nakhlawi's family

During the night of 21 October 2004, security officers tried to arrest Usama 'Abd al-Ghani al-Nakhlawi at his home in Nakhil, al-'Arish, but found that he was not there. Instead, according to the wanted man's sister, Sahar Muhammed 'Abd al-Ghani, a primary school teacher, they detained her elderly uncle, 'Eid 'Abd al-Ghani, although he was not a suspect in the case. They then went to the house of the parents of her brother's wife, Maryam Sulaiman Hassan. There they forcibly removed the 21-year-old woman's veil, blindfolded her and tied her hands behind her back, and beat her before taking her to the SSI office in al-'Arish. As a result, she was separated from her 15-month-old daughter, Hagar, who was left with her grandmother.

The next morning, security officers raided Sahar Muhammed 'Abd al-Ghani's home while everybody was still asleep. She was arrested, together with her two brothers, Ayman and Ahmed, and her parents. They all had their hands tied behind their backs and were blindfolded, then dragged into police cars. Ahmed was reportedly beaten

²⁴ Article 139 of the CCP and Article 71 of the Egyptian Constitution. Similar provisions are in Article 9(2) of the ICCPR.

before being pushed inside the car. They were all taken to the SSI office in al-‘Arish, where their blindfolds were removed and the men were separated from the women. They were told that they would be held until Usama surrendered himself to the police.

After they had been detained for one week, Sahar and her brother Ayman were taken by security police in a red car and told to point out the house of their uncle, Gumaa, and two of his sons, Magdi and Muhammed. These three were then arrested and also taken to the SSI office in al-‘Arish, together with another cousin, Muhammed Abdallah.

The wanted man’s elderly uncle, Eid ‘Abd al-Ghani, is reported to have been released after he had spent a week in detention and to have been told by the security police to find Usama ‘Abd al-Ghani al-Nakhlawi. Sahar, her mother Na‘ima and sister-in-law Maryam were detained for 14 days without charge or trial and then released, while Sahar’s uncle Gumaa and his two sons were held for two months and then released without charge. Sahar’s brother Ahmed, who reportedly became seriously ill because of the poor conditions of detention, was released on 23 December 2004. Her brother Ayman and her father, Muhammed ‘Abd al-Ghani, were released without charge after five months in detention.

While detained, none of Usama ‘Abd al-Ghani al-Nakhlawi’s relatives was allowed visits, contact with a lawyer or medical attention. Ayman and Gumaa were reportedly tortured at the SSI office in al-‘Arish. With the exception of ‘Eid ‘Abd al-Ghani, all the male members of the family were reportedly detained in the CSF military camp in al-Masa‘id, a few kilometres west of al-‘Arish, where detention conditions were reportedly harsh.

Usama ‘Abd al-Ghani al-Nakhlawi was arrested in August 2005 and tried in connection with the Taba and Nuweiba bombings. On 30 November 2006, he was sentenced to death together with two others. All three remain in Tora prison in Cairo.

[END BOX]

Incommunicado and secret detention

In many cases, the authorities have failed to disclose any information about those arrested to their families, including information about their whereabouts. When detainees’ relatives have inquired about them at the local SSI office or police station to which the arresting officers said they would be taken, they have been told that they were not there but not informed as to their current place of detention. Similarly, when families have made inquiries with the office of the Public Prosecutor or have written to the Ministries of Interior and Justice, these too have failed to provide them with any information or clarification of their relatives’ fate.

As far as the outside world is concerned, these detainees have become victims of enforced disappearance, a gross violation of international law. In virtually all cases, the disappearance has been of short duration, but in some cases of those returned from abroad it has lasted for months or even years.

When families have discovered the whereabouts of their relative through informal means, usually via former fellow detainees, they have not been allowed to visit them in detention or have been permitted to do so only after long periods during which their relatives have been held incommunicado. For many of those arrested

following the Taba bombing, for example, no family visits were permitted outside major national holidays. Those tried in connection with the Cairo bombings were not allowed family visits for over a year, until their trial opened in June 2006.

One reason for the authorities' failure to divulge information about the whereabouts of detainees is widely believed to be the result of the powers invested in the Ministry of Interior to determine where particular detainees are held.²⁵ Article 1 *bis* of Law No. 396 of 1956 – the Law on Prison Regulations – states that “individuals deprived of their liberty can be detained in one of the places of detention previously specified in this law as well as in places defined by decree of the Minister of Interior...” This has led to detainees being held in SSI detention centres and CSF military camps, premises that, unlike other more regular detention facilities, are not liable to inspection by the Public Prosecutor or any other judicial authority as required by Article 42 of the CCP and Article 85 of the Law on Prison Regulations.

In most cases, security detainees have been held in the local SSI office or police station for a couple of days and then transferred, usually to the SSI headquarters in Lazoghly Square in Cairo or to a prison near Cairo. Despite many reports that people have been held in SSI detention centres, the Ministry of Interior stated that “these [SSI] premises are not deemed detention premises since they are considered security information systems which have no jurisdiction whatsoever over detention operations. Therefore, regular inspection visits [as specified in Article 42 of the CCP] are not made to such premises.”²⁶ Since these detention centres are not recognized officially as prisons, no records of those detained there or their detention periods are kept. Holding detainees in such informal detention centres, even for a short period, violates Article 41 of the CCP, which prohibits detaining people in unofficial detention facilities. It appears also that the office of the Public Prosecutor is not informed about people detained in such premises or the reasons for their detention by the SSI, and so is unable to provide any oversight of detention conditions or the treatment of the detainees while they are held in such places.

As a result of these practices, many security detainees have been held for weeks or months incommunicado and reportedly tortured.

Incommunicado detention has been condemned by international human rights bodies and mechanisms as a human rights violation that facilitates other violations such as enforced disappearance, torture or other ill-treatment. The UN Special Rapporteur on torture has repeatedly stressed that torture often takes place while prisoners are held incommunicado, unable to contact people outside who could help them or find out what is happening to them, and has called for this practice to end. All detainees should be brought before an independent judicial authority without delay after being taken into custody, and have access to relatives, lawyers and doctors without delay and regularly thereafter.²⁷

[CASE BOX]

²⁵ Law 157 of 1968 and its executive decrees. See National Council for Human Rights, *Annual Report 2004/2005*, p.295.

²⁶ National Council for Human Rights, *Annual Report 2004/2005*, p.213.

²⁷ Human Rights Committee, Preliminary observations: Peru, UN Doc. CCPR/C/79/Add. 67, 25 July 1996, paras 18 and 24. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment, UN Doc. E/CN.4/1995/434, para. 926(d).

Six in secret detention

Six Egyptian nationals – Muhammed ‘Abd al-‘Aziz al-Gamal, Sayyid Imam ‘Abd al-‘Aziz al-Sharif (also known as Abu al-Fadl), ‘Isam Shu’aib Muhammed, Khalifa Sayyid Badawi, Uthman al-Samman and Ali Abd al-Rahim -- who were unlawfully returned to Egypt from Yemen in February 2002, are still being detained without charge, and without access to legal counsel, medical treatment or relatives, according to information received by Amnesty International.²⁸ They are being held incommunicado and in secret – victims of enforced disappearance.

Prior to their return to Egypt, the six had been detained by Yemen’s Political Security without trial in Sana’a since 2001.

In 1999, four of the men had been tried in their absence by military courts in Egypt. In what became known as the “returnees from Albania” trial, Muhammed ‘Abd al-‘Aziz al-Gamal, Sayyid Imam ‘Abd al-‘Aziz al-Sharif, ‘Isam Shu’aib Muhammed and Khalifa Sayyid Badawi were sentenced to death, life imprisonment, 10 and seven years’ imprisonment respectively, after an unfair trial before the Heikstep military court near Cairo. Uthman al-Samman, was tried in his absence before a military court in 1992 and was also sentenced to death. The authorities have made no information available about these men or whether they plan to retry them.

In March 2007, Muhammed ‘Abd al-‘Aziz al-Gamal and Sayyid Imam ‘Abd al-‘Aziz al-Sharif were reportedly transferred to Tora Prison from an unknown detention centre where they had been kept since their forcible return from Yemen. It was reported that, as members of the Egyptian Islamic Jihad formerly headed by Ayman al-Zawahiri, they were preparing to announce an initiative renouncing violence in Egypt similar to that of al-Gama’a al-Islamiya in 1997.²⁹

[END BOX]

Administrative detention

“I have now spent more than 12 years in [administrative] detention during which I have been subjected to all forms of torture and ill-treatment, prohibited from contacting my children and relatives. My family has been displaced, my financial sources lost, my business [in Pakistan] closed down and the future of my children wasted.”

Mohamed ‘Abd Rahim el Sharkawy, describing his administrative detention in Egyptian prisons

Several hundred people detained in connection with the bombings in Sinai between 2004 and 2006 and in Cairo in April 2005 are being held in administrative detention. In all, today there are some 18,000 administrative detainees languishing in Egyptian prisons, some of whom have been held continuously since the early 1990s.³⁰ Most of them are being held in conditions that amount to cruel, inhuman or degrading treatment. Hundreds are reportedly ill with tuberculosis, skin diseases and other

²⁸ Amnesty International and other human rights groups had previously been told that the six were returned to Egypt in 2004.

²⁹ “Former leader of Jihad joins initiative to stop violence in Egypt”, *Al-Hayat*, 22 March 2007.

³⁰ According to an official from the Ministry of Interior, the figure does not exceed 4,000 detainees.

ailments that thrive due to the lack of adequate hygiene and medical care, poor food and severe overcrowding.³¹

Hundreds of relatives of administrative detainees held a sit-in at the Lawyers' Syndicate building in Cairo for several months in the run-up to the September 2005 presidential elections in protest against the continuing imprisonment of their relatives in harsh conditions despite numerous release orders by emergency courts. They also mounted a protest in October 2005 outside the Interior Ministry in Cairo's Lazoghly Square.

People arrested as terrorist suspects who are not charged or who are acquitted are often kept in administrative detention by the Interior Minister under emergency legislation. Under Article 3 of the Emergency Law, the Minister of Interior may "arrest and detain suspected persons or those who endanger public order or security". Anyone detained under this provision is entitled to lodge a complaint against their detention 30 days after the detention order was issued. Such complaints are referred to an emergency court, which must give a reasoned decision within 15 days. However, if the court determines that the detainee should be released, the Interior Minister has 15 days to challenge the decision, during which the detainee continues to be held. In such circumstances, the case is then referred to a second, equivalent court which also has 15 days to decide on the Minister's objection. If the second court confirms the order to release, the detainee must then be freed. If not, the detainee continues to be held and is entitled to submit a new complaint to an emergency court and begin the whole process again once a further 30 days has elapsed.³²

In practice, however, the detaining authorities often circumvent this procedure and do not release detainees in accordance with the decision of the second court. Instead, they secretly move detainees to new places of detention, such as local police stations or SSI premises in Cairo or elsewhere, and hold them until new detention orders are issued against them by the Minister of Interior on the false grounds that the detainee was released but immediately returned to criminal or terrorist activities and was then rearrested.

