

EGYPT

Counter-terrorism against the background of an endless state of emergency

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security



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I- Introduction

Within the framework of a project developed in partnership with the International Rehabilitation Council for Torture Victims (IRCT) on Preventing Torture within the Fight against Terrorism, the International Federation for Human Rights (FIDH) mandated a fact-finding mission to Egypt with the objective of:

1. Documenting the use of torture and the violations of fair trials guarantees in the framework of the fight against terrorism and the state of emergency in Egypt
2. Examining the extent to which the recommendations issued by the UN Committee against Torture of December 2002 have been implemented by the Egyptian authorities and
3. Making constructive recommendations to the Egyptian government regarding the conditions of detention, the trial of those arrested for alleged terrorist activities, and regarding a comprehensive strategy respectful of human rights, and in particular the absolute prohibition of torture, to respond to the threat of terrorism.

The mission took place between the 26 April and 3 May, 2009. It was conducted by a delegation composed of Prof. Ahmed Ziauddin, Advisor to ODHIKAR (FIDH member organization in Bangladesh), Ms. Aideen Gilmore, Deputy Director of the Committee on the Administration of Justice (CAJ - FIDH member organization in Northern Ireland) and Dr. Federico Allodi, professor in psychiatry and founding member of the Canadian Center for Torture Victim in Toronto (Canada), in coordination with Al Nadim Center for the Rehabilitation of Victims of Torture, and with the collaboration of the Egyptian Organization for Human Rights and the Human Rights Association for the Assistance to Prisoners, both members of FIDH in Egypt.

In the course of its mission, the delegation met with Prof. Ahmed Fathy Sorour, President of the People's Assembly (Speaker of the Egyptian Parliament); Prof. Ahmed Kamal Aboelmaged, vice-President of the National Council for Human Rights; Mr. Ahmed Seif El Islam, Director of the Hesham Mubarak Law Center; Directors and members of the Arab Network for Human Rights Information (ANHRI); the Association for Human Rights and Legal Aid (AHRLA); Mr. Hafez Abu Seada, Secretary General of the Egyptian Organization for Human Rights (EOHR); Mr. Sameh Ashour, Head of the Lawyers Association,; and Judge Ashraf A. El Baroudi, President of the Supreme Court of Appeal of Egypt, Judge Ahmed Mekki, Court of Appeal in Alexandria, and Hossam El Gheryani, Vice-President of the Supreme Court of Appeal of Egypt, and Mr. Nicola Bellomo, representative of the EU Commission to Egypt.

The mission also had opportunities to have lengthy interviews with eight individuals who gave evidence of having been subjected to torture while in detention in prisons in Egypt and abroad and, in some cases, with their families.

FIDH deplores the fact that Dr. Mofid Shehab, Minister of State for Legal and Parliamentary Affairs, did not accept to meet with the members of the mission, as initially scheduled. The members of the mission were not allowed to access interrogation and detention places, and could not meet with persons accused of being members of the Hezbollah party, arrested in April 2009 and detained in El Arish prison or to visit the detention facilities of Wahid El Gedid and Tora. The families of the so-called "Hezbollah cell" eventually declined to meet the mission, fearing that such meeting could have some repercussion on their relatives in detention.

FIDH hopes that on the occasion of a future follow-up visit, an open and frank dialogue will be possible with the authorities to discuss the missions' findings.

II- Social and political context

The Arab Republic of Egypt with about 76 million people (2008) is one of the most populous countries in Africa. Half of the population lives in cities on the banks of the Nile or by the Nile Delta. Cairo alone has some 20 millions people and supposedly a density of 52,000 people per square km. The language is Arabic and Islam (Sunny tradition) is the religion of 80-90 % of the population. Egypt counts a Christian minority, the Coptic Church, which represents about 9% of the total population. There is also a small Jewish minority.

The present social and political situation has been strongly determined by the coup d'état of 22 July 1952 and the subsequent revolution. Gamel Abdel Nasser, a colonel in the Egyptian army, and other members of the group of Free Officers deposed King Farouk I, took over the government and initiated what has been considered to this day a military dictatorship.

After Nasser's death in 1970, another army officer, Mohammed Anwar El-Sadat, became president. In 1981 Sadat was assassinated by a member of the Islamic Jihad. He was succeeded to the presidency by his deputy Mohammed Hosni Mubarak, an Air Force Commander and Chief of Staff of the Egyptian Air Force, who also became chairman of the ruling National Democratic Party (NDP, Al watany). President Mubarak and his party have been in power for 28 years.

Since 1952, according to Article 1 of the Constitution, the State has been defined as a democratic socialist state. It has a President, a parliament or national legislative assembly (People's Assembly), a Consultative Council and a judicial system. The President appoints the Prime Minister and also heads the ruling party, the National Democratic Party, which holds 316 of the 444 seats in parliament. The second party, a legally banned party, Muslim Brotherhood, holds 88 seats (20%), most of them gained in a recent election.

In 2005, elections with multiple candidates took place. However, these elections were characterized by violence, accusations of vote rigging, imprisonment of opposition candidates and a low voter participation (22%) As expected, President Mubarak was re-elected and a candidate who protested the validity of the results was sentenced to five years of hard labour.

The most significant measure of Mr Mubarak's presidency has been the imposition of the state of emergency. He also adopted the Decree 1/1981 (amended in 2004), based on the Emergency Law of 1958; this decree refers a variety of ordinary crimes to State Security Courts, including crimes concerning state security, crimes of public incitement (including by newspapers), and crimes involving public demonstrations and gatherings. The Emergency Law has been renewed every two years with the result that Egypt has been under a state of emergency for the past 28 years. While Egypt has known strong terrorist activities between the 70s and the 90s, the phenomenon subsequently decreased. However, the Egyptian authorities are still involved in policies aiming at combating the resurgence of terrorism and at dismantling alleged terrorist cells.

Since 1981, Egypt has had a history of legalizing abuse in the name of the fight against terrorism, which includes an endemic practice of incommunicado detention and torture, the use of military and exceptional courts that do not meet fair trial standards and the routine violation of the rights to freedom of expression, assembly and association.

In 2005, the President announced that a draft law on anti-terrorism would soon replace the law on the state of emergency. On several occasions, FIDH and its partner organizations in Egypt expressed concern about the impact some provisions included in the bill could have on human rights.¹ Since March 2006, a committee has been drafting the new law to combat terrorism but the draft bill was not submitted to Parliament before the state of emergency expired in 2008; on the contrary, the state of emergency was extended for another two years until May 2010.

The adoption of an anti-terrorism law currently remains on the agenda of the Egyptian government, but could be postponed until after the next presidential elections due to take place in 2011, thus allowing for the extension of the state of emergency.

