



Egypt

Submission of the list of questions to be examined in the framework of Egypt's 3rd periodic report to the Committee Against Torture

Alkarama, 9 April 2010

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Alkarama recalls that it concentrates its work on four priority areas; arbitrary detention, enforced and involuntary disappearances, torture, and extrajudicial executions. We base our work primarily on the documented individual cases we submit to UN Special Procedures and Treaty Bodies, as well as our contacts with local actors including victims, their families, lawyers and human rights defenders.

1 Background

A diverse opposition (opposition political parties, unions, media and NGOs) contests the general policies of the Government. However, the opposition movement is dominated by the Muslim Brotherhood movement which remains banned as a political party to this day, despite numerous independent members of parliament being affiliated to the movement. The Government has refused the registration of 12 parties of various political tendencies who had requested official recognition.

Universal suffrage was introduced at the last presidential elections in 2005. Despite this relative opening of the political field, President Hosni Mubarak was re-elected for the fifth consecutive term in an election which was marked by wide-spread electoral fraud, according to the majority of independent observers.

During the 2005 legislative elections, the Muslim Brotherhood were the leading opposition, taking 88 of the 454 seats available. Since then, the political field has become more and more constrained and a vast campaign of arrests of Muslim Brotherhood members took place before the last municipal elections of 8 April 2008. From 14 February to 15 March 2008, 831 leaders and supporters were arrested in all parts of the country (Cairo, Alexandria, Al Beheira, Al Qalyubia, Al Gharbia, Kafr el-Sheikh, Asyut, Dakahlia, Beni Suef, Al Sharqia, Damietta, Giza, Al Faiyum, etc.) Most of those arrested had sought to present themselves as candidates.

While Egypt has previously experienced numerous terrorist attacks by armed groups, namely Jamaa Islamiya (Islamic Group), this organisation publicly denounced the use of violence in late 1997. However despite the relative improvement of the security situation, the state of emergency is regularly renewed as is the special legal regime which accompanies it.

Article 151 of the Egyptian Constitution states that "[t]he President of the Republic shall conclude treaties and communicate them to the People's Assembly, accompanied with suitable clarifications. They shall have the force of law after their conclusion, ratification and publication according to the established procedure..."

The Egyptian Constitution therefore gives the same legal standing to international treaties as it does domestic law. This means that dispositions contained in treaties risk being tossed aside in the case where a conflicting law is adopted subsequently. Some such laws adopted after treaties contain a clause stating the maintaining of the treaty dispositions by stating explicitly that their application does not overturn the application of Egypt's international obligations.

However, ambiguity over this question caused the Human Rights Committee to express its concern in this regard: "[t]he Committee regrets the lack of clarity surrounding the question of the legal standing of the Covenant in relation to domestic law and the attendant consequences. The State party should ensure that its legislation gives full effect to the rights recognized in the Covenant and that effective remedies are available for the exercise of those rights."¹

In response to this Concluding Observation regarding the position of the Covenant in the Egyptian legal system, the Government declared that "[i]n section 3, part I of this report, Egypt described the legal status of the Covenant under Egyptian law. This can be encapsulated in the affirmation that the rights and freedoms recognized in the provisions of the Covenant have been taken up by the Egyptian Constitution in such manner as to ensure that those same provisions, being supported by those of the Constitution, enjoy the legal protection afforded to constitutional rules."²

¹ Human Rights Committee, 76th session, *Concluding observations of the Human Rights Committee on the combined third and fourth periodic reports of Egypt*, 28 November 2002, (CCPR/CO/76/EGY), para. 4.

² *The combined third and fourth periodic reports of Egypt submitted to the Human Rights Committee pursuant to article 40 of the International Covenant on Civil and Political Rights*, (CCPR/C/EGY/2001/3), 15 April 2002, para. 640

However, it is necessary for the State party to eliminate any remaining ambiguities regarding the legal value of obligations contained in the Convention against Torture in relation to domestic law.

