

EGYPT

Human rights defenders, including some lawyers, have encountered harassment and persecution for carrying out their professional activities. Egypt has continued to maintain an elaborate system of special courts, which undermines the jurisdiction of regular courts. Despite the decision of the Court of Cassation to lift the Government sequestration of the Lawyers Syndicate, and several Administrative Court rulings supporting the Syndicate's right to hold elections in its offices, the group has been prevented from holding its general assembly. A substantial number of human rights violations were committed with impunity in the country.

The Egyptian Constitution proclaims Egypt as a socialist democratic state in which Islam is the official religion, Arabic the official language and *Shari'a* the principal source of legislation. The executive power in the Arab Republic of Egypt is vested in the President of the Republic in conjunction with the cabinet, which the President appoints and may dismiss at his direction. President Hosni Mubarak, who has been serving as Egypt's President since October 1981, was re-elected for a fourth six-year term in a national referendum in September 1999.

Legislative power is vested in a bicameral parliament, which is composed of the Peoples' Assembly (*Majlis al-Sha'b*), elected for a five-year term and the Advisory Council (*Majlis al-Shura*), which is partly elected and partly nominated by the President. The latest election, held between October 18 and November 15, 2000, confirmed the predominant role of the ruling National Democratic Party (NDP) and its dominance of the political landscape. The NDP won 172 seats, independent candidates won 225 and opposition parties won 17 seats. However, many of the independents elected were former members of the NDP who rejoined the party after being elected, leaving the People's Assembly balance at 338 NDP members. Although the judicial supervision of the election made the process fairer and more transparent than that of past parliamentary elections, there were significant shortcomings. Thousands of supporters of the opposition were arrested in the months before the elections, most of them members of the banned Muslim Brotherhood organisation.

HUMAN RIGHTS BACKGROUND

Serious human rights violations continued to be committed with impunity in Egypt. Abuses included arbitrary detention, trial of civilians before exceptional courts, serious limitations on freedom of expression and association, torture and ill-treatment of detainees. Prison conditions amounted to cruel, inhuman or degrading treatment. Human rights defenders continued to face harassment and persecution for carrying out their professional activities.

The Islamic movement backed by the religious establishment, *al-Azhar*, used the judicial system to incite public opinion against writers and journalists who express views that they consider deviant from *Shari'a* and Islam. They continued to pressure the Government to censor literary works and other forms of expression that they deem to constitute blasphemy. The Islamic Research Council of al-Azhar University issued a statement on May 17, 2000 denouncing the novel "A Banquet for Seaweed", by Syrian author Haidar Haidar, for allegedly insulting religious values. The novel, which was first published in Lebanon 1983, was reprinted by the Ministry of Culture as part of a

series on Arabic literature. The Islamist *al-Sha'b* newspaper (of the pro-Islamist Social Party) denounced the novel as blasphemous for ridiculing Islam, and initiated a campaign against the book and against the Minister of Culture for allowing it to be reprinted. After wide-spread demonstrations by al-Azhar University students, the Minister of Culture relented and agreed to recall the book.

State of Emergency

Since 1967, Egypt has been ruled predominantly under a state of emergency imposed initially in response to the Arab-Israeli war launched that year. In May 1980, following the implementation of the Camp David Agreement between Israel and Egypt, the state of emergency was lifted. However, it was re-imposed on October 6, 1981, following the assassination of President al-Sadat. Since that date it has been renewed regularly. In May 2000, the state of emergency was extended for another three-year period.

The state of emergency imposes serious restrictions on the exercise of many basic rights and continues to have far-reaching implications on the overall human rights situation in Egypt. The Emergency Law grants the President a wide range of powers, including censorship, confiscation and closing of newspapers on the grounds of public safety and national security. In addition, the Emergency Law empowers the executive to order the prolonged detention without charge or trial of anyone suspected of being a threat to national security and public order. The continuation of the state of emergency has led to the violation of some basic provisions of the ICCPR, to which Egypt is a party, including prohibition of arbitrary detention under article 9 and the right to fair trial under article 14. Legislation has been used to place impermissible restrictions on other rights, including the right of freedom of thought under article 18, freedom of expression under article 19 and freedom of association under article 22.