The issue of rendition and the role of third parties involved with Egypt in the international “war on terror” is not tackled in this report, but FIDH believes it would deserve further investigation.

1. See notably “Report on FIDH International Board’s workshop on anti-terrorism and human rights”, June 2008, n°496/2, available at <http://www.fidh.org/Report-on-FIDH-International-Board-s-workshop-on>.

III- Legal framework

1- Human rights framework

Kofi Annan, while he was still the Secretary General of the United Nations declared “*terrorists do not answer to anyone. We, however, must not forget our responsibilities to our citizens all over the world. It is our duty, while we embark on the war against terror, never to compromise human rights*”.

*On another occasion, Kofi Annan declared: “We should all be clear that there is no trade-off between effective action against terrorism and the protection of human rights. On the contrary, I believe that, in the long term, we shall find that human rights, along with democracy and social justice, are one of the best prophylactics against terrorism.”*²

Yet, unfortunately, States frequently restrict human rights under the banner of anti-terrorism, materializing the conflict between the state’s exertion of its full executive authority on individuals and what individuals are entitled to in terms of liberties and rights. This conflict notably manifests itself in the passing of laws restraining individuals’ rights.

The challenge to find an effective balance between combating terrorism and protecting human rights has become central. In this regard, the UN Security Council passed Resolution N° 456 in 2003 which asserts that all states should ensure that any anti terrorism mechanism should comply with international law, especially international human rights law and international refugee law.

On September 8th 2006, the Committee for Combating Terrorism adopted “The United Nations Global Counter- Terrorism Strategy” which states that there is no contradiction between effective measures of counter terrorism and the preservation of human rights; rather they are complementary and mutually dependent. It also affirms that the rule of law is an essential element for combating terrorism. This statement followed repeated expressions of concern by human rights institutions about the crisis that human rights protection was experiencing as a consequence of the fight against terrorism. For example, on the anniversary of the Universal Declaration on human rights after the September 11th attacks, 17 UN Human Rights special procedures released a joint statement which said, “it is essential that general policies achieve a fair balance whereby fundamental human rights and freedoms are maintained on one hand and legislative issues concerning national and international security is preserved on the other hand. Combating terrorism should not lead to violations of human rights stipulated in international law”.³

1-1- International standards

Also in 2006, the UN Sub-Commission on the Promotion and Protection of Human Rights formulated the “updated framework draft of principles and guidelines concerning human rights and terrorism”. In the part entitled “General principles” it states “International action to combat terrorism should focus heavily on prevention of terrorism or terrorist acts. To the degree possible, international action should focus on the development and implementation of forward-looking strategies rather than being responsive or reflective of individual acts or series of terrorist acts.”⁴

2. Kofi Annan, Secretary-General of the United Nations, Speech to the members of the Security Council on 18 January 2002.

3. <http://www2.ohchr.org/english/bodies/chr/special/counter-terrorism.htm>

4. Sub-Commission on the Promotion and Protection of Human Rights, “An updated framework draft of principles

The draft framework also identifies situations in which international law permits some limited derogations, exceptions or limitations to human rights in order to effectively carry out anti-terrorism policies. However, it specifies that should this be the case:⁵

- (a) Measures imposing derogations, exceptions or limitations of rights must be justified by the circumstances, must relate to the circumstances, and must be fully reported as required by the applicable human rights instruments;
- (b) Great care should be taken to ensure that exceptions and derogations that might have been justified because of an act of terrorism meet strict time limits and do not become perpetual features of national law or action;
- (c) Great care should be taken to ensure that measures taken are necessary to apprehend actual members of terrorist groups or perpetrators of terrorist acts in a way that does not unduly encroach on the lives and liberties of ordinary persons or on the procedural rights of persons charged with non-terrorist crimes;
- (d) Measures imposing derogations, exceptions or limitations following a terrorist incident should be carefully reviewed and monitored in a regular and timely fashion;
- (e) Measures imposing derogations, exceptions or limitations may not be overly broad or vague, but must be sufficiently clear so as to fully inform all who might be affected, and meet criteria of necessity and proportionality;
- (f) Measures imposing derogations, exceptions or limitations of human rights should be subject to effective legal challenge in the State imposing them.

The International Commission of Jurists, in addressing this issue adopted the Berlin Declaration on August 29th, 2004.⁶ The Berlin Declaration stresses several human rights obligations to be considered in the context of the fight against terrorism. These are:

1. Duty to Protect: All states have an obligation to respect and to ensure the fundamental rights and freedoms of persons within their jurisdiction. To that end, counter-terrorism measures must always be taken with strict regard to the principles of legality, necessity, proportionality and non-discrimination.
2. Independent Judiciary: In the development and implementation of counter-terrorism measures, states have an obligation to guarantee the independence of the judiciary and its role in reviewing state conduct. Governments may not interfere with the judicial process or undermine the integrity of judicial decisions, with which they must comply.
3. Principles of Criminal Law: States should avoid the abuse of counter-terrorism measures by ensuring that persons suspected of involvement in terrorist acts are only charged with crimes that are strictly defined by law, in conformity with the principle of legality (*nullum crimen sine lege*). In combating terrorism, states should apply and where necessary adapt existing criminal laws rather than create new, broadly defined offenses or resort to extreme administrative measures, especially those involving deprivation of liberty.
4. Derogations: States must not suspend rights which are non-derogable under treaty or customary law. States must ensure that any derogation from a right subject to derogation during an emergency is temporary, strictly necessary and proportionate to meet a specific threat and does not discriminate on the grounds of race, color, gender, sexual orientation, religion, language, political or other opinion, national, social or ethnic origin, property, birth or other status.
5. Peremptory norms: States must observe at all times and in all circumstances the prohibition

and guidelines concerning human rights and terrorism", para. 24, A/HRC/Sub.1/58/30, 3 August 2006, available at http://ap.ohchr.org/documents/dpage_e.aspx?b=5&se=6&t=9

5. *Ibid.*, para. 37.

6. See full text on http://www.icj.org/news.php3?id_article=3503?=en

of torture and cruel, inhuman or degrading treatment or punishment. Acts in contravention of this and other peremptory norms of international human rights law, including extra-judicial execution and enforced disappearance, can never be justified. Whenever such acts occur, they must be effectively investigated without delay, and those responsible for their commission must be brought promptly to justice.

6. Deprivation of liberty: States may never detain any person secretly or incommunicado and must maintain a register of all detainees. They must provide all persons deprived of their liberty, wherever they are detained, prompt access to lawyers, family members and medical personnel. All detainees have a right to habeas corpus or equivalent judicial procedures at all times and in all circumstances, to challenge the lawfulness of their detention. Administrative detention must remain an exceptional measure, be strictly time-limited and be subject to frequent and regular judicial supervision.