Some defendants have remained in detention following their acquittal by emergency or military courts after a new detention order was issued against them by the Interior Minister. Detainees who persist in lodging complaints against their detention orders have been transferred to remote prisons, hundreds of kilometres from their families, apparently in reprisal and to deter them from lodging further appeals. Lawyers representing such detainees have told Amnesty International that this practice has caused detainees to desist from exercising their right to challenge detention orders.

Such use of administrative detention orders is unlawful. The UN Working Group on Arbitrary Detention has stated that "the use of 'administrative detention' under public security legislation, migration laws or other related administrative law, resulting in a deprivation of liberty for unlimited time or for very long periods without

³¹ In September 2005, up to 2,000 prisoners were released for health and humanitarian reasons, reportedly following recommendations by the government-sponsored human rights body, the National Council for Human Rights.

³² For more details on administrative detention in Egypt, see *Egypt: Arbitrary detention and torture under emergency powers* (AI Index: MDE 12/01/1989); and *Egypt: Security police detentions undermine the rule of law* (AI Index: MDE 12/01/1992).

effective judicial oversight, as a means to detain persons suspected of involvement in terrorism or other crimes, is not compatible with international human rights law.”³³

The ICCPR does allow for derogation of some of its provisions during proclaimed states of emergency – but only if and to the extent that the situation constitutes a threat to the life of the nation. The Human Rights Committee has emphasized: “States parties may in no circumstances invoke Article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance... through arbitrary deprivations of liberty”. In accordance with international law and in particular Article 9(3) of the ICCPR, anyone detained on suspicion of criminal activity must be brought promptly before a judge and tried within a reasonable time, or else released.

Amnesty International has repeatedly reminded the Egyptian government of its obligations under international human rights law and drawn its attention to the requirement that detainees be brought before a judicial authority without delay, and either be charged with a recognizably criminal offence and tried promptly and fairly, or released.

The government has denied that detainees are held illegally in administrative detention after they have received release orders. In February 2006, an Interior Ministry official told the Egyptian Parliamentary Human Rights Committee that new detention orders are issued to those whose release had been ordered by the courts only in cases where there is evidence that the person in question may be a public threat or has returned to harmful activities. A similar statement was made to Amnesty International in 1993 by an official from the Ministry of Interior. The practice, however, indicates otherwise.

[CASE BOX]

‘Abd al-Mun’im al-Srougi

‘Abd al-Mun’im al-Srougi, aged 41, was arrested in June 1990 and has been detained ever since. No charges have ever been brought against him. He has been held in several prisons, including Abu Zaabal and Tora. Emergency courts have reportedly issued at least eight orders for his release. Amnesty International has been campaigning on his behalf since 1995. In October 1996, the UN Working Group on Arbitrary Detention adopted a decision that ‘Abd al-Mun’im al-Srougi had been detained arbitrarily in contravention of Universal Declaration of Human Rights and the ICCPR.³⁴ At the time of writing, ‘Abd al-Mun’im al-Srougi was in Wadi Natroon Prison, north-west of Cairo.

[END BOX]

[CASE BOX]

Mohamed ‘Abd Rahim el Sharkawy

³³ Report of the Working Group on Arbitrary Detention, E/CN.4/2005/6, para. 77.

³⁴ UN Doc, General E/CN.4/1997/add.1, 29 October 1996.

Mohamed 'Abd Rahim el Sharkawy has been in administrative detention since he was extradited to Egypt from Pakistan in May 1995. Six of his seven children are still in Pakistan.

Mohamed el Sharkawy had been arrested twice in Egypt in the 1980s – in 1981 in connection with President Anwar Sadat's assassination, and in 1987 after an attempted assassination of the then Interior Minister. He wrote in a letter received by Amnesty International that he was tortured, including by being suspended from the ceiling for several days, given electric shocks and beaten. Egyptian courts acquitted him on both occasions.

In 1988, while in Saudi Arabia for al-Hadj, the Muslim pilgrimage, he learned that SSI officers were at his home in Cairo waiting to arrest him. He decided not to return to Egypt and instead went to Pakistan. In 1989, his Egyptian wife and children joined him there and three years later he was granted Pakistani citizenship.

In July 1994, he was arrested at his home in Pakistan following an extradition request by the Egyptian authorities. Although courts in Peshawar and Lahore, as well as the Pakistan Supreme Court, had still to rule on his legal challenge that he could not be extradited to Egypt as a Pakistani citizen, he was sent back to Egypt in May 1995.

Once back in Egypt he was detained incommunicado for several months, during which he was allegedly tortured. Although he was acquitted by the emergency court after appealing against the order of the Minister of Interior to detain him, he has remained in administrative detention ever since. He says that when there were terrorist attacks in the 1990s in Egypt, he was taken from prison, interrogated and tortured.

Mohamed el Sharkawy has spent the past 12 years between al-Aqrab, Damanhour, Fayoum, Abu Zaabal and Tora prisons. Courts have ordered his release at least 15 times. He is currently in Liman Tora Prison. He says his health is bad because of the torture he suffered, lack of adequate medical treatment and harsh prison conditions. A medical report confirms that he has herniated vertebral discs, which cause him a lot of pain in his back and legs.

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3. Torture and other ill-treatment

"They told me 'we will suspend you'. I did not understand what they meant. Then they tied up my hands behind my back and tied up my feet and suspended me from my hands on the edge of an open door and started to torture me."

W.A.E.M., a 22-year-old university student, described to Amnesty International the torture he was subjected to by Egypt's security forces. He was never charged, his allegations of torture have never been investigated, and he has received no reparation for his ordeal.

W.A.E.M. was arrested at around 3am on 29 October 2004 at his home. He was blindfolded and taken to the SSI office in al-'Arish. He was asked to identify certain individuals but when he said that he had no idea who they were, he was insulted and repeatedly beaten on his face. His interrogators then stripped him naked, tied his hands behind his back, bound his feet together, and then suspended him by his wrists from the top of an open door. A wire was attached to one of his toes and

another to his penis. He was then given electric shocks. He had water poured on his face and was made to lie on the floor. All this happened while he was naked and blindfolded.

The same forms of torture continued for a week. Sometimes he was also forced to be present while other detainees were being interrogated and tortured, and at other times he could hear the screams of fellow detainees being interrogated. He said, “The worse thing that happened to me was taking my clothes off because it affects my psychology”.

W.A.E.M. told Amnesty International that he spent 14 days in the SSI office in al-‘Arish before being transferred to a CSF detention centre in al-Masa‘id after the ‘Eid el-Fitr holiday marking the end of Ramadan. At the CSF detention facility, he was held in a cell with some 35 others, in very cramped conditions. The inmates, who all had to sleep on the floor, received no more than one meal a day, were not allowed out of the cell and were denied medical attention. As a result of being suspended with his hands behind his back, his arms were badly injured and he could not move them freely for 45 days. During this period, he was fed and assisted by other detainees. His request to see a doctor was rejected.

After two months in al-Masa‘id, he was returned to the SSI office in al-‘Arish where he was held for a further 20 days. He was denied permission to sit his university exams. He was then transferred to Tora Prison, where he says he was again interrogated and assaulted while blindfolded. He was eventually released without charge in April 2005.

Across Egypt, torture and other forms of ill-treatment are systematic in detention centres. Detainees held for their political beliefs or activities, especially alleged members of unauthorized Islamist groups, including people returned from abroad, are particularly at risk of torture and other ill-treatment, notably at the SSI headquarters in Lazoghly Square, Cairo, as well as at other SSI branches, police stations and occasionally prisons.

SSI officers have routinely taken people from prisons for interrogation without the authorization of the Public Prosecutor – a clear violation of the CCP and the Law on Prison Regulations. Both laws prohibit police officers from contacting a detainee without written authorization from the Public Prosecutor.³⁵ In dozens of cases reported to Amnesty International by lawyers and former detainees, detainees were taken from Tora Prison to the SSI premises and tortured or otherwise ill-treated during interrogation. Usually, the detainee’s file contains no record of these transfers. Egyptian law actually prohibits such transfers, but there are no provisions to prosecute or punish those who undertake them.³⁶

Torture has taken different forms during these interrogation sessions.³⁷ The most frequently reported methods have been beatings; electric shocks; suspension by the wrists and ankles and in contorted positions for long periods; and threats that the victim or their relatives will be killed, raped or otherwise sexually abused. Some detainees said they were interrogated while fellow inmates were being tortured nearby.

³⁵ Article 140 of the CCP and Article 79 of the Law on Prison Regulations.

³⁶ Abdallah Khalil, *al-Huquq al-Madaniyya wa al-Siyassiya fi al-Tashri‘ al-Masri (Civil and Political Rights in Egyptian Legislation)*, p. 118.

³⁷ Amnesty International obtained information about these abuses directly from the victims or their written testimonies, or from reports by their relatives and lawyers and other sources.

Others said that they heard the screams of people being tortured and saw the injuries of prisoners after they had been interrogated. Many of those detained in connection with the attacks in Taba and Sharm el-Sheikh said that their hands were tied and that they were stripped naked and blindfolded throughout the sessions.

Such practices were noted by the UN Committee against Torture in relation to Ahmed Agiza and Mohammed El-Zari, who were transferred to Egypt from Sweden and allegedly tortured (see Chapter 5). “Egypt resorted to consistent and widespread use of torture against detainees, and... the risk of such treatment was particularly high in the case of detainees held for political and security reasons.”³⁸

Despite such widespread knowledge of the systemic recourse to torture and other ill-treatment in Egypt’s detention centres, especially in security cases, some states, including Sweden, the UK and the USA, have sought assurances from the Egyptian authorities that a person transferred to Egypt will not suffer these abuses, in at least implicit recognition that torture is common in Egypt.³⁹ Such assurances, however, are not worth the paper they are written on given that those providing the assurances already have a record of breaking pledges made to the wider international community when ratifying international treaties that ban torture and ill-treatment. Moreover, reliance on such assurances does not satisfy the absolute obligation under international law not to transfer anyone to a country where they risk torture or other ill-treatment (the principle of *non-refoulement*). In a press statement in March 2007, referring to the case of Ahmed Agiza and Mohammed El-Zari, the Swedish Ministry of Justice stated, after the fact, that the government had concluded that the guarantees it received from Egypt “should not have been considered to be sufficient”.

In a response to one of the Human Rights Committee’s comments, the Egyptian government said in 2004 that those returned forcibly to Egypt from other countries had been presented before the Public Prosecutor upon arrival and that none of them had “filed a complaint about ill-treatment”.⁴⁰ This is misleading. In fact, many of the people who were returned from abroad were arrested upon arrival, kept for over a year in incommunicado and secret detention, and tortured or otherwise ill-treated (see Chapter 5).