In addition to the emergency law, several laws restrictive of civil liberties continue to apply. These include:

- The Anti-terror Law: This law was adopted in response to an upsurge in political violence in the early 1990s. However, the law not only targets the activities of armed groups, but also criminalizes non-violent political opposition activities. This law has been used as a basis for the trials of more than a hundred alleged Muslims Brotherhood members before military courts in 1995, 1996 and 1999-2000.
- The Press Law: Law No. 95 of 1996 includes stiff penalties for journalists with regard to a variety of offences, including mandatory prison sentences for defamation, insult and false information. According to article 185, insulting a public official in relation to the conduct of the official's duties or service may be punished with a maximum of one year's imprisonment. Article 303 stipulates imprisonment of up to two years for defaming a public official, and article 307 provides that the punishment should be doubled in cases where insult or defamation has been produced as printed materials.
- - Law on Associations: On June 1999, Law No. 153 of 1999 on Civil Associations and Institutions was adopted by the Egyptian parliament to replace Law No. 32 of 1962. Law 153 met with strong local and international criticism for imposing severe restrictions on civil society institutions, including *inter alia*, requirements to receive prior government approval for board elections, affiliation with foreign organisations and funding, prohibition of practising political or trade-union activity outside of the exclusive framework of certain political parties and trade unions, or engaging in activities that threaten national unity or

violate public order or morality. In May 2000, the UN Committee on Economic, Social and Cultural Rights called for the amendment or repeal of the Law No. 153, in order to bring Egypt into conformity with its international obligations. The Committee expressed concern that the law "gives the Government control over the rights of NGOs to manage their own activities, including seeking external funding".

In June 2000, the Egyptian Constitutional Court declared Law No. 153 to be unconstitutional. The Court did not examine the substance of the law, but rather found that the law should have been presented to the *Maglis al-Shura*, the Egyptian Upper House. The Court further commented that disputes between NGOs and the authorities should be referred to administrative courts rather than criminal courts of first instance. The Egyptian authorities announced that while Law No. 153 of 1999 is suspended, its predecessor Law No. 32 of 1964 applies. Law No. 32 of 1964 had in many respects imposed even more restrictive conditions on the operation of NGOs. Once the NGO is registered under Law 32, the Ministry of Social Affairs has direct control over a wide range of the NGO's activities, including *inter alia*, government and policy matters.

The activities of some NGOs in Egypt have been criminalized through Military Decree No. 4 of 1992, which prescribes a minimum of seven years imprisonment for receiving funding without permission from the authorities.

Torture

Despite the existence of constitutional and legal safeguards, torture and ill-treatment of detainees by police, security personnel and prison guards remains widespread. Torture is used to extract information, coerce the victims to end their antigovernment activities and deter other from similar activities. In January 2000, the Egyptian Organisation for Human Rights (EOHR) released a report in which it documented 13 cases of torture that occurred in police stations during the latter half of 1999, two of which ended in death. While the Government has investigated some torture complaints in criminal cases and punished some offending officers, the punishments are typically lax considering the seriousness of the offences.

In a recently published report, the Egyptian NGO Human Rights Centre for the Assistance of Prisoners (HRCAP) analysed 1,124 law suits concerning compensation for torture between 1981 and 1999. The report stated that the perpetrators of torture often go without punishment, as existing provisions in both the Penal Code and the Code of Criminal Procedure render it difficult to bring them to justice. However, the State has disbursed a sum of 4,766,550 Egyptian Pounds from the public treasury in compensation payments.

Human rights defenders

The Government approved the holding of the Second International Conference of the Human Rights Movement in the Arab World, which took place in Cairo from 13 -16 October 2000 under the title "Human Rights, Education and Dissemination: A 21st Century Agenda". However, during the period between February 2000 and August 2001 a number of restrictions were imposed on human rights work in Egypt.

On May 21, 2001, the Supreme State Security Court in Cairo sentenced Saad Eddin Ibrahim, a prominent human rights defender, to seven years' imprisonment. Twenty-seven other defendants standing trial were also convicted and received sentences ranging from a one-year suspended prison sentence to five years' imprisonment. Dr. Ibrahim was convicted on the basis of three charges:

receiving funding without authorisation (Military Decree No. 4 of 1992), dissemination of false information abroad harmful to Egypt's interests (article 80 (d) (1) of the Penal Code) and appropriating money by fraudulent means. Dr. Ibrahim was the director of the Ibn Khaldun Centre for Development Studies and lecturer at the American University of Cairo. The Ibn Khaldun Centre, established in 1988, is engaged in activities to promote democracy and human rights activities, which have included publications and public events on the situation of minorities in the Middle East and monitoring parliamentary elections.