7. Fair Trial: States must ensure, at all times and in all circumstances, that alleged offenders are tried only by an independent and impartial tribunal established by law and that they are accorded full fair trial guarantees, including the presumption of innocence, the right to test evidence, rights of defense, especially the right to effective legal counsel and the right to judicial appeal. States must ensure that accused civilians are investigated by civilian authorities and tried by civilian courts and not by military tribunals. Evidence obtained by torture, or other means which constitute a serious violation of human rights against a defendant or third party, is never admissible and cannot be relied on in any proceedings. Judges trying and lawyers defending those accused of terrorist offenses must be able to perform their professional functions without intimidation, hindrance, harassment or improper interference.

8. Fundamental Rights and Freedoms: in the implementation of counter-terrorism measures, States must respect and safeguard fundamental rights and freedoms, including freedom of expression, religion, conscience or belief, association, and assembly, and the peaceful pursuit of the right to self-determination; as well as the right to privacy, which is of particular concern in the sphere of intelligence gathering and dissemination. All restrictions on fundamental rights and freedoms must be necessary and proportionate.

9. Remedy and reparation: States must ensure that any person adversely affected by counter-terrorism measures of a state, or of a non-state actor whose conduct is supported or condoned by the state, has an effective remedy and reparation and that those responsible for serious human rights violations are held accountable before a court of law.

In a report published in 2005, FIDH analyzed the conditions under which derogations to human rights apply in the framework of the fight against terrorism, and provided a framework to examine the compatibility of anti-terrorism laws and policies with international human rights law.⁷

1-2- Respect by Egypt of its international human rights obligations

Having ratified a number of international human rights treaties, Egypt has committed itself to protecting the rights contained therein. Furthermore, Article 151 of the Egyptian Constitution incorporates these international treaties into domestic law, theoretically giving them legal effect at national level.

Thus, having ratified the International Covenant on Civil and Political Rights (ICCPR)⁸ the Egyptian authorities have an obligation to protect the rights of physical integrity, such as the right to life, the right to be free from torture, cruel, inhuman or degrading treatment; the

7. "Counter-Terrorism versus Human Rights: The Key to Compatibility", October 2005, N° 429/2, available at <http://www.fidh.org/Counter-Terrorism-Measures-and-Human-Rights-Keys>

8. <http://www2.ohchr.org/english/law/ccpr.htm>

guarantees related to the right to a fair trial, including rights upon arrest, right to be tried by an independent and impartial court, and the right to basic conditions of detention; protection against discrimination; the rights to freedom of speech, belief, association, assembly; and right to political participation.

In 2002, the Human Rights Committee, a UN body composed of independent experts that oversees the implementation of the Covenant by States Parties, made a number of recommendations to the Egyptian government, including⁹:

- Egypt should consider reviewing the need to maintain the state of emergency (para. 6);
- Violations of the right to life and right to be free from torture should be investigated, action taken against those responsible and reparation made to victims (para. 13);
- An independent body should be established to investigate such complaints (para. 13);
- Visits of intergovernmental and non-governmental organizations to places of detention should be permitted (para. 15);
- Legitimate action against terrorism should not become a source of violations of the Covenant (para. 16);
- Non-governmental organizations should be enabled to discharge their functions without impediments such as prior authorization, funding controls and administrative dissolution (para. 21); and
- The democratic expression of political pluralism should be permitted (para. 22).

Furthermore, having ratified the UN Convention against Torture, the Egyptian authorities have an obligation to take effective measures to prevent any act of torture in any territory under their jurisdiction, and to ensure that torture is a criminal offence. Under the Convention, States Parties must promptly investigate any allegation of torture and victims of torture must have an enforceable right to compensation. State Parties must also ban the use of evidence produced as a result of torture in their courts and are prevented from deporting, extraditing or refouling people where there are substantial grounds for believing they will be tortured.

The Committee against Torture that oversees implementation of this treaty made numerous recommendations in relation to areas of concern upon its examination of Egypt in 2002¹⁰, including:

- Reconsideration of the maintenance of the state of emergency ;
- The adoption a definition of torture which fully corresponds to the definition in the Convention;
- A guarantee that all complaints of torture or ill-treatment, including those relating to death in custody, are investigated promptly, impartially and independently;
- Mandatory and regular inspection of all places of detention by prosecutors, judges or another independent body;
- Immediate access of all detained persons to a doctor and a lawyer, as well as contact with their families;
- The elimination of all forms of administrative detention and mandatory inspection of premises controlled by the State Security Investigation Department, with reports of torture or ill-treatment committed there to be investigated promptly and impartially;
- Legislation to give full effect to the rights recognized in the Convention and institute effective remedies for the exercise of such rights; particularly that any court decision to release a detainee is actually enforced;

9. Concluding observations of the Human Rights Committee: Egypt, CCPR/CO/76/EGY, 28 November 2002, accessible at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.76.EGY.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.76.EGY.En?Opendocument)

10. Conclusions and recommendations of the Committee against Torture: Egypt, CAT/C/CR/29/4, 23/12/2002, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.29.4.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.29.4.En?Opendocument).

- The abolition of incommunicado detention;
- The right of all persons convicted by decisions of military courts in terrorism cases to have their conviction and sentence reviewed by a higher court;
- Non-governmental organizations engaged in human rights work to be allowed to pursue their activities unhindered, and in particular have access to all places of detention and prisons; and
- Precise rules and standards to be established to enable victims of torture and ill-treatment to obtain full redress.

However, most of those recommendations have not been implemented to date.

2- Anti-terrorism legal framework

Egypt was one of the first countries to suffer internal acts of terrorism dating back to October 1981 when former president Anwar Sadat was assassinated by an Islamic group. Terrorist violence continued from the beginning of the 1990's until the end of 1997 claiming innocent lives. After a calm period, terrorist activity reappeared on a regional and international scale as Egypt's farthest Eastern territory, the Sinai Peninsula, was attacked three times by terrorists between October 2004 and April 2006. More recently, in February 2009, a bomb explosion in Cairo has killed a French tourist and injured more than 20 other people.

2-1- The Egyptian Constitution

In March 2007, 34 articles of the Constitution were amended by the Parliament. Article 179 as amended stipulates the State's responsibility to counter the dangers of terrorism and on that basis, establishes that legal provisions relating to "the leading inquiry and investigation procedures required to encounter these dangers" shall not be hindered by constitutional provisions that guarantee the judicial oversight of detention, home search, and surveillance or seizure of communications.