[CASE BOX]

Ahmed Abdallah Rabaa

It appears that Ahmed Abdallah Rabaa was tortured and otherwise ill-treated during nearly three months’ detention either because his brother Muhammad was a terrorist suspect, or because of a mix-up in names by the security forces.

When police came to arrest his brother on 22 October 2004 at around midnight, Ahmed Rabaa was reportedly hit on the head with the butt of a machine gun. He was

³⁸ UN Doc, Communication No. 233/2003: *Agiza v Sweden*, CAT/C/34/D/233/2003 (Jurisprudence), para. 13.4, 24 May 2005.

³⁹ In September 2005, the UK ambassador to Egypt reportedly asked the Egyptian National Council for Human Rights to guarantee the rights of Egyptians upon their return from the UK and said that the UK government wanted to include in the “diplomatic assurance” a note on the role of the Council in providing guarantees that the rights of individuals returned to Egypt would be protected. The Council reportedly rejected the proposal.

⁴⁰ UN Doc, Egypt, CCPR/CO/76/EGY/Add.3. Follow-up Response by State Party, 18 November 2004.

handcuffed, thrown to the floor and asked to kneel down while security officers searched the house. He was set free when the police arrested Muhammad.⁴¹

Ahmed Rabaa told Amnesty International that about three weeks later, on around 15 November, the security officers returned and asked him to come with them for a few hours. He was reportedly kept for two days in the SSI offices in al-‘Arish, then transferred to the SSI headquarters in Cairo together with 16 others. He was held there for 11 or 12 days and regularly interrogated. He was later transferred to Tora Prison and held there for around 33 days. He was then brought back to the SSI headquarters in Cairo, where he was detained for a further week. During this period, he said, he was interrogated and tortured three to four times a day. He described being beaten, suspended by the ankles and wrists in contorted positions, and given electric shocks to sensitive parts of the body, including his lips, penis and head. Every time he was interrogated and tortured, he was blindfolded and made to take off all his clothes. He said that a doctor came almost every day to check on those who had been tortured.

Throughout his detention Ahmed Rabaa had no access to his lawyer or family, and at no point was he brought before a judicial authority.

On around 7 January 2005, he was told by SSI officers that there had been a mix-up about the names of people they thought he knew, and he was returned to Tora Prison. He was released from there at the end of February 2005. The authorities have failed to investigate his allegations of torture and to take action against the perpetrators, and he has received no compensation.

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Egyptian law and torture

Torture and other forms of ill-treatment are prohibited by the ICCPR and the Convention against Torture, which Egypt has ratified. However, because of the narrow definition of torture in Egyptian legislation, only some of the practices banned internationally are prohibited and criminalized under Egyptian law.⁴²

Egyptian law defines torture narrowly in the context of forcing an accused to confess. Death threats and physical torture are criminalized only when they happen following an unlawful arrest by someone purporting to be a government officer.⁴³ The law therefore does not address a situation where a person may be tortured for other reasons (such as to extract information, intimidate, punish or degrade) or when the victim is not accused of an offence.

⁴¹ Muhammad Abdallah Raba’ was subsequently sentenced to life imprisonment by an emergency court in Ismailia in connection with the Taba and Nuweiba bombings (see box on the Tawhid wal Jihad trial).

⁴² See Articles 126, 129 and 282 of the Penal Code.

⁴³ Torture is defined under the section of the Penal Code entitled “Coercion and ill-treatment by civil servants against people” (Articles 126-132). The most severe penalties for torturers are up to 10 years’ imprisonment for anyone “*who ordered or committed torture to force an accused to make a confession*” or, when the victim dies, to “*the same sentence stated for intentional killing*” [which is up to death penalty]. Torture, including death threats, can be punished by imprisonment under other provisions, including Article 282 of the Penal Code. However, this only applies when the person tortured has been arrested unlawfully, as specified in Article 280 of the Penal Code, by someone purporting to be a police officer or wearing police uniform. Article 282 stipulates “Whoever arrests, confines or detains a person without an order from one of the concerned authorities, and in other than the cases wherein the law and statutes authorize the arrest of the suspects, shall be punished with the detention or a fine not exceeding two hundred pounds.”

The Egyptian authorities have been notified several times that this definition of torture is far more restrictive than the definition under the Convention against Torture.⁴⁴ In June 1994, for instance, the Committee against Torture called on Egypt to “provide in its penal legislation for all forms of torture”.⁴⁵ To date, no such amendments have been made.

Furthermore, states should not simply criminalize torture, but should also take “effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdictions”.⁴⁶ The Human Rights Committee has additionally referred to the need for prevention, investigation, punishment and reparation for torture and other ill-treatment.⁴⁷

Egyptian law does contain some safeguards to protect detainees from torture and other ill-treatment. Article 36 of the CCP stipulates that a detainee must be brought before a Public Prosecutor for questioning within 24 hours of arrest, after which the detention period can be extended or the detainee should be released. Article 42 of the Constitution and Article 40 of the CCP prohibit the “physical and moral harm” of detainees. Article 57 of the Constitution provides that civil and criminal proceedings in connection with torture as defined under the Penal Code are not subject to any statute of limitation.

In practice, however, these safeguards have been frequently breached and over-ridden by emergency law procedures, and have proved inadequate to protect detainees from torture and other ill-treatment. Indeed, the lack of effective safeguards has led to many deaths in custody.

[CASE BOX]

Deaths in custody

Muhammad Suleyman Youssef Ahmed and his cousin Ashraf Sa‘id Youssef died in custody apparently as a result of torture. Both had been arrested in connection with bombings in Cairo on 7 April 2005.

Muhammad Ahmed, a 40-year-old primary school teacher from Shubra al-Kheima, north of Cairo, reportedly died on 29 April 2005 in police custody shortly after arrest. His relatives told the media that although they suspected that he had been tortured to death, they were coerced by the authorities into signing a medical report that attributed the death to natural causes, and into burying the body the same day while police officers were present.

An Interior Ministry official told Amnesty International that Muhammad Ahmed suffered “some health problems” that may have caused or contributed to his death, but gave no details. Amnesty International is not aware of any official or formal

⁴⁴ Under the Convention against Torture “the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

⁴⁵ UN Doc. A/49/44, para. 90.

⁴⁶ Article 2 of the Convention against Torture.

⁴⁷ Human Rights Committee’s General Comment No. 20 on Article 7 of the ICCPR, para. 8.

investigation into the circumstances and cause of death, even though they remain unclear.

Ashraf Sa'id Youssef, aged 28, was reportedly arrested on 29 April 2005 in al-Manoufiya and held incommunicado for 13 days. His relatives learned about his whereabouts only when he was transferred to al-Minyal University Hospital on 11 May 2005 with serious injuries. He died eight days later. On 21 May, the Public Prosecutor claimed implausibly that, according to initial police reports, Ashraf Sa'id Youssef caused his own injuries by repeatedly banging his head against the wall of his cell. However, the government reportedly acknowledged that the injuries included bruises on the chest and arms. The Public Prosecutor said that he had ordered the body to be made available for forensic examination to establish the cause of death. As far as Amnesty International is aware, however, some two years later, no such examination nor any proper investigation into the death has taken place.

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4. Unfair trials

International human rights standards and Egyptian law include provisions that guarantee the right to a fair trial, including the right to legal counsel, the obligation to investigate allegations of torture and other ill-treatment, and the ban on using evidence obtained under torture in judicial proceedings. However, these safeguards have regularly been violated in cases deemed by the Egyptian authorities to affect national security as these are dealt with in a parallel legal system applying “special” legal procedures.

Lack of equality before the law

People accused of political or terrorism-related offences are deprived of their right to equality before the law as a result of the special procedures that apply throughout the legal process, from prosecution to trial. The principle of equality is established under international law as well as the Egyptian Constitution.⁴⁸ This means that everyone should be granted, without discrimination, equal access to a court; that fair trial guarantees are equally available to all; and that judges and officials do not act in a discriminatory way when enforcing the law.

However, provisions of the emergency legislation as well as amendments to the Egyptian Penal Code and CCP violate this principle.⁴⁹ Cases involving offences deemed to be security-related are investigated by a special branch of the Public Prosecution -- the Supreme State Security Prosecution -- or are referred by the President to the Supreme Military Prosecution for investigation.⁵⁰ The defendants are

⁴⁸ Article 40 of Egyptian Constitution and Article 14(1) of the ICCPR.

⁴⁹ This is, for instance, the case of the Anti-Terrorism Law of 1992, which amended the Penal Code, and Law 95 of 2003, which abolished State Security Courts and amended the CCP.

⁵⁰ The Code of Military Justice empowers the Military Prosecution to: investigate on its own a number of offences (offences covered by ordinary law that could fall under the remit of military justice, all military offences covered by ordinary law, and military offences referred to it by the military authorities) (Article 29); and initiate and proceed with a criminal case (Article 30). In addition, the Military Prosecution has all the powers given to the Public Prosecution, the examining judge and those of the accusation chamber, as described in the following section on Public Prosecution's special powers.

then tried before emergency or military courts, which violate a number of fair trial guarantees, including the right of appeal to a higher tribunal.

Public Prosecution's special powers

The Public Prosecution has the power to initiate and proceed with a criminal case by conducting investigations into criminal offences. It can do so through law enforcement officers or by delegating the investigation to an examining magistrate.⁵¹ However, the latter option remains an exception and is at the discretion of the Public Prosecution.

In cases deemed to be security-related,⁵² the Public Prosecution often decides to conduct the investigation itself using the Supreme State Security Prosecution, which specializes in such offences and is directly supervised by the Public Prosecutor. Since 1953, when the Supreme State Security Prosecution was established by decree of the Justice Minister, its powers have been expanded by other decrees.⁵³ Its members have been mandated to investigate security offences anywhere in Egypt as well as crimes referred to it by the President.

Under Article 10 of the Emergency Law, the Public Prosecution has, in addition to its normal functions, the powers of an examining magistrate and those of the appeal court of misdemeanours held in camera (accusation chamber). These are the same powers as those given to the Public Prosecution under the now-defunct law establishing State Security Courts. After the abolition of the State Security Courts in 2003, these powers were given to the Public Prosecution under the CCP when dealing with security offences.⁵⁴ Under the added Article 206*bis* of the CCP, the Public Prosecution also accumulated the powers of the examining magistrates and those of the accusation chamber when dealing with terrorism offences.⁵⁵ The only difference between the added Article of the CCP and previous legislation is that these powers can now be exercised only by members of the Public Prosecution with at least the rank of chief prosecutor.

Giving the Public Prosecution the judicial powers of the examining magistrate and the accusation chamber suspends in practice a number of Articles in the CCP that require judicial permission or oversight for certain procedures.⁵⁶ It also breaches the

⁵¹ Articles 64-67 of the CCP.

⁵² These are defined in the Penal Code mainly as crimes affecting national security inside or outside the country, explosives and embezzlement of public funds.