Several international human rights NGOs have expressed concerns that the charges against Saad Eddin Ibrahim and his co-defendants were politically motivated and constituted a violation of the defendants' right to the peaceful expression of their opinion. The trial was also said to have fallen short of international standards of fair trial, including the right for a full review before a higher tribunal. In a joint statement, the UN Special Representative on Human Rights Defenders and the UN Special Rapporteur on the Independence of Judges and Lawyers remarked: "We believe that the conviction of these members of civil society for their human rights activities will have a chilling effect on the activities of other human rights defenders in Egypt".

THE JUDICIARY

The judicial system in Egypt comprises both ordinary court and exceptional court systems. However, the elaborate exceptional court system continues to undermine the jurisdiction of ordinary courts, particularly in sensitive cases.

The Ordinary Court System

The ordinary court system is comprised of civil and criminal courts, the State Council, which is a separate administrative court structure, and a constitutional court. The civil court system is composed of a Court of Cassation, Courts of Appeal and Magistrate Courts.

The Magistrate Courts have general jurisdiction over small claims and minor offences. In civil cases, they are composed of one judge, while in criminal cases they may be composed of either one judge or three judges, depending on the seriousness of the possible penalty. There are seven Courts of Appeal in Egypt that are composed of three judges. Each is divided into civil and commercial chambers. The Court of Cassation, which sits in Cairo, accepts petitions on judgements rendered by the Courts of Appeal only on two grounds: mistakes of law and violations of due process.

There is also an elaborate system of administrative courts composed of primary level, appeal and State Council. The State Council is an independent judicial body that comprises three branches: judicial, consultative and legislative. The judicial branch comprises three types of administrative courts whose decisions can be appealed before the High Administrative Court.

The Supreme Constitutional Court

The Supreme Constitutional Court is an independent judicial body, entrusted with the task of examining the constitutionality of laws as well as the interpretation of legislative texts. The Court consists of seven judges who are appointed by the President of the Republic following consultation

with the High Council of Judicial Authorities, including the President of the Court, who is third in line for presidency of the Republic after the President and the Speaker of the Peoples' Assembly. Individuals have no legal standing before the Court.

Despite restrictions on the Court, the jurisprudence it develops has far-reaching implications on the question of constitutionality of laws. A series of rulings of the Supreme Constitutional Court has revealed that many existing laws seriously violate the human rights and civil liberty guarantees that are enshrined in the provisions of the Constitution. The Court has ruled that 53 of the Constitution's 211 articles, i.e. some 25 percent, have been contravened by various laws.

Selection, Promotion and Transfer of Judges

The Constitution guarantees the independence of the judiciary, with article 165 providing that "the Judiciary Authority shall be independent". Moreover, article 166 proclaims that judges shall be independent, subject to no authority other than the law, and that no authority may intervene in judiciary cases or in the affairs of justice. Judges serving in the regular court system are appointed by the President upon recommendation of the Higher Judicial Council. This Council is headed by the President of the Court of Cassation and is composed of senior judges and the Attorney-General.

Judges are appointed for life and may not be dismissed without serious cause. However, in practice the executive authority enjoys considerable influence over the judiciary, in so far as the appointments of judges are a presidential prerogative. Judges are considered functionaries of the Ministry of Justice, which administers and finances the court system. This scheme places the judiciary under the control of the executive, since it makes the executive the *de facto* head of the judiciary, thereby undermining the independence of the judiciary as well as the principle of separation of powers.

Special Courts

An elaborate exceptional court system exists parallel to the ordinary court system. This exceptional system may be traced back to 1980 and operates under the framework of a state of emergency and a series of emergency laws. The exceptional court system comprises several types of special courts, which were described in detail in the previous editions of *Attacks on Justice (1996-1999)*. These special courts include State Security Courts, which are composed of the Emergency Security Courts and the Permanent State Security Courts, and Military Courts.