Questions :

1. *What is the legal value of obligations of the Convention against Torture in relation to domestic law?*
2. *What legal measures does the State party plan to take to give full effect to the rights recognised by the Convention against Torture?*

2 Special legislation

2.1 The law relating to the state of emergency

Law No. 162 of 1958 regarding the state of emergency in Egypt is the most important obstacle to the respect of rights guaranteed by the Constitution. Put in place following the assassination of President Anouar El Sadat in October 1981, the state of emergency was renewed for two years in 2008. It is confrontation with an armed opposition which has long legitimised its renewal to fight against terrorism. However, this law unarguably provides an environment which is highly conducive to human rights violations and torture. It is true that article 48 of the Egyptian Constitution allows for the suspension of certain rights and freedoms as well as the adoption of special legislation.

However, the special legal provisions in place now for several decades have been instrumentalised from the initial aim of the authorities, that is to say, the preservation of national unity and general security, with the exclusive aim of preserving and perpetuation the political system in place.

The law of the state of emergency gives exorbitant powers to security forces, particularly the State Security Intelligence services (SSI), under the mandate of the Minister of Interior. Articles of the law on the state of emergency are incompatible with article 2, para. 2 of the Convention Against Torture: "2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

In fact, provisions of the emergency law have led to the suspension of certain rights considered fundamental by article 4 paragraph 2 of the ICCPR through the prerogatives given to the Egyptian authorities to limit freedoms relating to assembly, movement as well as detention. Article 3 of the law relating to the state of emergency allows the Ministry of Interior to arrest and detain all persons considered as dangerous by the administration without any legal proceedings for an undetermined period of time.

This legal provision also gives the President of the Republic (or his representative) the power to arrest those who "threaten the security of the state" or "public order" without providing details on the extent or interpretation of these terms.

In practice, the application of the special legislation has led to massive and systematic arrests and detention which has created an atmosphere which is conducive to torture particularly when people arrested are detained for long periods of time without legal oversight and without contact with the outside world.

The fact that there is a lack of effective legal control on places of detention further worsens this situation.

This emergency law was originally legitimised as a counter-terrorism measure, but it was then extended to repress the Muslim Brotherhood and other political movements, and at present, the law is being applied to repress social opposition movements as was the case in 2008 when labourers and unions protested peacefully against rising prices.³

³ Florence Morice, *Loi d'urgence, énième* (only available in French – The Emergency Law, nth time), Jeune Afrique, 10 September 2008, http://www.jeuneafrique.com/Article/LIN08068Ioidueminec0/Index_Dossiers (accessed on 9 April 2010)

Questions :

3. Which provisions of the law on the state of emergencies are compatible with article 2, paragraph 2 of the Convention ?
4. How are the terms "threat to public security" and "public order" defined?

2.2 Anti-terrorism legislation

The **anti-terrorism law** was promulgated in 1992. It contains a broad definition of terrorism which allows even the legitimate use of the freedom of expression to be criminalised. A new anti-terrorism law was announced in 2007. This law has not been promulgated to date, but there are fears that it will only serve to "legitimise the exception" by incorporating the main provisions of the emergency law into the criminal code, further reducing freedoms of expression and association as well as the freedom of trade unions.

On 19 March 2007, the Parliament voted, in absence of the opposition, on amendments to 34 articles of the **Constitution**, which integrated a number of the legal provisions of the state of emergency which foster serious human rights violations, particularly related to arrest and detention. Once more, all such measures prove that a favourable environment for the widespread practice of torture in Egypt is being created.

According to the Egyptian media, the draft anti-terrorism law being prepared would further broaden the definition of "terrorism" to include all "disturbances to the public order" and all behaviour "susceptible to weakening that national economy and the country's image". It appears that with this new law, incitation (explicit or implicit) to terrorism would be qualified as a crime on its own, with the same sentence applied – the death penalty or life imprisonment – as for the carrying out of terrorist actions themselves.

Article 179 of the Constitution was also modified in March 2007 so that extraordinary powers were given to the security forces in the context of the counter-terrorism. This authorises them to arrest and detain people for long periods of time, and to carry out searches and phone tapping without any warrant.