⁵³ See Abdallah Khalil, *Al-Huquq al-Madaniyya wa al-Siyassiya fi al-Tashri' al-Misri (Civil and Political Rights in Egyptian Legislation)*, p.569.

⁵⁴ This was done by virtue of Law 95 of 2003 abolishing State Security Courts and amending the CCP.

⁵⁵ Article 206*bis* was added to the CCP by virtue of Law 95 of 2003 abolishing State Security Courts. It stipulates that "members of the public prosecution with at least the rank of chief prosecutor, shall – in addition to the jurisdictions prescribed for public prosecution – have the power of the examining magistrate in investigating the crimes prescribed in Parts I [crimes affecting national security from outside], II [crimes affecting national security from inside the country], II*bis* [explosives] and IV [embezzlement of public funds] of book II of the Penal Code. They shall, in addition, have the power of the accusation chamber as prescribed in Article 143 of the present law, in investigating the crimes prescribed in Section 1 of Part II [terrorism] referred to earlier, provided that the ["precautionary"] detention period does not exceed 15 days at each [renewal] each time." The reduction in the period of "precautionary" detention to 15 days (from 45 days) was introduced by Law 145 of 2006 amending the CCP.

⁵⁶ These are Articles 51-54, 77, 84, 92, 124, 125, 141 and 206, covering house search, interrogation in the presence of lawyers, defence access to investigation documents, access to lawyers and case files,

UN Guidelines on the Role of Prosecutors, namely that “the office of prosecutors shall be strictly separated from judicial functions.”⁵⁷

In practice, Article 206*bis* of the CCP gives sweeping powers to the Public Prosecutor to detain people suspected of terrorist offences. In any terrorism-related cases, the Public Prosecutor can order the pre-trial (“precautionary”) detention of such suspects for 15 days in his capacity as a Public Prosecutor. He can also extend the detention for up to 45 days as an examining magistrate and continue, as an accusation chamber, to renew the detention for periods not exceeding 15 days each (reduced from 45 days in 2006). This means that the Public Prosecutor has the power to detain people for up to five months (reduced from six months in 2006) without independent judicial oversight as required by Articles 202 and 203 of the CCP and international human rights standards.

As a result, those held in “precautionary” detention are deprived of their right to be brought promptly before a judge or other officer authorized by law to exercise judicial power.⁵⁸ They are also denied the right to challenge their detention before a judicial authority established by law in order to review the lawfulness of their detention.⁵⁹

Lack of access to lawyers

People arrested on political or security grounds in Egypt are rarely given prompt access to a lawyer.

A defendant’s right to legal counsel is one of the key safeguards for a fair trial, enshrined in international law,⁶⁰ and applies to all stages of the judicial process. The Human Rights Committee and other human rights bodies have further recognized that the right to a fair trial requires access to a lawyer during detention, interrogation and preliminary investigations. The right of detainees to be assisted by a lawyer when charged is also enshrined in the UN Basic Principles on the Role of Lawyers. Principle 6 notes specifically that individuals charged with serious crimes should have access to a lawyer “of experience and competence commensurate with the nature of the offence” who should be provided free of charge if the defendant does not have the means to pay for such services.

The Egyptian Constitution guarantees the right to legal counsel, including for those lacking financial means.⁶¹ The CCP stipulates that anyone arrested or detained has the right to legal counsel and that no one shall be interrogated without the

seizing material and surveillance without permission from a judge after looking at the case documents. See Abdallah Khalil, *Al-Huquq al-Madaniyya wa al-Siyassiya fi al-Tashri' al-Masri (Civil and Political Rights in Egyptian Legislation)*, p.136.

⁵⁷ Guideline 10.

⁵⁸ Article 9(3) of the ICCPR and Principle 37 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

⁵⁹ Article 9(4) of the ICCPR.

⁶⁰ For example, Article 14 of the ICCPR.

⁶¹ Article 69. Under Article 124 of the CCP (as amended by Law 145 of 2006): “the examining magistrate in criminal cases liable to imprisonment cannot interrogate a suspect or confront him with other suspects or witnesses until the suspects’ lawyers has been invited to be present, except in cases of *flagrante delicto* or where there is compelling reason to believe that evidence may be lost according to what the examining magistrate’s states in the report... If the suspect does not have a lawyer or his lawyer did not come after being invited, the examining magistrate must of his own initiative appoint a lawyer for him.”

presence of their lawyer (except in cases where the suspect has been caught in the act of the crime or when there is fear of losing evidence).⁶² Article 125 allows defence lawyers access to investigation documents one day before the interrogation of the suspect by the Public Prosecution and prohibits separating the lawyer from the suspect during interrogation. However, crucially, it also gives the examining magistrate and Public Prosecution the discretion to refuse such access.

Public Prosecutor's Decree No.1 of 2002 instructs Public Prosecutors' offices to enable lawyers to obtain and review copies of the investigation documents at any stage of the investigation.⁶³ This was meant to reinforce the right to equality between the defence and prosecution. In practice, however, defence lawyers have complained about their inability to access file documents, particularly when the investigation is carried out by the Supreme State Security Prosecution.

Given the gravity of the charges in cases of alleged terrorist offences, Amnesty International is deeply concerned that defendants accused of such offences do not appear to have had access to legal counsel when initially brought before the Public Prosecution for interrogation. None of those detained in connection with the Taba and Sharm al-Sheikh bombings, for instance, had lawyers with them during their interrogation by the Public Prosecutor. Furthermore, the defence team did not have access to the file documents until after the first session before the emergency court in Ismailia in July 2005. This violated the ICCPR and the CCP.⁶⁴

Lack of investigations into torture allegations

"Egyptian law guarantees to the victim in torture cases that an investigation will be immediately conducted by an independent judicial authority that enjoys immunity, namely the Department of Public Prosecution".⁶⁵

Responsibility for investigating allegations of torture or other ill-treatment lies with the Public Prosecutor, who should conduct an investigation in collaboration with the judicial police and decide on whether or not to prosecute. In July 2005, the Public Prosecutor established a special Human Rights Protection Unit mandated to investigate, identify and follow up any human rights violations or reports of such violations.⁶⁶

Such provisions in the law have not been matched in practice. In many cases defendants have told the Public Prosecutor on their first appearance before him that they have been tortured in SSI premises. Their lawyers have reiterated the allegations. However, the Public Prosecutor has either failed to refer the defendants for medical examination or has not done so immediately. In most cases, such defendants have been referred for a medical examination by the trial judge upon the request of the

⁶² See Articles 139 and 124.

⁶³ "EOHR welcomes the decree of the Public Prosecutor to apply the right of the defence before the prosecutor", EOHR, 19 May 2002.

⁶⁴ Although the CCP authorizes the Public Prosecution to prevent a detainee from receiving visits or mixing with other prisoners, Article 141 specifies that this should not affect the detainee's right to have regular access to his or her lawyer.

⁶⁵ UN Doc, CAT/C/34/Add.11, para. 108.

⁶⁶ Decree No.1221 of 2005.

defence lawyers, often several months after the alleged torture happened and when marks of physical harm have faded or disappeared.

This was the case for most of the defendants in the Taba trial, for instance. One of the defendants, Usama 'Abd al-Ghani al-Nakhlawi, who was eventually sentenced to death, said he was tortured during interrogation and asked the Public Prosecutor to refer him for examination by a forensic doctor, but was reportedly told that the request had to be made by his lawyer. However, he was not allowed access to his lawyer until he was brought before the court in March 2006 and was only presented before a forensic medical doctor by order of the court in May 2006, nine months after his arrest. Other defendants who complained about torture were allegedly told by the Public Prosecutor that they had already been treated for torture injuries and that they should not bring the matter up again.

Even when a complaint has been filed with the office of the Public Prosecutor, torture victims, their relatives and their legal representatives are unlikely to be told whether it is being investigated or informed of the progress of any such investigation for weeks, months or even years. Unsurprisingly, this has caused a widespread loss of confidence in the system by those whom it is supposed to protect and their legal representatives. The result is that many victims of torture now do not file complaints or press for information about investigations into complaints of torture. When Amnesty International has raised allegations of torture with the Egyptian authorities, it has generally received no response or been told that the abuses did not occur or that there was no investigation because no official complaint had been received.

Where investigations into allegations of torture or other ill-treatment have taken place, they have usually lasted for years and have rarely resulted in prosecutions. Indeed, prosecutions of alleged torturers have been mounted only in cases in which torture was alleged to have caused or contributed to a detainee's death, and then only when the deceased was not being held on a security-related charge. Amnesty International knows of no case involving the torture or death of a detainee held on security grounds in which a member of the SSI has been convicted.

In the most prominent trial of members of the SSI, who were accused of having tortured alleged members of Islamist groups between 1981 and 1983, all 44 accused SSI officers and prison officials were acquitted in 1989. The court accepted that the detainees had been tortured but found that the perpetrators had not been adequately identified – the victims had been blindfolded throughout their torture – with the result that those responsible for perpetrating the abuses escaped justice.

A number of impediments constrain investigations of allegations of torture and other ill-treatment. Foremost is the prolonged detention of suspects incommunicado before they appear before the Public Prosecutor and trial judge, combined with the lack of an independent oversight mechanism to check on conditions and their treatment in pre-trial detention. Consequently, by the time the defendants who allege torture are medically examined, any physical signs of torture or other ill-treatment are likely to have healed and there is little or no forensic evidence to support the detainee's claim. The common use of blindfolding, which prevents or inhibits detainees from ascertaining the identities of their torturers or being able to point them out subsequently, and the use of unofficial detention centres, including SSI premises and CSF military detention facilities, further exacerbates the problem. According to Egyptian law, a torture complaint must specify where the torture took place and identify the alleged perpetrators.

A further problem is that there are no safeguards against possible further torture or ill-treatment, in law or in practice, to protect those who do lodge complaints against torture. This, and the fear that they could suffer reprisals at the hands of the security forces, also reportedly deters some victims of torture from filing an official complaint or publicizing their case in the media or through human rights organizations.

International law obliges states to investigate complaints of torture and other ill-treatment. The Convention against Torture requires that each state party institutes a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed. Article 12 makes it clear that this duty is not dependent on a formal complaint being made by a detainee. Article 13 guarantees the right of any individual to “complain to and to have his case promptly and impartially examined by, its competent authorities.” Such investigations should be capable of leading to the identification and punishment of those responsible.

[CASE BOX]

Magdi Idriss

Magdi Idriss, aged 39 and an alleged member of an armed Islamist group known as Tanzim al-Wa’ad (Organization of the Promise), was arrested on 8 May 2001. He was not brought before the Public Prosecutor until 5 June and was not interrogated until 12 September that year. For 77 days, he was held in the SSI premises at Lazoghly Square, Cairo, where he says he was tortured. During his first appearance before the Public Prosecutor, he said that he had been tortured. The Prosecutor noted that Magdi Idriss had wounds on the left hand and right thigh and that he alleged these were the result of torture. Other defendants told the Public Prosecutor that they had seen Magdi Idriss being tortured. The torture complaints were reiterated by his lawyer, who requested a medical examination.