Thus, amended article 179 allows the government to promulgate a counter-terrorism law that suspends the constitutional protections related to arrest and detention, house and body search and private communications. This provision, in its current wording, allows limitation to a number of rights that go much beyond the limitations allowed under international human rights law.

The amended Article 179 also allows the president to refer civilians suspected of terrorism to military and other exceptional courts. This contradicts the jurisprudence of the UN Human Rights Committee as well as the decisions of the UN Working Group on Arbitrary Detention, which considers that civilians should be brought to trial by regular courts in all cases, and under no circumstance by military courts.¹¹

2-2- The Emergency Law of 1958

The Egyptian Government has fought terrorism through Emergency Law No. 162 of 1958 under which Egypt has operated since the assassination of President Sadat in 1981 until this present day. The emergency law is used to justify many crimes and acts of violence by the Government which gravely contradict the Constitution and violate human rights.

On April 30th 2006, the People's Assembly decreed that the Emergency Law would be extended for two more years, and in May 2008, it was renewed again until May 2010. The Government

11. See FIDH, "Counter-Terrorism vs Human Rights: The Key for Compatibility", N° 429/9, October 2005, p. 29-30.

defended this decision by arguing that canceling the emergency law without first passing a new anti-terrorism legislation would lead to a legislative vacuum; a situation which would pose a serious threat especially since the drafting of a new anti-terrorism bill might take up to two and a half years. The Government also argued that extending the emergency law was intended to support the security forces facing terrorist operations.

As mentioned earlier, Article 4 of the ICCPR regulates the accepted derogations to human rights in times of emergency, specifies the conditions under which a state of emergency can be declared and the rights that cannot be derogated under any circumstance. As demonstrated below, the Emergency Law of 1958 clearly violates such conditions and requirements.

2-3- Law n° 97 of 18 July 1992 on Terrorism

This law (“Law Amending Some Provisions of the Penal Code, the Criminal Procedure Code, the Law Establishing State Security Courts, the Law on Secrecy of Bank Accounts, and the Law on Weapons and Ammunition”) adopted in 1992, completed the Penal Code, establishing several terrorism-related offenses; several provisions detailed below are particularly worrying:

Article 86:

This article defines terrorism as: *“any use of force or violence or any threat or intimidation to which the perpetrator resorts in order to disturb the peace or jeopardize the safety and security of society and of such nature as to harm or create fear in persons or imperil the 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.”*

Article 86(a):

This article provides the penalty of *“execution or a life sentence of hard labor for the supplying of groups, gangs or other terrorist formations with weapons, ammunition, explosives, materials, instruments, funds or information that assist them in carrying out their aims”*.

Article 86 (bis):

It is a crime punishable by imprisonment for any person to create or organize, or direct, on illegal grounds, an association or organization or group or gang with the intention of calling in any way for the suspension of the constitution or laws or impedes state institutions or public authorities in the performance of their work; or compromise personal freedom for citizens or their other general rights provided by the constitution or law; or impairing the national unity or social peace; individuals who command or lead or extend material aid to these groups knowing their intentions will be sentenced to life imprisonment with hard labor.

Persons who join the above-mentioned groups, bodies, organizations, associations or gangs or participate knowingly in their activities in any form will be imprisoned for a maximum of five years. The same punishment applies to individuals who promote in oral, written, or any other form, the issues mentioned in the first section; as well as those who - with the intention of distribution or to be viewed by other parties - permit the circulation, directly or indirectly, of editorials or publications or recorded items, whatever their kind, which promote the above mentioned concerns; subject to the same punishment are those who possess any instrument of printing or recording which was used for, or intended to be used for the printing or recording or broadcasting the issues previously mentioned, even if for temporary period of time .

These provisions are subject to several criticisms:

- The definition of terrorism as provided in the Penal Code is ambiguous and comprises a variety of different, prohibited acts. The UN Human Rights Committee has conveyed

to the Egyptian government the necessity of reconsidering the definition of “terrorism” used in the law and replacing it with a more precise definition.

- Of particular concern is the increasing number of crimes punishable by the death penalty in violation of the International Covenant for Civil and Political Rights (ICCPR), which prohibits the extension of capital punishment to new offenses after the signature of the Covenant¹².

According to the Special Rapporteur on the promotion and protection of all human rights and fundamental freedoms while countering terrorism who visited Egypt in April 2009, “ the definition in article 86... runs the risk of including acts that do not comprise a sufficient relation to violent terrorist crimes. Of particular concern is that a number of offenses based on this definition are subject to the death penalty...”¹³.

The law strays away from its supposed initial objective, combating terrorism, and tackles other issues. The law moved from the narrow conception of anti-terrorism legislation to one of repressing freedom of thought and expression as well as peaceful political activities. This dubious nature is clear when considering the fact that the law does not limit acts of terrorism to armed violence but could imply “any threat or intimidation” used in order to “disturb peace or jeopardize the safety and security of society”. Such a definition can be interpreted to include a variety of political activities, for example, union organized activities like strikes, protests or demonstrations, and could even result in unacceptable restrictions to freedom of expression. These activities are subject to the same regulations and penalties as terrorist crimes, regardless of whether violence is being used or not.

- The law reinforces procedural requirements for political parties and compromises legal protection for peaceful political opposition. These regulations are so stringent that in some cases the mere possession of publications is treated as a crime of terrorism even if the content of the publication does not refer to terrorist activities.

- The above-mentioned provisions compromise the constitutional entitlement of equality for all citizens. The law to combat terrorism also eliminates a number of protections included in the Criminal Procedure Code, for instance:

- it increases the duration of provisional detention before transferring the defendant to a court to six months for misdemeanors, 18 months for felonies and 2 years for felonies punished by death. This violates Article 71 of the Constitution containing the guarantees against arbitrary arrest.¹⁴

- it allows the police to detain civilians for a period of up to 11 days without bringing any charges under the claim that this time is used for investigation and inquiries. During this period the defendant is denied access to a lawyer and there is no judicial monitoring of his/her situation, which makes him/her particularly vulnerable to ill-treatment and torture.

- it subjects individuals aged between 15-18 years old to the same treatment as other suspects

12. The penal code prescribes the death penalty for the following crimes and offenses: attacks on the external security of the State (articles 77 and 80), attacks on the internal security of the State (article 83a) and crimes and offenses coming under the “anti-terrorist” legislation (articles 86 to 102).

13. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, Mission to Egypt, A/HRC/13/37/Add.2, 14 October 2009, para. 11.