This same article also states that "[t]he President may refer any terror crime to any judiciary body stipulated in the Constitution or the law."⁴ This means that people acquitted by civil courts, having been the subject of a court order or decisions to file the criminal case by the prosecutor may, at the request of the President, be brought to justice again and judged by military tribunals and special courts (whose decisions cannot be appealed) on the same facts as the previous charges.

This was the case of Mohamed Khirat Saad EL-SHATER and 25 other leading members of the Egyptian Muslim Brotherhood, all of whom were university professors, doctors, lawyers, engineers, heads of companies or high-level managers. They were all arrested in three night raids on 14 and 24 December 2006 and 17 January 2007.

On 29 January 2007, they were brought before the Cairo Civil Criminal Court, accused of "belonging to an banned organisation, of having provided weapons and military training to students" – they were all acquitted of these charges.

At the same time as they were acquitted, the court also ordered their immediate release. Security forces in the court then immediately arrested them after the verdict was announced and on 4 February 2007, President Hosni Mubarak personally sent the case to a military tribunal.

⁴ Egyptian State Information Service, "Modernising the Constitution" section, *Mubarak ratifie la promulgation des nouveaux amendements constitutionnels* (in French only – Mubarak ratifies the promulgation of new constitutional amendments), (not dated) available from <http://constitution.sis.gov.eg/fr/html/link0845.htm> (accessed on 9 April 2010)

On 15 April 2008, the Supreme Military Court of Haiksteip finally handed down its verdict on the case and sentenced most of the people concerned to imprisonment for "membership of a banned political organisation".

These special courts are not the only ones which are in violation of human rights – article 1 of the Code of Prisoners No. 396 of 1956 attributes powers to the Ministry of the Interior to create private prisons and transform any place into a detention centre. The same article states that only the General-Prosecutor, the highest authority in the national prosecution, has the right to visit these types of centres.

Questions :

5. *How is the anti-terrorism legislation of 1992 compatible with the provisions of the Convention against Torture?*
6. *How is the proposed draft anti-terrorism law also compatible with the provisions of the Convention?*
7. *How are the changes of 19 March 2007 in the Constitution, and particularly article 179 compatible with the principle of the separation of powers and the independence of the judiciary as well as the provisions of the Convention?*

3 Torture

3.1 Torture in the legislation

Article 42 of the Egyptian Constitution states that: "any person who is arrested or imprisoned or whose freedom is in any way restricted must be treated in a manner conducive to the reservation of his human dignity and no physical or mental harm must be inflicted on him. Any statement by a citizen which is proved to have been made under duress or the threat thereof is deemed null and void."⁵

However, in Egyptian legislation, there is no clear and full definition of the crime of torture in conformity with Article 1 of the Convention against Torture (CAT).

The criminal legislation prohibits any recourse to torture and condemns its perpetrators, yet a number of ambiguities remain in the articles which deal with this questions. For example, article 126 of the Criminal Code prohibits any act of torture committed by an agent of the state against an accused individual if the aim of this act is to extract confessions.

Article 126 only criminalises acts of torture which aim to extract confessions, excluding acts of torture committed for other motives such as in the form of reprisals or to punish an attitude, an activity or a political position.

This article also excludes from its scope of application anyone who is not an accused individual, making it unclear whether this prohibition applies to other categories of detainees.

Finally, Article 126, which is loudly criticised by Egyptian lawyers and human rights defenders, only criminalises the author of acts of torture, and not the person giving the orders or their hierarchical superior, who either gave the orders or, by their silence, allowed the act to take place. These people fall outside of the scope of Article 126.

The deficiency of the legislation is further illustrated by Article 129 of the Criminal Code which states "the penalties to be applied in the event of the use, by a public official acting in his capacity as such, of violence incompatible with human dignity or likely to cause physical pain (art. 129)."⁶

⁵ *The combined third and fourth periodic reports of Egypt submitted to the Human Rights Committee pursuant to article 40 of the International Covenant on Civil and Political Rights*, (CCPR/C/EGY/2001/3), 15 April 2002, para. 277

⁶ *The combined third and fourth periodic reports of Egypt submitted to the Human Rights Committee pursuant to article 40 of the International Covenant on Civil and Political Rights*, (CCPR/C/EGY/2001/3), 15 April 2002, para. 351

The criticism of this Article concerns, on the one hand, the very light sentences (one year in prison or 200 Egyptian pounds, or 25 Euro, fine), and on the other hand, the fact that this Article only covers physical pain, thus excluding psychological violence.