Despite this, almost one month elapsed before Magdi Idriss received a medical examination; when it occurred, the medical examiner was unable to establish the cause of his injuries or when they were sustained. No full investigation into the torture allegations was ever initiated.

[END BOX]

Use of torture evidence

In many security or political cases, statements allegedly extracted under torture or other ill-treatment have been accepted as evidence by the court and have formed the basis for convictions, although the defendants in question have retracted such statements in the courtroom.

The use in court of statements obtained under torture is prohibited by the Convention against Torture.⁶⁷ The Human Rights Committee has also stated that the

⁶⁷ Article 15.

use or admissibility in judicial proceedings of statements or confessions obtained through torture or “other prohibited treatment” should be prohibited by law.⁶⁸

In light of the difficulty in proving, in the absence of accurate medical evidence, that torture or other ill-treatment had occurred, the UN Special Rapporteur on torture has recommended that “[w]here allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment”.⁶⁹

The Special Rapporteur has also noted: “Prosecutors and judges should not require conclusive proof of physical torture or ill-treatment (much less final conviction of an accused perpetrator) before deciding not to rely as against the detainee on confessions or information alleged to have been obtained by such treatment; indeed the burden of proof shall be on the State to demonstrate the absence of coercion.”⁷⁰

Although Egyptian law does not state as expressly that statements made as a result of torture or ill-treatment should not be used as evidence in any proceedings, Article 42 of the Egyptian Constitution and Article 302 of the CCP provide that statements extracted under “coercion or threat” must be dismissed and not relied upon in legal proceedings against the defendant.

Many defendants have denied the charges against them when they first appeared before the trial judge, usually several months after arrest. They have also stated that they were tortured while in SSI custody and that confessions were extracted from them using torture or other ill-treatment. At the lawyer’s request, the court has often referred them for medical examination. Subsequent reports presented by the prosecution during trial sessions have dismissed their allegations. Many of the forensic reports of defendants in the Taba bombing trial, for instance, stated that there were marks on the bodies of the defendants that were consistent with torture, but that it was not possible to determine their cause because of the time that had elapsed since the alleged torture took place, which was up to nine months. In some cases, the torture allegations were reportedly dismissed on the ground that the suspects could not name any of their alleged torturers.

In all the cases highlighted in this report, the judges did not order any further investigation, thereby dismissing the torture allegations. Emergency and military courts have persistently sentenced defendants to lengthy prison terms and to death on the basis of contested evidence extracted under torture or other ill-treatment.

Military and emergency courts

For many years, civilians have faced grossly unfair trials before military or emergency courts, especially in cases involving alleged national security or terrorism-related offences.

Trials before these courts violate some of the most fundamental requirements of international law, in particular the right to a fair and public hearing before a competent, independent and impartial tribunal established by law;⁷¹ the right to have

⁶⁸ General Comment 20, para 12.

⁶⁹ A/56/156, para.39(j).

⁷⁰ Report on visit to Turkey, UN Doc, E/CN.4/1999/61/Add.1, para. 113(e).

⁷¹ Article 14(1) of the ICCPR.

adequate time to prepare a defence;⁷² the right to be defended by a lawyer of one's choosing;⁷³ and the right to appeal against conviction and sentence to a higher tribunal.⁷⁴

The Egyptian President or one of his representatives decides under which court's jurisdiction certain cases fall. The appointment of military judges and the referral of cases to courts by the executive cast doubt on the independence and impartiality of these courts.

Judgements by the emergency courts cannot be appealed and become final after ratification by the President, who may decide to commute the sentence, revoke the judgement or order a retrial by another emergency court.⁷⁵ Whenever a court conducting the retrial decides on an acquittal, the verdict must also be ratified by the President.⁷⁶ This violates the right to appeal to a higher tribunal and the prohibition of double jeopardy (trying someone twice for the same offence).⁷⁷

Similarly, those convicted by military courts have no right to appeal to a higher tribunal. All sentences passed by military courts are subject only to review by the Military Appeals' Bureau, a body composed of military judges, whose decision is ratified by the President.

The violations mentioned above, together with the lack of independence and impartiality of the judiciary, are particularly disturbing in view of the complexity and seriousness of the offences that are subject to this procedure, and that some are punishable by death.

In July 1993 the UN Human Rights Committee expressed deep concern about military courts trying civilians. It concluded that "military courts should not have the faculty to try cases which do not refer to offences committed by members of the armed forces in the course of their duties".⁷⁸

In 2002, the Committee reiterated its concerns, noting that "military courts and State security courts have jurisdiction to try civilians accused of terrorism although there are no guarantees of those courts' independence and their decisions are not subject to appeal before a higher court (Article 14 of the Covenant)".⁷⁹

Amnesty International has repeatedly called on the Egyptian government to stop trying civilians before military courts. The government continues to claim that such trials are fair and that the President is lawfully empowered to refer crimes to the military judiciary. On 6 February 2007, President Mubarak referred 40 members of the banned Muslim Brotherhood organization to a military tribunal on charges of money laundering and membership of an illegal organization. On 28 February 2007, a

⁷² Article 14(3)(b) of the ICCPR.

⁷³ Article 14(3)(d) of the ICCPR.

⁷⁴ Article 14(5) of the ICCPR.

⁷⁵ Articles 12, 13 and 14 of the Emergency Law.

⁷⁶ For more information on Amnesty International's position on trials before emergency courts, see *Egypt: Arbitrary detention and torture under emergency powers* (AI Index: MDE 12/01/1989), pp 14-16.

⁷⁷ Article 14(7) of the ICCPR states: "[n]o one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country."

⁷⁸ UN Doc, CCPR/C/79/Add.23, para. 9, July 1993.

⁷⁹ UN Doc, CCPR/CO/76/EGY, para. 16(b), 28 November 2002.

court in Cairo upheld a decision in January 2007 by the Public Prosecutor to freeze the assets of 29 of them.

[BOX]

Military court: Tanzim al-Wa'ad trial

The trial of 94 defendants accused of membership of Tanzim al-Wa'ad (Organization of the Promise), including seven who were not present in court, opened before the Supreme Military Court in the Heikstep Camp, north of Cairo, on 18 November 2001. Defence lawyers complained that the interrogation transcripts had been tampered with and that specific words and paragraphs had been erased by the authorities in order to hide evidence that the defendants were a group of people who had merely sought to provide assistance to Palestinians and Chechens, and were not involved in financing "terrorist groups" as the charges alleged. One lawyer reported that he was threatened by a security officer responsible for the initial investigations, apparently because he questioned the findings of these investigations before the court.

Seventy-five of the 94 defendants had been arrested during dawn house raids in early May 2001, mainly in Cairo, Alexandria, al-Qalyubiyah, as-Suways and Giza. Most were held in different SSI branches for at least 70 days, during which they were reportedly tortured, including with electric shocks. They were presented before the Supreme State Security Prosecution in June-July 2001.

The detainees were not allowed to have their lawyers with them during the initial interrogation sessions before the Supreme State Security Prosecution. At least 24 of them told the Public Prosecutor that they had been tortured. Although some of them were referred to forensic doctors, the resultant examinations were not able, due to the passage of time, to establish what caused the marks on their bodies or when or how they had been sustained.

The defendants were initially charged by the Supreme State Security Prosecution with illegally collecting money to send in support of the Palestinian intifada (uprising) and to Chechens fighting Russian forces in 2001. After the attacks in the USA on 11 September 2001, additional and more serious charges were brought, including seeking to topple the Egyptian government and to assassinate top government officials, premeditated sabotage and destruction, threatening peace and public security and possessing firearms, ammunition and explosives without license. On 12 October 2001, President Mubarak issued a decree referring the case to a military court.⁸⁰

On 9 September 2002, the court sentenced 51 of the defendants to prison terms of between two and 15 years, and acquitted 43 others, including one of the seven men tried in his absence. Those sentenced included students, former government officials, a Yemeni national, three men from the Russian Republic of Dagestan, and three Egyptians with dual nationality. The sentences were ratified by the President on 17 October 2002, rendering them final.

Some of the 43 who were acquitted were not released but continued to be detained under orders issued by the Interior Minister. Among them was Fawzi al-Said, then imam of Tawhid Mosque at Ramsis Square in Cairo. He was reportedly released in April 2005.

⁸⁰ "*Qarar jumhuri bi-ihalati 83 irhabiyen misriyan wa ajnabiyan ila al-qadha' al-askari*" ("Presidential decision to refer 83 Egyptian and foreign terrorists to military justice"), *Al-Ahram*, 17 October 2001.

[BOX]

Emergency court: Tawhid wal Jihad trial

A trial before the (Emergency) Supreme State Security Court in Ismailia of three alleged members of Tawhid wal Jihad (Unity and Holy War) charged in connection with the October 2004 bomb attacks in Taba and Nuweiba began on 2 July 2005 – a session observed by Amnesty International delegates. Muhammed Abdallah Rabaa, a 41-year-old owner of a metal workshop, and Muhammed Gayiz Sabbah, a 25-year-old employee of an irrigation company, were in the dock. The third defendant, Muhammed Ahmed Saleh Falife, was at liberty at the time and was subsequently killed during an armed confrontation with the police.

In March 2006, after investigations in connection with bomb attacks in Sharm al-Sheikh in July 2005, 13 other people became co-defendants in the trial. One of the 13, who was on the run from the police at the time, was also subsequently killed during an armed confrontation with the police, according to reports.

Muhammed Abdallah Rabaa and Muhammed Gayiz Sabbah were arrested on 22 and 23 October 2004 respectively at their homes in al-‘Arish. The men’s families were not told of the reason for the arrests or where the men were being detained. They repeatedly sought information from the SSI office in al-‘Arish and the office of the Public Prosecutor, but without response. When the families discovered the men’s whereabouts through released detainees, they were not allowed to visit them. Subsequently, family visits were only permitted on major national holidays.

During the initial trial session on 2 July 2005, relatives of both defendants were not allowed inside the courtroom. However, the court ordered that the defendants be allowed family visits, and shortly afterwards Muhammed Abdallah Rabaa had his first official visit from his family, 10 months after his arrest.

In court, Muhammed Abdallah Rabaa and Muhammed Gayiz Sabbah denied the charges against them and stated that they had been forced to confess under torture while in the custody of the SSI. On the request of their lawyers, the court referred them for medical examination. A subsequent report, presented by the prosecution during the trial session of 14 August 2005, dismissed their allegations on the grounds that the medical examination had found no forensic evidence of torture.

Muhammed Abdallah Rabaa and Muhammed Gayiz Sabbah had no legal assistance during the whole of their pre-trial detention. The first time they had access to their lawyers was when they were brought into the courtroom, a few minutes before the opening of the initial trial session.

The two men later told their lawyers that they had requested a medical examination and legal assistance when they had been initially brought before the Public Prosecutor for interrogation, but their requests were denied. No record of this was made in the case files.