14. Art. 71: Any person arrested or detained shall be informed forthwith of the reasons for his arrest or his detention. He shall have the right to communicate with whoever he sees fit and inform them of what has taken place and to ask for help in the way organized by law. He must be notified, as soon as possible, with the charges directed against him. Any person may lodge a complaint to the courts against any measure taken to restrict his personal freedom. The Law shall regulate the right of complaint in a manner ensuring a decision regarding it within a definite period or else release shall be imperative.

with regards to interrogation and trials and thereby ignores the rehabilitative methods usually available for minors.

2-4- Draft anti-terrorism law

Article 179 of Constitution is considered to be the basis for the new anti-terrorism bill currently under preparation. According to the UN Special Rapporteur Martin Sheinin, who, unlike the members of the FIDH mission, had the opportunity to meet with the Egyptian authorities, who firmly assured him that “any proceedings allowed for under the new law would come under strict judicial oversight”.¹⁵

According to the Speaker of the Egyptian Parliament, Dr. Ahmed Fathi Sorour, “*Rule of law is meaningless unless the law conforms to the supreme principles that ensure the rights and freedoms of individuals facing the authority, so that the law does not become a mere instrument to serve the authority’s political goals (..) Criminal proceedings affect an important side of our social life, our personal freedom, thus the State uses the law as a tool to achieve its goals and oppress adversaries at the expense of individual freedoms. However, when the rule of law overrides other practices, the provisions of the Code of Criminal Procedure guarantee freedoms before the authorities.*” This must be borne in mind in the process of drafting the anti-terrorism law.

Many experts, including Egyptian judges, have repeatedly stated that the bill in preparation would contradict the Constitution in many ways. However since no one has ever been able to see the text of the draft bill, and as no genuine consultation with civil society organizations has ever taken place, we may only recall our recommendation that the draft law should take into consideration the following main points:

- The definition of the crime of terrorism should include a clear definition of the material element of the crime which distinguishes it from other acts. The definition should not be applicable to any legitimate act performed by political opposition or during armed struggle against foreign occupation for national liberation and self-determination in accordance with the principles of international law.

The FIDH supported the efforts made by the United Nations Secretary General during preparations for the summit meeting held on the 60th anniversary of the UN, urging that a definition of terrorism be finalized and a convention be adopted. The proposal made by the High Level Panel -- and reiterated by Kofi Annan -- is the most interesting proposal at this stage. Terrorism is defined as: “*any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004) that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.*”¹⁶

FIDH considers that this definition could provide guidance for the elaboration of the draft anti-terrorism law in Egypt.

The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, proposes three cumulative conditions to be met in order to classify an act as terrorist:

(a) Committed against members of the general population, or segments of it, with the

15. Ibid, para. 13.

16. See report by the Secretary General’s high level panel on threats, challenges and changes <http://www.un.org/secureworld/>, and the Open Letter the FIDH sent to the U.N. Secretary General, Kofi Annan, concerning Chap. VI, devoted to terrorism, dated 7 December 2004: http://www.fidh.org/article.php3?id_article=2106.

intention of causing death or serious bodily injury, or the taking of hostages;

- (b) Committed for the purpose of provoking a state of terror, intimidating a population, or compelling a Government or international organization to do or abstain from doing any act;
- (c) Correspond to all elements of a serious crime as defined by the law.

- In drafting the law, the People's Assembly should abide by those principles that are derived from international human rights standards binding upon the State, including, for example, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the UN Convention against Torture. In particular, the following constitutional guarantees must be ensured:

- No crime, or punishment may be pronounced unless provided by law (Art. 66 of the Constitution);
- The presumption of innocence and all the guarantees related to the rights of the defense (Article 67, 69 and 71 of the Constitution).
- The People's Assembly shall exercise control over the work of the executive authority in the manner prescribed by the Constitution (Art. 86 of the Constitution)
- The law shall regulate the judiciary (Art. 166 and 167 of the Constitution).
- Ensuring public freedoms and privacy of citizens and the inviolability of their homes and not compromising it except in cases ordered by court and issued by a member of the Judiciary (Articles 41 et seq., Part III of the Constitution).
- Independence of the judiciary and guarantee of the right of every citizen to a just and fair trial before the courts, which shall ensure neutrality, impartiality and accessibility (Articles 65, 68 and 165 of the Constitution).

IV- Main violations

1- Torture allegations

According to numerous reports published by international and Egyptian NGOs,¹⁷ torture is systematically practiced by the security forces in Egypt, in particular by State Security Intelligence (SSI) which operate under the Ministry of Interior, the major branch of the Executive led by the President of the Republic. Under the Convention against Torture ratified by Egypt in 1987, the government must “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction” (Art 2.i). However, SSI forces, far from undergoing any substantial reform in their practices and policies, continue to enjoy special privileges and exclusive powers.

The use of torture has been a major element in the Egyptian’s government’s counter-terrorism strategy for over two decades, as witnessed by the various interlocutors met by the mission.¹⁸

As noted by the El Nadim Center for Rehabilitation for Victims of violence and torture:

“ Protected by an artillery of exceptional laws, the emergency state, an impunity granted by the Egyptian legislation and the lack of political will to combat torture, torture has become a systematic state policy in Egypt.

While the government does not deny the occurrence of torture cases and occasionally permits the trial of some of its officers, it disagrees with civil society organizations on the scope and extent of the practice of that crime, and denies the fact that it is amounting to a systematic state policy, to the extent that Egypt can be described as a police state.

Under the emergency state the country witnessed an expansion in the state security apparatus to the extent that it has come to infiltrate all forms of public and private life, an increased use of military and high state security courts to look into cases that should have been looked into by ordinary courts, an escalation in the practice of torture to the point that some perpetrators have come to film themselves while committing that crime (as in the case of Emad el Kabir) which has become the main, if not the only means of investigation used by all forms of police intelligence and against all citizens, whether suspects or accused of theft, murder or political dissidence.

Another category of torture survivors seen or followed by the center are those cases who were victimized by the “war on terror”, which also included cases brought to Egyptian security authorities through the process of extraordinary rendition. The last of those “terror” cases are two cases, that have come to be known as the Zeitoun case and the Hezbollah case. Lawyers attending the detainees in both cases report a mental state and fear that they have not encountered in previous cases. A recent message released by the defendants after the end of their interrogations reports the use of torture and the fear of complaining to court lest the torture be repeated.

In addition to individual torture in security premises, be they police stations, detention centers, SSI offices or even security offices in universities or other public places, recent years have witnessed an increase in the rate of organized collective police violence”.¹⁹

17. See bibliography for list of such reports

18. See section 4

19. Statement by the Egyptian NGO coalition in view of the Universal Periodic Review at the UN Human Rights Council, January 2010.