Questions:

8. *Will the State Party introduce into its legislation a definition of the crime of torture in accordance with Article 1 of the CAT?*
9. *Will the State Party enlarge the scope of application of the relevant Articles, in particular Article 126 of the criminal code, allowing the prosecution of the person who ordered the torture and/or his hierarchical superior, who, by his silence allowed the act of torture to occur?*
10. *Will further legislative steps be taken to fight the impunity of the perpetrators of acts of torture?*
11. *Will the State Party implement criminal sentences for acts of torture in proportion with the gravity of the crime?*

3.2 Torture : A systematic phenomenon

Egypt is armed with the legal apparatus and legislation which should allow for the effective combating of the practice of torture. However, far from disappearing, this phenomenon seems to be getting worse and is now systematic, in particular for people accused of terrorism or arrested for political motives. Egyptian citizens extraordinarily rendered from abroad in the framework of the war on terror are also victims of such acts.

Numerous political prisoners passed through the SSI headquarters in Lazoghli, Cairo, and allege having been seriously tortured during their detention there. Torture is also practiced in the centres under the control of the security forces or the intelligence services, in police stations, and in prisons. Despite formal complaints by victims, the procedures are very long and, in reality, it is rare that a real inquiry is opened and that the torturers are effectively tried and sentenced.

The **methods of torture** used include hitting, suspending by the wrists or ankles for long periods, electric shocks on all parts of the body, rape and other sexual harassment, as well as threatening death or sexual harassment of members on them or their family. A number of people have died under torture. The authorities usually attempt to justify such deaths by stating they were suicides; investigations initiated following such deaths are lengthy and rarely establish the reality of what occurred.

The Egyptian authorities continue to arrest all people who oppose the government or whose political actions or attitude can be interpreted as opposing the government. One of the recent victims of this, **Mr Taha Abdel Tawab Mohammed**, a doctor in the Fayoum Governorate, organised a committee to support the candidacy of Dr Mohammad Al Baradei, former director of the International Atomic Energy Agency (IAEA), in the 2010 Egyptian parliamentary elections. The Egyptian SSI summoned Dr Mohammed to their Fayoum headquarters on 2 March 2010. Following questioning, they savagely beat him and he suffered various types of humiliation. For example, they asked him to undress whilst the SSI officers insulted and verbally abused him. He was detained until the next day when he was transferred immediately to Senores hospital where he was treated for the injuries caused by the torture.⁷

Two brothers, **Zakaria Mohamed Hamid Hassan Ibrahim** and **Dia' Eddine Mohamed Hamid Hassan**, were also victims of such acts of torture. Zakaria Ibrahim was arrested on 22 September 2009 by the SSI and detained in the military prison of Al Mazah in Heliopolis in Cairo. During a week, he was seriously tortured: hung by his wrists and beaten all over his body. He was not given any food and put in solitary confinement during the six days of secret detention. He was only released on 28 September 2009 on the condition that he come to the headquarters of the SSI two times a month for further questioning. His brother, Dia' Ibrahim, was arrested from his place of work on 8 December 2009 and is at the moment detained in the military prison of Al Mazah where he is subjected to

⁷ Alkarama Press Release, *Egypt: SSI in Fayoum terrorize Al-Baradei supporter*, 12 March 2010, http://en.alkarama.org/index.php?option=com_content&view=article&id=435:egypt-ssi-in-fayoum-terrorize-al-baradei-supporter&catid=22:communiqu&Itemid=102 (accessed on 9 April 2010)

mistreatment and torture. The authorities have tried to force him to sign false confessions against his brother.

Alkarama also submitted to the Special Rapporteur on Torture a number of cases of violations of the right to life.⁸ **Mr Abessadek Zahrane Chahine**, aged 54, living in Tanta, was arrested at his home during his daughters wedding ceremony on 5 February 2009. The police forces violently beat him in front of a number of witnesses, causing him to lose consciousness. He was transported to hospital where the doctors could only confirm his death. The authorities told the family that an autopsy had been conducted, but to this day, no report or further information has been communicated to the family.