Defence lawyers told Amnesty International that they asked the Public Prosecutor to allow them to be present when the suspects came before him. Their request was rejected and only part of their communication with the office of the Public Prosecutor was included in the case files. Moreover, the defendants were not informed that lawyers had offered to defend them.

When Usama ‘Abd al-Ghani al-Nakhlawi and Mustafa Hussein Muhammed, two of the 13 new co-defendants, were brought to trial in March 2006, they declared in court that they had been blindfolded, held in secret detention and tortured to force them to confess. In May 2006 Mustafa Hussein Muhammed exposed his back to the court to show multiple bruises and burn marks. Forensic reports ordered by the court were inconclusive and on that basis the court did not order further investigation into their allegations of torture.

In September 2006, the court sentenced Muhammed Gayiz Sabbah, Usama ‘Abd al-Ghani al-Nakhlawi and Yunis Muhammed Abu Gareer to death and submitted the verdict to the office of the Mufti (supreme religious authority) for approval.⁸¹ On 30 November 2006, after that approval had been given, the court confirmed the sentences. The other defendants were sentenced to between life and five years’ imprisonment. Muhammed Abdallah Rabba was sentenced to life imprisonment.

In December 2006, the African Commission on Human and Peoples’ Rights requested the government of Egypt to stay the execution of the three men sentenced to death, pending a consideration of a complaint submitted to it in a session in 2007.⁸² The three men continue to be held in Tora Prison.

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Death penalty

Many people convicted of terrorism-related offences have been sentenced to death following unfair trials, including before military courts.

Under international human rights law, those suspected of or charged with crimes punishable by death are entitled to the strictest observance of all fair trial guarantees at all stages of the legal proceedings, including during the investigation stage, as well as to certain additional safeguards. For example, the UN Human Rights Committee has stated that “the death penalty should be quite an exceptional measure” and should only be handed down after a trial that observes all the procedural guarantees for a fair hearing.⁸³ Any death sentence imposed after a trial that does not conform to all fair trial guarantees would amount to arbitrary deprivation of the right to life. As this report has shown, the Egyptian authorities have failed to ensure that the key safeguards are applied during the various stages of investigations and trials in capital cases.

Amnesty International opposes the death penalty in all cases, without exception, as a violation of the right to life and the ultimate cruel, inhuman and degrading punishment.

Crimes punishable by death in Egypt include offences under the existing “anti-terrorism” legislation; premeditated murder; arson attacks leading to death; rape and

⁸¹ Before pronouncing a death sentence, courts have to submit their decision with the case documents to the Mufti, Egypt’s highest religious authority, for his opinion. If he does not give an answer within 10 days, the court may pronounce the death sentence. However, the opinion of the Mufti is not legally binding.

⁸² The complaint was submitted to the Commission by the Egyptian Initiative for Personal Rights and the non-governmental organization INTERIGHTS.

⁸³ General Comment No. 6 on the right to life, para. 7.

drug-related offences.⁸⁴ Over the past decade, death sentences have been pronounced for all the above-mentioned offences. Death sentences are passed by exceptional courts as well as by criminal courts.

Since the introduction of the Anti-Terrorism Law and the President's referral of civilians to military justice, military and emergency courts have sentenced some 137 people to death, 94 of them by military courts (including 13 *in absentia*) in connection with charges of "terrorism".⁸⁵ At least 67 of the death sentences passed by military courts are known to have been carried out.

5. Unlawful transfers to torture: five cases

It is not clear how many people suspected of terrorist offences or terrorist links – by the Egyptian or the US authorities – have been returned to Egypt since 11 September 2001. What is clear, however, is that those known to have been unlawfully returned have suffered a wide range of human rights violations, including enforced disappearance, torture and other ill-treatment. The victims have been Egyptian nationals, Egyptians with dual nationality, and foreign nationals.

Most of the detainees in this category who have been able to speak about their experiences say that upon arrival at Cairo airport, they were handcuffed, blindfolded and taken to a secret detention facility believed to be run by the General Intelligence. They were held there incommunicado for weeks or months before being transferred to SSI premises and later to prison. Throughout their entire detention, they were beyond the protection of the law. All allege that they were tortured while in Egypt, but none of their allegations is known to have been investigated by the Egyptian authorities.

The Egyptian authorities have also unlawfully transferred prisoners to countries where they were at clear risk of torture and other serious human rights violations.

Abdul Rahman Muhammad Nasir Qasim al-Yaf'i

Abdul Rahman Muhammad Nasir Qasim al-Yaf'i, a Yemeni national now aged 38, spoke to Amnesty International in February 2006 about his unlawful transfer from Egypt to Jordan in 2001. As with most of the other unlawfully transferred people interviewed by Amnesty International, his interrogations did not appear aimed at investigating a specific criminal offence, but at gathering intelligence about the activities of others. It appears that he was held for months simply on the basis of his admission that he had visited Afghanistan.

Abdul Rahman al-Yaf'i, who lives in Sana'a in Yemen with his wife and children, said that he took his aunt and brother to Cairo in Egypt for medical treatment in October 2000. When he told airport immigration officials, in response to a question, that he had visited Afghanistan 10 years earlier, they detained him at the airport for about 13 hours and then said he had to return for his passport. When he came back for the passport two days later, an Egyptian policeman handcuffed and blindfolded him, then took him to a building where he was put in a cell so small that he could not stand

⁸⁴ Egyptian legislation also provides for the death penalty for other offences against the external security of the state, such as espionage in times of war. The Code of Military Justice lists a number of capital offences for serving members of the armed forces.

⁸⁵ *Protecting Human Rights in the Fight Against Terrorism in Egypt*, EOHR, 2004, Appendix 1.

upright. When he asked why they were holding him, he said he was told “we just want some general information”.

After some hours, he was taken for interrogation. He said his interrogators began calling him names and making him stand up and sit down over and over again. They repeatedly asked him about where he had visited in Afghanistan and whom he had met. He was also questioned about bombings in Kenya, Tanzania and Saudi Arabia. When he could not answer, he said they attempted to strangle him, all the while insulting his parents, wife and religion. He was interrogated like this three times a day. “They accused me of everything that ever happened in the world... perhaps it is the price you have to pay for having been in Afghanistan”. They asked him to work with them, and offered to put his aunt and brother in the “finest hospitals in Cairo”. He refused, and they told him he would be turned over to the USA.

After four days, Egyptian officials returned him to the airport, where they took him through the VIP entrance and straight to a waiting plane. The plane was “full of military, you could feel the presence of military even if it was a civilian plane.” Abdul Rahman al-Yaf’i said that he kept asking what was happening to him and where he was going, but eventually “stopped asking questions because there were no answers”. He said he was surprised when the plane took him to Amman airport in Jordan. There, his guards handed him over to Jordanian security officials.

In Jordan, he said, he was tortured regularly during interrogation in the first week or two, and less often after that. Abdul Rahman al-Yaf’i said that about twice a month, when delegates from the International Committee of the Red Cross visited the detention centre, he and dozens of other detainees were hidden in underground cells, where prisoners wrote their names on the walls. He was returned in March 2001 to Yemen, where he was detained for nearly two months and then released without charge.

Mamdouh Habib

Mamdouh Habib, an Australian national of Egyptian origin, told Amnesty International that on 5 October 2001 he was arrested in Pakistan and detained there for nearly a month, during which he was beaten and threatened in order to make him sign a confession. He was then handed over to around 15 US officials, stripped of his clothes, photographed, sedated and flown to Egypt, where he was held for about six months before being taken to Afghanistan, then Guantánamo Bay. He was released without charge in January 2005.

During the flight to Egypt from Pakistan, he said, Egyptian security officers intentionally prevented him from sleeping. Upon arrival at Cairo airport, he was handcuffed, blindfolded and taken to a building surrounded by high walls. The car drove for about 10 to 15 minutes before it descended into what appeared to be an underground location inside the building. He was stripped of his clothes, photographed and put in a room. A doctor checked his heart prior to his interrogation.

He said he was visited by two Egyptian high security officers and asked to co-operate and confess that he was planning to hijack a plane to commit terrorist acts. When he refused to co-operate, he was drugged and put in a tiny cell with a dim amber light and a hole in the ceiling through which the outside could not be seen.

During interrogation, he said, he was hung from hooks in the ceiling, beaten, given electric shocks and threatened with rape and death and the death of his relatives.

He also reported that he was forced into torture chambers, one of which was filled with water so high that he had to stand on tiptoe for hours in order not to drown. A second chamber had a very low ceiling and held two feet of water, forcing him to maintain a painful stoop. A third had a few inches of water and an electric generator which his captors said would electrocute him.

Under such conditions he confessed that he had helped train the attackers of 11 September 2001 in martial arts, a confession he later withdrew.

He reported that the systematic use of drugs and electric shocks temporarily paralysed the left side of his body. He was bleeding from his eyes and ears, and often urinated blood. Due to his deteriorating health, he was transferred to a room on a higher floor where he was seen regularly by a doctor, apparently to treat him before his release.

He was then told by the Egyptian security officers that he was no longer needed in Egypt. Early one morning, he was blindfolded, chained, had his mouth and eyes covered with tape, and was put in a van that took him to the airport. In a second van at the airport, a security officer filmed Mamdouh Habib as he was stripped, had the tape removed from his face and mouth, and was photographed before being blindfolded, gagged and put on an aircraft.

From Egypt, Mamdouh Habib was flown to Afghanistan, and from there to Guantánamo Bay, where he was detained for almost three years. He told Amnesty International that at every stage of his detention he endured physical and psychological torture and other ill-treatment, ranging from a kick “that nearly killed me” to electric shocks and threats that he would never see his family again.

Ahmed Agiza and Muhammed El-Zari

Two Egyptian nationals, Muhammed Muhammed Suleiman Ibrahim El-Zari and Ahmed Hussein Mustafa Kamil Agiza, were unlawfully returned from Sweden to Egypt on 18 December 2001. Muhammed El-Zari was released without charge in October 2003 after nearly two years in detention without charge or trial. Ahmed Agiza was sentenced to 25 years’ imprisonment on 27 April 2004 after an unfair trial before a military court. The sentence was reduced to 15 years by President Mubarak in June 2004.

Prior to returning the two men to Egypt, the Swedish authorities obtained assurances from the Egyptian authorities that the men would not be tortured or otherwise ill-treated, or sentenced to death in Egypt. However, both men report that on their return they were held incommunicado for more than a month and tortured.

Ahmed Agiza told relatives that he was tortured with electric shocks, placed in solitary confinement in harsh conditions, and threatened that his wife and mother would be sexually assaulted in his presence. In July and December 2004, the Egyptian authorities reportedly dismissed as unfounded the torture allegations of Ahmed Agiza and Muhammed El-Zari, referring to an Egyptian investigation about which no details were provided.