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, who visited Egypt shortly before the FIDH delegation, is “gravely concerned about information that terrorist suspects subjected to detention by SSI officers are at particular risk of torture and that, according to the Human Rights Committee and the Committee against Torture, “recourse to such practices appears to display a systematic pattern”. This includes, inter alia, beatings, suspension in painful positions for long periods, electric shocks including on the genitals, rape and threats to kill the victim or members of the family, all of which aim at bringing the victim into a state of complete intimidation, including compelling him to confess to any charges brought against him/her. Condemning any connivance at the crime of torture, the Special Rapporteur reminds the Government of Egypt of the obligation of the State to ensure that all perpetrators of such offenses are brought to justice on the basis of prompt and independent investigations that are carried out whenever there are reasonable grounds to believe that torture has been committed.”²⁰

In the course of meetings with victims of torture and the organizations which support them, the FIDH delegation could clearly identify conditions which have fostered impunity for perpetrators of acts of torture and made accountability extremely challenging. The prevalence of torture was also alarmingly apparent (see below selected cases).

FIDH partner organizations described the situation in a report submitted to the UN Human Rights Council in view of the Universal Periodic Review of Egypt in 2010:

“Crimes of torture continue to take place every day in police stations, State Security police headquarters, and other detention facilities, including at times in prisons. In many documented cases, torture has led to death. No matter how much the Egyptian government insists that these are nothing more than a few isolated incidents committed by a handful of corrupt officers, hundreds of documented testimonies indicate that torture is a systematic policy carried out by police officers on a broad scale all over the country against both political and criminal detainees, suspects and convicts, men and women, adults and minors.... Although the Public Prosecutor has begun using his legal authority to search and inspect detention facilities, the tools of torture remain a regular feature of the arsenal of police stations and are routinely employed.

While the government strongly denies its disregard for torture or the protection it extends to torturers—citing the fact that it has referred a handful of officers to court on charges of torture in recent years—the reality shows the authorities’ keenness to protect torturers from punishment. The government has always resisted any attempt to redefine the extremely limited definition of torture in Egyptian law, which covers only abusive actions against a suspect with the aim of obtaining a confession. The government ignores all documented reports and cases indicating that torture is now used for a long list of reasons, including to intimidate or recruit police informers, to discipline or punish at the behest of a third party, to force a citizen to renounce an apartment or plot of land, as part of a hostage-taking policy that usually nets women and children related to a suspect, and to punish those who dare to challenge policemen’s absolute authority or demand to see judicial warrants or arrest and search orders. The law also prohibits victims of torture from suing their torturers directly in court, delegating this authority solely to the Public Prosecutor, which closes the vast majority of complaints without charge. Even in the rare cases in which the Public Prosecutor refers a police officer to trial, the Ministry of Interior does not suspend the officer or transfer him during the investigation or trial, but

20. Ibid, A/HRC/13/37/Add.2, para. 30.

leaves him on the job where he can further pressure the victims, abuse them, and sometimes re-arrest and torture them again to compel them to withdraw their complaints. In recent years, police officers have evinced a remarkable ability to protect themselves from conviction on charges of torture, whether through falsifying arrest and police records, delaying medical exams for victims to document their injuries, blindfolding victims and using false names to prevent identification, or concealing witnesses from the court and misleading it in various other ways. These legal shortcomings and political protection mean that in the majority of cases, police officers are acquitted or receive extremely light sentences in those few cases of torture that do reach a courtroom”²¹

2- Conditions and length of pre-trial detention

2-1- Administrative detention

Article 3 of the Emergency law provides for the arrest and detention of criminal suspects, in particular “of persons who are dangerous to public security and order”. Individuals considered a national security threat during the state of emergency may consequently be subjected to a regime of “administrative detention”, without necessarily ever being charged or brought to trial.

As noted by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the government is unable to provide exact numbers of persons being held in administrative detention under this provision of the emergency law. However, those interviewed by the FIDH delegation, and other sources, indicate that as many as thousands of people could be detained. Although the government does not provide detailed figures, it is clear that a systemic problem exists.

Under Article 3, a detainee is allowed to lodge a complaint against his/her detention 30 days after his/her arrest. This appeal is heard by an emergency court, which has 15 days to make a decision during which time the detainee continues to be held. If the court rules that the detainee should be released, the Ministry of the Interior has another 15 days to appeal that decision, which is heard by another emergency court, which has a further 15 days to issue a decision. If the court confirms the detention, the detainee can submit another complaint after a further 30 days and the whole process commences again. As such the detention can be indefinite and administrative detention can and has been used to detain people without charge or trial for unacceptably long periods of time since no maximum time limit is specified in the law. While there is a constitutional right of access to a lawyer, this does not form part of the criminal procedures code and thus does not always operate in practice. In addition, the fact that the detainee can challenge the legality of his/her detention before a court only 30 days after his/her arrest violates Article 9(4) of the ICCPR, which reads “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

There is also a significant gap between the theory of what the law allows and what is practiced in reality in that if the court orders the release of the detainee, in many cases the authorities have circumvented the decision and continued to hold the detainee until another detention order can be issued. Thus detainees find themselves in a “revolving door” situation whereby their release is ordered but they never make it beyond the door of the courtroom, but are rather returned to detention illegally.

21. El Nadim Center for the Rehabilitation of Victims of torture, the Egyptian Initiative for Personal Rights, Hisham Mubarak Law Center are among the members of the NGO coalition.

In addition, there have been reports of those who continue to complain and challenge their detention being removed to remote places of detention thus cut off from contact with their families.

According to the Vice-President of the National Council on Human Rights,²² such prolonged detention is “unforgivable” and he questioned how the damage would ever be recovered.

2.2. Illegal detention in the premises of the SSI

As noted by UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, according to Egyptian law, all persons deprived of liberty in Egypt, whether under the ordinary penal framework or in accordance with the Emergency Law, must be detained in officially recognized places of detention. Public detention facilities are subject to inspection by the Public Prosecutor or any other judicial authority and unannounced inspections are carried out on a regular basis with the purpose of preventing unlawful detention of any person. Egyptian domestic law prohibits the detention of people in unofficial detention facilities, and unlawful arrest or detention constitutes a criminal offense²³.

Despite these safeguards, many former “terrorist suspects” (including some interviewed by the FIDH delegation – see section 4) have testified about being arrested and held incommunicado in SSI secret or underground interrogation centers.