Alkarama was also informed of the case of **Mr Magdi Anwar Mar'i**, 43 years old, living in Arimoune, Al Mahmoudia (Al Buheira), who was arrested on 11 July 2009 at his home for having protested the destruction without any judicial warrant of his stable. He was taken in a Minibus and tortured during the trip, before being thrown out, lifeless, onto the road in front of a number of eye witnesses. His family filed a criminal complaint against the police officers responsible for his death but they have not been informed of the results of these complaints.

Mr Mohamed Abdelhafid Neboua, aged 24, was arrested on 10 July 2007 in front of his home in Gizeh by police officers and taken to Wassim police station. Witnesses reported to his family that he was savagely tortured. A few days after his arrest, police officers informed his family that he had committed suicide by jumping out of the fourth floor of the police station. No autopsy was conducted and no inquiry was initiated by the General Prosecutor who received the family's complaint.

On 5 November 2006, **Mr Ahmed Hassane Fouad**, a 35 year old grocer living in Alexandria, was arrested by the police of Mina Al Bassal and brought to the police station where he was secretly detained for several days. According to his sister who was finally allowed to visit him, traces of torture were visible on his face and he told her he was tortured on a daily basis. A few days later, his family was informed he had "committed suicide" by hanging. Doubting the validity of this claim, they filed a complaint to the prosecutor general asking that he initiate an investigation and order an autopsy. To this day, they have had no response.

Hisham Mahmoud Diab, of Dutch and Egyptian nationality, was arrested by SSI forces at dawn on 8 May 2001 at his home in Heliopolis, Cairo. Immediately after his arrest, he was brought to the SSI headquarters at Lazoghli and was continuously tortured for 45 days. Though a civilian holding no military status, Mr Diab was then tried before a Military Court and sentenced to 3 years in prison. He served his sentence and was to be released in May 2004; however, the SSI, using the emergency laws as justification, ordered his re-arrest and transferred him to their headquarters in Lazoghli. He remains detained illegally and has several times been transferred from one prison to another.

The situation in **Egyptian prisons** is particularly preoccupying, especially concerning the people detained for political motives. The members of the Muslim Brotherhood detained in the prison of Torah are in particularly inhuman conditions which can be considered torture. Those suffering from health suffer from nearly no medical attention. Alkarama called for the intervention of the Red Cross as early as 2007, yet they are still not given permission to visit people detained in Egyptian prisons.⁹

In the framework of the international cooperation in the fight against terrorism, dozens of suspects were illegally transferred to Egypt. These people, be they Egyptian or not, were detained in detention centers of the General Intelligence Services and the SSI, where they were systematically tortured during long periods of detention. One of the most emblematic cases of this is that of Abou Omar (**Usama Mostafa Hassan Nasr**), abducted by CIA agents in February 2003 in Milan and transferred

⁸ Alkarama Press Release, *Egypt: Mr Zahran Abdessadek Chahine, new case of deaths resulting from torture*, 22 February 2009, http://en.alkarama.org/index.php?option=com_content&view=article&id=190:egypt-mr-zahran-abdessadek-chahine-new-case-of-deaths-resulting-from-torture-&catid=22:communiqu&Itemid=102 (accessed on 9 April 2010)

⁹ Alkarama Press Release, *Egypte: Conditions de détention des détenus de la prison de Torah* (only available in French - Egypt : Detention conditions in Torah Prison), 18 September 2007, http://fr.alkarama.org/index.php?option=com_content&view=article&id=181 (accessed on 9 April 2010)

to Cairo on board an airplane specially chartered by the CIA. Disappeared during 14 months, he was released but arrested 23 days later because he spoke on the phone about his torture in the SSI headquarters. He was finally freed on 11 February 2007 without ever been charged.

Article 3 of the Convention against Torture, which prohibits the *refoulement* of individuals to countries where they would face torture, is systematically violated. Hundreds of Eritreans were detained in camps, others sentenced for having illegally entered Egypt, and others detained on administrative orders from the Ministry of Interior in accordance with the Emergency Law, before being sent back to their country.