Further detailed information on Ahmed Agiza’s treatment emerged in 2003, mainly through a complaint against Sweden submitted to the UN Committee against Torture on 25 January 2003. The Committee found that Sweden had violated the

Convention against Torture by returning him to a country where there was a risk of torture.⁸⁶

Muhammed El-Zari said that he was interrogated under torture, including by having electric shocks applied to his genitals, nipples and ears. He stated that his torture was monitored by medical doctors who made sure that it would not leave visible scars. He said that eventually he was forced to confess to crimes that he had not committed. Further detailed information on his treatment emerged in November 2006, mainly through a complaint against Sweden submitted to the UN Human Rights Committee in July 2005. The Committee also found that Sweden had violated the ICCPR.⁸⁷

Ahmad Abu al-Maati

Ahmad Abu al-Maati, a truck driver and Canadian citizen of Egyptian origin, was arrested in Syria on 12 November 2001. He says he was held at the Palestine Branch of Syrian military intelligence for 12 weeks and tortured.

According to his testimony, on 25 January 2002 he was hooded, handcuffed and taken by car to a waiting plane that took him to Egypt. Still blindfolded and handcuffed, he was moved to a van that drove him to the General Intelligence building in Cairo. His blindfold was only taken off in order to photograph him. Someone, presumably a doctor, checked his blood pressure and pulse. Then he was taken to the interrogation room where he was beaten all over his body. He was threatened with rape and the rape of his sister, who lives in Egypt and whom his torturers claimed was in the room next to him. During all the interrogation sessions, he was kept blindfolded, with his hands handcuffed behind his back, causing a lot of pain to his shoulders. He was beaten and kicked, and forced to sign a confession stating that he had deliberately destroyed his Canadian passport. He was held at the General Intelligence building for four and a half months.

In June 2002, he was transferred to the SSI branch in Nasr City. He was put in a cell (1.5m x 2m). He was blindfolded and handcuffed all the time. His cuffs were moved to the front only when he was given food or allowed to go to the toilet. He was interrogated for more than 10 hours at a time. During interrogation, he was tortured, including with electric shocks to his hands, shoulders, legs, stomach and genitals.

About six weeks later he was taken to the SSI headquarters in Lazoghly Square, where he spent a further two weeks blindfolded and handcuffed in a side hallway with other prisoners. Then he had his blindfold and handcuffs removed and was put in a crowded cell. This was the first time he had any contact with other prisoners. At the end of July 2002, he was taken to Tora Prison, where he was detained under orders issued by the Ministry of Interior under emergency legislation.

On 12 August 2002, he was visited by Canadian consular officials in the presence of SSI officers. He told them he had been tortured and forced to sign false confessions but was then silenced by an Egyptian official. The following month he

⁸⁶ *Agiza v. Sweden*, Committee against Torture, Communication No. 233/2003, UN Doc, CAT/C/34/D/233/2003, 24 May 2005.

⁸⁷ *Alzery v Sweden*, Human Rights Committee, Communication No. 1416/2005, UN Doc, CCPR/C/88/D/1416/2005, 10 November 2006. El-Zari is Amnesty International's chosen transliteration from Arabic; the UN Human Rights Committee uses Alzery.

was transferred to Abu Zaabal Prison where he was held in solitary confinement for two weeks.

On 15 October, Ahmad Abu al-Maati received his first release order from an emergency court. However, he was taken to the SSI headquarters in Lazoghly Square and detained there for five days before being returned to Abu Zaabal Prison with a new detention order. On 3 November 2002, he received a second release order but was again taken to Lazoghly Square for a few days before being issued with a new detention order and returned to Abu Zaabal Prison. At the end of November 2002, he was transferred to Tora Prison. He was then taken to the SSI Nasr City branch where he was placed in solitary confinement, interrogated and tortured, including with electric shocks.

Ahmad Abu al-Maati was transferred several times between Tora Prison, Abu Zaabal Prison and the SSI Nasr City branch before the Minister of Interior ordered his release on 11 January 2004. He was able to return to Canada in March 2004.

Abu Omar

On 17 February 2003, Usama Mostafa Hassan Nasr, an Egyptian national known as Abu Omar, was abducted in Milan, Italy, and then transferred to Cairo on a plane believed to have been chartered by the US Central Intelligence Agency (CIA).

After his arrival in Cairo, Abu Omar's fate and whereabouts were unknown for 14 months. He was released in late April 2004 and instructed not to disclose what had been done to him. He was rearrested after 23 days because he phoned relatives and friends in Italy and told them of the torture and ill-treatment he was subjected to during these 14 months. He was kept in prison until his unexpected release, without charge, on 11 February 2007.

Amnesty International delegates met him at his home in Alexandria two months later and he described his abduction, transferral to Cairo, imprisonment in Egypt, and his torture and ill-treatment throughout.

He said that on 17 February 2003 at noon, while on his way to a mosque, he was stopped by a man who showed him his card from a distance "as they do in movies". The man said he was from the police and asked him for his residence permit. The police officer then made some phone calls giving Abu Omar's details. Abu Omar said he was suddenly lifted off the ground and pushed into a white van and beaten on his stomach and all over his body so that he urinated involuntarily. He was hooded and had his hands and feet tied. He showed Amnesty International a scar on his knee that he said was caused by the injuries he sustained when he was pushed into the van.

Abu Omar said that when his abductors saw foam coming from his mouth, they tore off his clothes and gave him a heart massage. One of them removed the hood and looked into his eyes with a small torch "as doctors do". When they saw that he was still alive, they put the hood back and left him on the floor of the van.

After a drive of about four hours, he was put in a different car and driven to an airport. He said he had his clothes cut off and hood removed by about seven or eight people, was photographed and had new plastic bindings put on his hands and feet. Tape was also put over his face with holes by the nose and mouth to allow him to breathe. He was also given a thin uniform to wear.

He said that on his arrival in Cairo, he was blindfolded by Egyptian security officials and driven to General Intelligence. He said that after he had refused the demands of two senior Egyptian officials to work as an informant in Italy for the Egyptian secret services, he was tortured and kept in the premises of General Intelligence for about seven months.

Abu Omar said that he was then transferred to SSI offices where he stayed for a further seven months, during which he was also tortured, including with electric shocks to sensitive areas of his body. He also reported that he was tortured using methods his torturers termed the “bride” and the “mattress” (see below). He was interrogated about a visit he had made to Afghanistan and alleged links to al-Qa’ida, and tortured to make him confess that he had returned voluntarily to Egypt on board an Egypt Air flight.

Just over a year before Abu Omar’s release, on 5 January 2006, an official from Egypt’s Interior Ministry denied the torture allegations made by Abu Omar and said that he had been detained for security reasons as one of the leaders of the Egyptian Islamist Jihad group. The official, who was responding to international reports about Egypt’s co-operation with US intelligence agencies in torturing individuals suspected of terrorism, added that Abu Omar had returned to Egypt voluntarily because “he was tired of running away”. In September 2006, Amnesty International’s Secretary-General raised the case of Abu Omar directly with the Minister of Interior, Habib El Adly, who said that the Egyptian authorities did not have any information about Abu Omar’s whereabouts.

In July and December 2005, the Italian authorities issued warrants for the arrest of 22 CIA agents allegedly involved in the abduction of Abu Omar.⁸⁸ Following a request by the Italian prosecutor investigating the abduction, Abu Omar was brought before the Public Prosecutor in Cairo on 28 March 2006 to be questioned about his abduction. Abu Omar reportedly refused to be interrogated in the absence of his lawyer. He was then returned to Tora Prison. He appeared before the Public Prosecutor again on 6 April and described his abduction and unlawful transfer to Egypt by US intelligence agents. This was the first time since his abduction from Italy that he was allowed to have a lawyer with him during interrogation. He reportedly complained about having been tortured by the SSI upon his return to Egypt and said that he had been held in solitary confinement.

The Public Prosecutor gave no indication that the Egyptian authorities had investigated Abu Omar’s allegations of torture and other ill-treatment. Abu Omar was held in prolonged solitary confinement following orders from the Interior Ministry under emergency legislation, and reportedly suffered bad health. He tried three times to commit suicide and staged several hunger strikes to protest against his continued detention despite having received at least 16 release orders from emergency courts.

Abu Omar’s re-arrest in May 2004 was carried out under emergency legislation at his home in Alexandria. He was kept in the SSI branch in Nasr City for almost a month before being transferred to Tora Prison where he was kept for four months with no access to his family or lawyer. His relatives were only allowed to visit him when he was transferred to Damanhour Prison, near Alexandria. Three days after their visit on 21 February 2005, his relatives returned to the prison to be informed that

⁸⁸ Arrest warrant of 20 July 2005, Tribunale Ordinario di Milano, Section XI Criminal Court as Review Judge, No. 1413/2005 RG TRD [53].

he had been transferred to Tora Prison. His relatives were not able to see him again until October 2005. After this visit, they had no direct contact with him until 24 August 2006; all their contacts during this period were through the office of the Public Prosecutor and, after April 2006, via his lawyer. Although visits to him by his relatives were on a regular basis afterwards, they were sometimes restricted due to international media interest in his case.

[BOX]

Abu Omar's testimony

Amnesty International obtained a copy of the 11-page undated, handwritten account, which the Italian prosecutor confirmed as that of Abu Omar.⁸⁹ During Amnesty International's interview with Abu Omar in March 2007, he said that his original letter was 16 pages long; the missing five pages covered his ill-treatment in prison after his rearrest.

The letter, which was smuggled out of Tora Prison, gives a graphic account of the torture Abu Omar says he suffered first in the building of the Egyptian Military Security Intelligence and then in the offices of the SSI.

"Then they presented me with some food and about an hour later they opened the cell door and blindfolded me and tied my hands and took me to an office and the interrogations and torture began, they removed all my clothes and removed the binds on my hands and replaced them with ... two binds on my hands behind my back and one bind which they tied around one foot so that I was standing on one foot and I would fall to the floor naked as they laughed and lifted me back up and again and again and the electric shocks began as well as the hand beatings and the threats to rape me if I refused to talk and if I held back anything I knew...

"The interrogation with me lasted a complete seven months... Seven months passed as if seven years. I experienced pain and torture and reading papers and magazines was completely prohibited as well as radio and television or seeing family members, everything was prohibited, an unbearable hell...

"At the beginning of the interrogation process, the guard opens my cell door and makes sure to blindfold me tightly and changes the position of my bound hands to behind my back out of fear that I would remove the blindfold and witness the officer that is interrogating and torturing me. My feet remain bound and then I'm dragged to the interrogation rooms. They then remove all my clothes (naked as the day my mother gave birth to me) and they let me into where the interrogators are who order them to play with my genitals in order to humiliate me and then the brutal torture begins...

"I was exposed to all forms of crucifixion. They crucified me on a metal door, and on a wooden apparatus which they call 'El Arousa' or 'the bride' hands up high, behind my back, to the sides as well as the feet tightly together and spread apart and torture during crucifixion by means of electric shocks and by being kicked and beaten with electric cables, water hoses and whipped...