As recalled by the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, “*such practices would result in a situation where the detainee is beyond any protection of the law, and in some cases amount to enforced disappearance*”. According to the interview with the Egyptian Organization for Human Rights, there are 56 cases of such enforced disappearances that they are aware of and they cited the UN Working Group on Enforced Disappearances as having identified 17 such cases between 1992 and 2008.²⁴

The Special Rapporteur recalls that the Human Rights Committee has recommended that provisions be made against the use of incommunicado detention and that all detainees be given prompt and regular access to lawyers and doctors in order to ensure respect for the absolute prohibition against torture, as established in article 7 of the International Covenant. However, as a prerequisite for the protection of this right, only officially recognized places of detention must be used for the detention of terrorist suspects. As consistent allegations exist of the use of other facilities for this purpose, independent, prompt and thorough investigations are needed.

3- Attacks on the independence of the Judiciary

The amendment of Article 179 of the Constitution confiscated the inherent competence of the judicial authority to exercise prior control over the legitimacy of proceedings before the trial phase. In addition, this article allows the President of the Republic to refer those accused of terrorist acts to any court stipulated in the constitution including military courts or any other exceptional court.

Such a system severely compromises the independence of the Judiciary. As noted by judges interviewed by FIDH, the President overrules the Judiciary and takes over the judicial system by exercising discretion to refer a case to whatever court he deems appropriate. This procedure presents a high risk of arbitrariness and the defendant does not know before which court he/she is going to be tried until the President makes this decision.

22. The NCHR was set up by the government in 2003 as the designated national human rights institution. The FIDH mission was able to meet with its Vice-president during the mission in April 2009.

23. A/HRC/13/37/Add2, pp18

24. Interview with EOHR during the mission in April 2009.

The Emergency Supreme State Security Court is composed of three ordinary judges; however, two of them may be replaced by two military judges appointed by the President. The Military Courts are comprised of military judges appointed by the Deputy Head of the Armed Forces.

There is no right of appeal from the Emergency Supreme State Security Court. Instead, judgments issued by these courts become final after ratification by the President (or someone delegated by him). While judgments from the military court can be appealed to the Supreme Court for Military Appeals, this review is allowed on matters of law and procedure only, and not on conviction or sentence.

There exists a Judicial Bureau made up of senior judges chosen by the Minister of Interior who can read the judgments of the Emergency Courts and ask that they be abolished. However, there is no right of hearing in front of this Bureau; lawyers can make written representations only and there is no legal framework or process governing it. In an interview with one NGO, this Bureau was described as a “ratification bureau” since in practice very few judgments are overturned

The lack of a systematic right to appeal those courts’ rulings is highly questionable, in particular when the accused may face the death sentence. As stated by the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism “...*these special judicial regimes as a whole seriously undermine the strict distinction between the judiciary and the executive, therefore unavoidably putting at least into question the appearance of impartiality and independence of these tribunals*”. He further notes that the independence and impartiality of a tribunal is “*an absolute right that is not subject to any exception.*”

4- Selected cases on human rights violations

ABU OMAR EL MASRI, Egyptian national, former Imam from Milan, Italy

Mr. Masri was detained in Egypt for the first time in 1988. He was held in two detention centres altogether for six months. He was subjected to torture in Alexandria, El Maamura prison. The officer who tortured him now holds an important position. They call him the Emperor or Red Man because of a skin condition in his face. In the city there was then strife with sectarian groups. One such was the El Jama’a Al Islamiya group and many of them were imprisoned there. The authorities listed him as one of them; he insisted he was not.

He complained he was so traumatized that he decided he would leave Egypt if they released him. He finally went to Amman and then to Yemen where he worked as a teacher in a religious school. He saved some money and left for Pakistan. There he worked in a NGO, in fact, a revival religious school, teaching Afghan children. He remained in Pakistan until 1992.

After the collapse of the Soviet Union he moved to Albania. He settled there and got married. He worked with a relief work organization and started his own commercial business. In Albania he was accused of plotting an assassination of the Afghan foreign minister. (He said he did not even know that the minister was in the country.) He was arrested and tortured. After four days he was told there were no charges against him.

Three months before 9/11, 2001, Mr. Masri received asylum in Italy and was offered a passport. After 9/11 however, mosques were subject to systematic searches, many Muslims were fired from their jobs, and suffered other kinds of discrimination and scrutiny.. On the 17th February 2003 Mr. Masri was kidnapped. He had noticed before that he was followed by people walking or in cars. His apartment was searched. There were cameras in the building in front of the mosque checking everyone who was coming in and out. The telephone would ring and a voice would

ask, "Are you Abu Omar," and he would say, yes. Then the police conducted searches with dogs at the office of the mosque. He was never summoned to the police station. The Egyptian consul in Milan phoned the mosque asking them to fire him because he was "a troublemaker and a former detainee, speaking badly of Egypt."

On the 17th February, 2003, the day he was kidnapped, he went to the mosque from his house to pray. He saw a van and around the corner a man, white, coming out of a car showed him a card identifying him as police. He had no fear. He had all his papers. The man stood on the sidewalk. Then he was lifted by two huge Italian civilians who threw him into the van. He resisted but they beat him up. Altogether there were four people in the van, including the driver. They covered his head with a hood and gave him plenty more beatings. He was put down to the floor and, after one hour, his breathing became difficult and he went into a spasm. A policeman removed the hood and gave him cardiac massage. They looked at his pupils and they put the hood back on. They drove for about four hours. They transferred him to another vehicle but he couldn't tell whether it was another car or a plane. He was confused. He could not concentrate. Later on he learned it was a plane.

He began to recover his consciousness, still with the hood on and his hands tied behind his back. There was a loud noise and it was very cold. He had no shoes. There was a strong wind and was forced to lie down on the floor. He heard the voices of eight or nine people. They cut his clothes off and he became totally naked. They put on trousers and a shirt on him which were very short. Once they lifted the hood and he saw eight or nine people. They had trousers with lots of pockets. They had no pistols but lots of tools and all wore masks. It was only for a few seconds. They took a picture of him. They taped his head from the top to the neck leaving only his nose and face out. The handcuffs were removed and replaced by plastic handcuffs and leg cuffs. He was forced to lie down and he was freezing cold. He said he didn't know where he was and still he doesn't know but all the time he heard the sound of a motor engine. He screamed. He heard music although his ears were plugged. He noticed the plane was lifting. It got less windy and warmer. He had a crisis with shortness of breath and someone came and put a tube in his mouth with oxygen, and he was given water by straw. He cannot tell how long the flight lasted. He felt his hands and feet restrained. He went down a few steps not the long stairs of a plane; probably it was a small military plane, then he heard Egyptian being spoken.

He reckons he was kidnapped at twelve noon and it was next day at dawn when he was in Egypt. All the time he received no food, hardly water. They put him into a car. The restraints were cut but they put cuffs on his feet and his hands in front of him. They drove for some time but cannot tell where to. They put him into a room, cut the tape off his face and realized it was injured and bloody. He realized he had been wearing a training suit with the legs and arms cut. He realized he had been wearing diapers.