Questions :

12. *What are the legislative, administrative and judicial measures taken by the authorities to end the practice of torture throughout the territory under its jurisdiction under articles 1 and 2 of the Convention?*
13. *What are the measures taken to end the forced expulsion of foreigners to countries where they risk been submitted to the torture and/or cruel, inhuman or degrading treatment?*
14. *Is the State Party considering allowing there to be control measures by an independent judicial authority?*
15. *Is the State Party considering ratifying the Optional Protocol of the CAT?*

4 Arbitrary detentions and enforced disappearances

According to various estimates, in the region of 18,000 to 20,000 individuals are detained without charge or trial on orders from the Interior Ministry. Alkarama is regularly informed of arrests and arbitrary detentions, of which cases of administrative detentions and/or secret detentions for excessively long periods should be considered as forms of torture in themselves.

After considering a communication sent by Alkarama to the Working Group on Arbitrary Detention on 18 October 2006 regarding the case **19 individuals arrested in 1996** and since held under administrative orders, the Working Group found their detention to be arbitrary¹⁰. All of the 19 individuals were tortured by State Security Intelligence services. It was only following their secret detention which lasted between 1 and 3 months, that they were informed verbally that they would be detained without a court hearing under orders from the Ministry of Interior.

All of these individuals made requests to the competent judicial authorities for their release, and because of the lack of charges against them, the court ordered their release. However, the Ministry of Interior used its 'veto power' to issue administrative orders that they be remanded in custody, thus rendering the provisions for appeal of the State of Emergency law completely illusory and inefficient.

Several thousands of individuals remain in custody under similar circumstances despite having received orders for their release based on the fact that no single legal infraction actually exists on their criminal files. Others remain in custody despite having completed their prison sentences.

Mr Tarek Abdelmoujoud Al Zumer, now 50 years old, was arrested in October 1981 and accused of complicity in the assassination of Anwar Al-Sadat. In 1982, he was sentenced by the Supreme State Security Court to 15 years imprisonment based solely on the fact that he was related to one of those accused of carrying out the attacks. He was then sentenced to a further 7 years imprisonment based on the same facts in violation of the *non bis in idem* principle (double jeopardy principle) and the two sentences were accumulated.

It was intended he be released in October 2003, at the latest; however at this time he was remanded in custody on orders from the Ministry of Interior. After his lawyers raised his case, the Supreme Administrative Court ordered his release on 18 May 2004, however the Ministry of Interior again opposed it, using its 'veto power' to issue an administrative detention order.

¹⁰ Working Group on Arbitrary Detention, *Opinion No. 21/2007 (Egypt)*, adopted on 22 November 2007 (available for download on: http://fr.alkarama.org/index.php?option=com_docman&task=doc_download&gid=125&Itemid=70 (accessed on 9 April 2010)).

Many prisoners are in the same situation as Mr Tarek Abdelmoujoud Al Zumer, some of whom have been detained for more than 20 years; following their sentence they have no idea when they will eventually be released. Some of those in question suffer from depression and chronic mental disorders due to the fact that they are held without ever knowing when they'll be released. The fact that they remain in custody under these circumstances is a form of intolerable mental and psychological torture and should thus be considered as such by the Committee against Torture.

Several people have also been **disappeared**, mostly after being arrested by agents of the State Security Intelligence services (SSI). Alkarama submitted the cases of 17 individuals, arrested between 1992 and 1997, to the Working Group on Enforced and Involuntary Disappearances. Some of those in question were arrested along with others who were subsequently released. The victims of disappearance were last seen at SSI headquarters in Lazoghli, Cairo. Despite various measures taken by their families, they still have no idea as to their outcome and have been unable to receive any news as to their whereabouts. The family members of the disappeared are also victims of torture, as they continue to live their lives in anxiety and uncertainty.

Questions :

16. *How does the State party justify remanding in custody those released under orders from the courts?*
17. *Has the State party opened independent investigations into cases of enforced disappearances which occurred while in custody of the SSI ? If so, what are outcomes of these investigations? Have the families been informed?*