Emergency State Security Courts

The Emergency State Security Courts were established under the Emergency Law. They have jurisdiction to consider not only cases that arise under the Emergency Law, but also cases punishable under the ordinary Penal Code if they are transferred to them by the President of the Republic or his representatives. Emergency Courts are formed by judges appointed by a presidential decree upon the recommendation of the Minister of Justice. The Emergency Law empowers the President of the Republic to appoint military officers to these courts. Judgements passed by them are not subject to appeal or review by any other judicial body. However, the President of the Republic has the power to alter or annul any decision passed by the Emergency Courts.

Permanent State Security Courts

The legal basis for establishing Permanent State Security Courts is found in article 171 of the Constitution, which provides that "the law shall regulate the organisation of State Security Courts and shall prescribe their competence". Law No. 105 of 1980 confers State Security jurisdiction over cases involving crimes which constitute a threat to internal and external security of the State, the crime of possessing and using arms and explosives, bribery and embezzlement of public funds. Law 105 provides for Magistrate State Security Courts, which are composed of a single judge and Supreme State Security Courts, which are normally composed of three judges. The law permits the President of the Republic to appoint military officers to the latter court. Persons convicted in a Supreme State Security Court do not have the right to a full review before a higher tribunal. Verdicts issued by the Magistrate State Security Courts may be appealed before a special chamber within the Court of Appeal and then can be reviewed by the Court of Cassation. Article 8 of Law No. 105 provides that verdicts issued by the Supreme State Security Courts are final and may not be appealed except through cassation or re-consideration, which are decided on by the Court of Cassation. The grounds of appeal in both cases are limited and must be based on points of law, not on the facts of the case. This clearly violates article 14 (5) of the International Covenant of Civil and Political Rights (ICCPR), to which Egypt is a party, which provides: "everyone convicted of a crime shall have the right to this conviction and sentence being reviewed by a higher tribunal according to the law".

Military Courts

The Military Courts are part of the military hierarchy. According to article 6 (2) of Law No. 25 of 1966 on the Military Judiciary, the President of the Republic, during a state of emergency, has the right to refer to the military courts any crime which is punishable under the Penal Code or under any other law. The jurisdiction of Military Courts to try civilians has further been endorsed by the Supreme Constitutional Court which ruled that the President may invoke the Emergency Law to refer any crime to a military court.

Military Courts do not ensure civilian defendants due process before an independent tribunal. While military judges are lawyers, they are also military officers appointed by the Minister of Defence and subject to military discipline. There is no appellate process for verdicts issued by Military Courts. Instead, verdicts are subject to a review by other military judges and confirmation by the President of the Republic.

LAWYERS

The independence of the legal profession in Egypt, as well as other professional syndicates, has been undermined by the adoption of Law 100 of 1993. This Law provides for very strict conditions for validating the election processes of professional syndicates. It requires that a 50% quorum of registered members must cast their votes in order for the election of the governing board to be valid. Failing a quorum, a second election must be held in which at least 30 per cent of the membership votes for the board. If such a quorum is unattainable, the judiciary may appoint a caretaker board until new elections can be set. In addition, Law 100 requires professional syndicates to refrain from activities that do not constitute part of their original activities. This provision has been seen as part of an effort by the Egyptian authorities to severely restrict the right to freedom of association for professional syndicates and to prevent Islamists from capturing or retaining the leadership of professional syndicates.

The Lawyers Syndicate underwent a crisis with the Government that ended up in its dismantlement (see *Attacks on Justice 1998*). A nation-wide election for the Lawyers Syndicate, which had been scheduled for 1 July, 2000, was postponed by the Government on the grounds that syndicate offices were inadequate to allow voting by all the members. The elections were allegedly postponed to prevent victories by Islamists, as had occurred in the previous elections.

Despite a decision by the Court of Cassation to lift the Government's sequestration of the Lawyers Syndicate and to allow elections, and despite several Administrative Court rulings supporting the Syndicate's right to hold elections in its offices, no such elections had taken place by the time of the compilation of the present report.

CASES

Yehya Ibrahim {lawyer}: On 3 January 2001, Mr. Yehya Ibrahim was attacked and detained by a police officer after an argument with the Chief Prosecutor in the prosecution office in El-Bagour, Monofeya. A number of other lawyers who were present at the time organised an assembly, but were dispersed by police, reportedly with excessive force, resulting in the injury of one lawyer, **Magdy Shaltout {Lawyer}**, who was taken to hospital.