"I underwent torture through what they call 'the mattress' and it is a mattress that is placed on the tiled floor of the torture chamber and it is wet down with water and

⁸⁹ Translation by the *Chicago Tribune*.

attached to electricity. My hands were tied behind my back and so were my feet and someone sat on a wooden chair between my shoulder blades and another sat on a wooden chair between my legs and the electricity was switched on and I find myself raised from the strength of the electricity that is touching the water but the wooden chairs are keeping me from rising high and then the electricity is switched off and the interrogator tortures me by electric shocks to my genitals while cursing me and telling, 'Let Italy be of benefit to you'...

"I was placed near the torture chambers for long periods of time to hear the screams of the tortured and their moans and their howls so that I would collapse psychologically and sure enough I experienced episodes of epilepsy and passing out.

"I was sexually abused and sodomized twice and this was the worst thing that I went through for signs of physical torture eventually go away and the pain goes away but the psychological repercussion and the bitterness and scandal of sexual violation remain. This sexual violation occurred twice where my hands were restrained behind my back and so were my feet and they lay me on my stomach, naked, and someone lay on top of me and began to try to rape me and I screamed so hard and so loud that I passed out and I don't know whether he raped me or he was just intimidating and threatening."

[END BOX]

6. Recommendations

Amnesty International calls on the Egyptian authorities to repeal all provisions of the emergency legislation that allow for human rights violations, including those exceptional provisions that have been reinstated into normal law, and to ensure that the planned new anti-terrorism law complies fully with international human rights law and standards. In particular, the Egyptian government should:

Condemn torture and other ill-treatment

- Publicly condemn torture and other ill-treatment; ensure that these practices cease; and make clear to all officers involved in arrest, detention and interrogation, in particular those of the SSI and General Intelligence, that torture and other ill-treatment will not be tolerated under any circumstances.

End incommunicado and secret detention

- Abolish incommunicado detention and ensure that detainees have immediate access – by law and in practice – to the outside world, in particular their lawyers and families, as well as independent medical care.
- End secret detention in SSI and any other premises, where detainees are at risk of torture or other ill-treatment and where detention conditions may in themselves constitute a form of cruel, inhuman and degrading treatment or punishment.
- Publish up-to-date lists of all places of detention in a form that is readily accessible to lawyers and members of the public.

- Establish and maintain a central register to ensure that all detainees can be promptly traced; and bring appropriate sanctions against officers responsible for the unlawful detention of detainees, including failure to keep proper records of detainees.
- Make public the names of all detainees transferred to Egyptian custody since 2001, the circumstances of their transfer, their current whereabouts and the reasons for their continued detention and supply their full details to their families and lawyers and to the International Committee of the Red Cross (ICRC).
- Allow the Public Prosecution to inspect all detention places, including those used by the SSI.
- Allow regular, unannounced, independent and unrestricted inspections by national and international independent expert bodies to all places where people are or may be deprived of their liberty.

End administrative detention

- End the use of administrative detention.
- Pending repeal of the Emergency Law, 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 Interior Minister appears in a court without delay after being taken into custody; the power of this court to order the release of individuals who are unlawfully detained should not be liable to be overturned by any executive official.
- Immediately release all those who are detained under the Emergency Law for whom release orders have been issued by a competent court.

Strengthen protection during detention

- Ensure that all officers carrying out arrests identify themselves to those arrested and notify them in writing of the reasons for the arrest, the authority ordering the arrest, and the place where they will be detained.
- Ensure that the families of those detained are informed promptly of the place of detention of their relatives and any subsequent changes to the place of detention.
- Allow detainees to be examined by an independent doctor as soon as they are arrested and after each period of questioning, and monitor the quality of medical reporting.
- Ensure that those making a complaint of torture or other ill-treatment and any witnesses to torture or other ill-treatment are adequately safeguarded against possible reprisals, intimidation or harassment, and take firm action if such harassment or other abuses takes place.
- Modify the definition of the crime of torture in Egyptian law to make it comply fully with the definition in Article 1(1) of the UN Convention against Torture. All forms of cruel, inhuman or degrading treatment or punishment should be explicitly prohibited. It should be made clear that the prohibition is absolute and must not be suspended under any circumstances, including during a state of war or other public emergency.

- Keep under systematic review interrogation rules, instructions, methods and practices with a view to preventing any cases of torture or ill-treatment, in line with the provisions of the UN Convention against Torture.

Address unfair trials and the death penalty

- Stop referring civilians to military courts and halt immediately all pending trials of civilians in military courts, and transfer the cases to civilian courts for a new trial.
- 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.
- Commute all death sentences and announce a moratorium on the death penalty with a view to abolishing it.

Safeguard against unlawful transfers

- Do not transfer to the custody of another state anyone suspected or accused of security offences unless the transfer is carried out under judicial supervision and in full observance of due legal process.
- Ensure that anyone in Egypt facing transfer has the right to challenge its legality before an independent tribunal, and has access to an independent lawyer and an effective right of appeal.
- Do not receive into custody anyone suspected or accused of security offences unless the transfer is carried out under judicial supervision and in full observance of due legal process.
- Bring all such detainees before a judicial authority without delay after being handed over to Egyptian custody.
- Ensure that detainees have prompt access to legal counsel and to family members, and that lawyers and family members are kept informed of the detainees' whereabouts.
- Ensure that detainees who are foreign nationals have, in addition, access to diplomatic or other representatives of their country of nationality or former habitual residence.
- Co-operate fully with investigations in other states looking into unlawful transfers, under the US-led "war on terror", of individuals suspected of links to terrorist organizations or groups.

End impunity

- Ensure that all allegations of torture or other ill-treatment are investigated promptly, thoroughly and impartially and that officials responsible for the torture or other ill-treatment of prisoners are brought to justice, and that victims receive full reparation.
- Take all appropriate criminal or administrative measures against officials who fail to comply with safeguards against human rights abuses.

Co-operate with the UN to end torture

- Implement recommendations by UN treaty bodies and special procedures.

- Issue a standing invitation to all UN human rights experts, and facilitate immediately the visit requested by the UN Special Rapporteurs, especially the UN Special Rapporteur on torture and the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism.
- Submit the overdue reports to the UN Human Rights Committee and Committee Against Torture as a matter of priority.
- Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Appendix

Amnesty International's 12-Point Programme for the Prevention of Torture

Torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) are violations of human rights, condemned by the international community as an offence to human dignity and prohibited in all circumstances under international law. Yet they happen daily and across the globe. Immediate steps are needed to confront these abuses wherever they occur and to eradicate them. Amnesty International calls on all governments to implement the following 12-point programme and invites concerned individuals and organizations to ensure that they do so. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to end torture and other ill-treatment and to work for their eradication worldwide.

1. Condemn torture and other ill-treatment

The highest authorities of every country should demonstrate their total opposition to torture and other ill-treatment. They should condemn these practices unreservedly whenever they occur. They should make clear to all members of the police, military and other security forces that torture and other ill-treatment will never be tolerated.

2. Ensure access to prisoners

Torture and other ill-treatment often take place while prisoners are held incommunicado – unable to contact people outside who could help them or find out what is happening to them. The practice of incommunicado detention should be ended. Governments should ensure that all prisoners are brought before an independent judicial authority without delay after being taken into custody. Prisoners should have access to relatives, lawyers and doctors without delay and regularly thereafter.

3. No secret detention

In some countries torture and other ill-treatment take place in secret locations, often after the victims are made to "disappear". Governments should ensure that prisoners are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made available immediately to relatives, lawyers, the courts, and others with a legitimate interest, such as the International Committee of the Red Cross (ICRC). Effective judicial remedies should be available at all times to enable relatives and lawyers to find out immediately where a prisoner is held and under what authority, and to ensure the prisoner's safety.

4. Provide safeguards during detention and interrogation

All prisoners should be immediately informed of their rights. These include the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of their detention. Judges should investigate any evidence of torture or other ill-treatment and order release if the detention is unlawful. A lawyer should be present during interrogations. Governments should ensure that conditions of detention conform to international standards for the treatment of prisoners and take into account the needs of members of particularly vulnerable groups. The authorities responsible for detention should be separate from those in charge of interrogation. There should

be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

5. Prohibit torture and other ill-treatment in law

Governments should adopt laws for the prohibition and prevention of torture and other ill-treatment incorporating the main elements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and other relevant international standards. All judicial and administrative corporal punishments should be abolished. The prohibition of torture and other ill-treatment and the essential safeguards for their prevention must not be suspended under any circumstances, including states of war or other public emergency.

6. Investigate

All complaints and reports of torture or other ill-treatment should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The scope, methods and findings of such investigations should be made public. Officials suspected of committing torture or other ill-treatment should be suspended from active duty during the investigation. Complainants, witnesses and others at risk should be protected from intimidation and reprisals.

7. Prosecute

Those responsible for torture or other ill-treatment should be brought to justice. This principle applies wherever those suspected of these crimes happen to be, whatever their nationality or position, regardless of where the crime was committed and the nationality of the victims, and no matter how much time has elapsed since the commission of the crime. Governments should exercise universal jurisdiction over those suspected of these crimes, extradite them, or surrender them to an international criminal court, and cooperate in such criminal proceedings. Trials should be fair. An order from a superior officer should never be accepted as a justification for torture or ill-treatment.

8. No use of statements extracted under torture or other ill-treatment

Governments should ensure that statements and other evidence obtained through torture or other ill-treatment may not be invoked in any proceedings, except against a person accused of torture or other ill-treatment.

9. Provide effective training

It should be made clear during the training of all officials involved in the custody, interrogation or medical care of prisoners that torture and other ill-treatment are criminal acts. Officials should be instructed that they have the right and duty to refuse to obey any order to torture or carry out other ill-treatment.

10. Provide reparation

Victims of torture or other ill-treatment and their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

11. Ratify international treaties

All governments should ratify without reservations international treaties containing

safeguards against torture and other ill-treatment, including the International Covenant on Civil and Political Rights and its first Optional Protocol; and the UN Convention against Torture, with declarations providing for individual and inter-state complaints, and its Optional Protocol. Governments should comply with the recommendations of international bodies and experts on the prevention of torture and other ill-treatment.

12. Exercise international responsibility

Governments should use all available channels to intercede with the governments of countries where torture or other ill-treatment are reported. They should ensure that transfers of training and equipment for military, security or police use do not facilitate torture or other ill-treatment. Governments must not forcibly return or transfer a person to a country where he or she would be at risk of torture or other ill-treatment.

This 12-point programme sets out measures to prevent the torture and other ill-treatment of people who are in governmental custody or otherwise in the hands of agents of the state. It was first adopted by Amnesty International in 1984, revised in October 2000 and again in April 2005. Amnesty International holds governments to their international obligations to prevent and punish torture and other ill-treatment, whether committed by agents of the state or by other individuals. Amnesty International also opposes torture and other ill-treatment by armed political groups.