He complained of pain in the anus for 15 days. He later heard from other people that they had given him suppositories to calm him down. They took pictures of him and they pushed him into a room where they took information such as age and identity data and the time that he left Egypt, for 15 or 20 minutes. He was told that in the room there were important people. They addressed them as "*pasha*" or lord and they were going to talk to him. One questioned, "Would you go to Italy now as an informer." He replied, "No." And there were no more questions. He was taken away to the toilet and inside he could raise his hood but they put it down on him again after he left the room. It was the first time he had gone to the toilet since he was kidnapped. It was cold. He was told cameras were surveying him. After two hours in a cell he was out again. They removed his face mask while shutting his eyes with a new tape. With his hands, tied in the back, he went to another room where the beatings began.

The interrogator identified himself as the guy who got him in Egypt. There was no interrogation without torture. Mr. El Masri had a beard then and they pulled it. Electricity was common practice during the interrogations. The torture continued for some time.

Later on he learned that he had been at the National Security since February 18, 2003 for about seven months. They made him sign two papers. One, after he complained of symptoms of psychological distress, stating that he had not been subjected to torture or ill treated. In fact, Mr. El Masri said he was subjected to continuous torture for the whole length of his detention of seven months. The other document stated that at the time of his detention he did not have any papers with him. When he refused they further tortured him. In winter the cell was extremely cold and in the summer extremely hot. In between occupied cells there were empty cells so prisoners could not communicate with each other. Besides the beatings and the electricity he was also subjected to sexual assaults and violation attempts. They called him "Samia", a female name, and gave him a woman's gown. They forced him to lay face down and some laid on top of him. He could not tell what happened. He screamed a lot.

During the second period of seven months he was detained at the State Security headquarters. He was in an underground cell with one hole in the ground for toilet. All this time he did not bathe once. In March 2004 he was allowed a bath with soap and given new clothes. He was blindfolded again and taken to an officer. He was given a drink and told that if he went to the State Prosecutor, "he is with us and we will know anything you tell him. You have to tell him you came from Italy to Egypt voluntarily". He told the police "I did not come through the airport or with any airline". The officer replied, "It doesn't matter. The State Security Prosecutor knows everything about it". When Mr. El Masri went to see the State Prosecutor he "told him what in fact had happened, but he did not listen". Then he told him what the police had told him to tell the Prosecutor.

A man came in a van to take him "home", when in fact took him to the Alexandria police station where he stayed for two days. They gave him seven warnings, including, not to contact human rights organizations or the press or to any body about these experiences and not to go abroad. On April 2004 the police came back to see him at home and they took him to a Cairo police station. They gave him another paper to sign on matters of his release. At the station he saw in a dossier the name of a man in Italy. Later he phoned the man in Italy and warned him. He was taken to Medinat Nasser for one month. "Not much torture there. Mild". From there to Tora prison, where he stayed from 2004 to 2007. They explained to him, "A small twist of the ear, so you learn your lesson". It was considered "administrative detention" with "no charges" being laid. Then back to Medinat Nasr Detention Centre.

At the end of 2004 and 2005, he was told he was to go to the Justice Centre to see the Prosecutor, because the Prosecutor wanted to interview him, but that the Prosecutor could not be there. He would have to talk to them. He refused unless he had a lawyer with him.

A lawyer and the press came to see him in jail and he spoke to them. The police told him, "You have spoken to the media", "but they were more lenient this time". They made him an offer, "If your wife does not speak to the media we will give you 10 000.00 EP to start a business". She spoke to the media and he was kept in prison. He wrote an eleven page document with the description of his torture and it was published. In 2007 the Egyptian minister went to Italy and four days later Mr. El Masri was released. He was cautioned, "If you speak you will be back. No one will help you."

The methods of torture were such that they left no permanent scars, for instance, the beating were for the most part with hoses. The only instance of drug use was by suppositories which he assumed from his confusion and the testimonies of other prisoners in Cairo. As residual symptoms of the traumas of persecution and torture he complained of feeling over-vigilant all the time, worried about the children going to school and being followed.

He is still taking medications.

MOHAMMED H. SEIF EL DIN

On May 11th 2001 Mr. Mohamed Seif El Din, 47 years old, separated with two children, an accountant by profession with a job with American Airlines, was detained for no reason he could

tell. He was sentenced to seven years in prison. The sentence was due to finish in September 2007 but he has not been released.

Before the arrest he lived in the U.S. for 16 years and returned to Egypt in 1994.

Apparently looking for an escaped person, the police visited him at home and arrested him. His brother went to jail looking for him but was also arrested. The next morning Mohammed Yousef was handcuffed and blindfolded and taken from Sinai to Cairo to the main security headquarters in Lazoghly. According to Yousef, the place has a bad reputation "Once you go there you are a dead man. If you come out you are a new born again". The torture consisted of application of electricity, hanging by his hands and sexual abuse. In fact he feared he could be raped anytime and witnessed one such rape. The judge ordered his release but the decision has never been implemented "This is a common practice" he says. "One man was ordered released 40 times by the judge but was never released". After September 11 the case was raised again. He was told the U.S. wanted him for interrogation. He was given two choices: 1) to rot there or 2) go to the U.S.A. The family feared that he would be shipped to the U.S. illegally. He tried to get legal aid in the U.S.A. but got no reply. After September 11 his case was transferred to a military court. First he was charged with involvement in Chechnya and Gaza, then other charges regarding attempting to kill the president and other people. "This is routine accusation like a broken record."

He is still in jail and is moved from one secret place to another and to Torah prison. The Brothers see him once a month. Since he is a U.S. citizen the U.S. is handling his case in cooperation, which seems to make the case even more complex and handled so harshly

The Muslim Brothers have been working on his behalf for nine years. They have sent letters to many human rights NGOs as well as to some high-ranking politicians, including Mrs. Hilary Clinton. Their case is acknowledged but they have received no support.

With regards to his medical background, Mohamed Seif has never been seen by a psychiatrist or a psychologist. A doctor informed him that he required an urgent operation because he bled by the mouth and has high blood pressure.

After legal judiciary discharge the State Security arrested him, allegedly as a security risk. Of people arrested like Mohamed Seif, 99% are released but Mohammed is a U.S. citizen and the family believes that it is the U.S. who wants him in prison and to never have a chance to return to the U.S.A. It is believed that he would be seen as an embarrassment and a liability (See the appendices of the District Court in Florida with an indictment).

MOHAMMED ADEL, DIAA EL-DIN GAD and ABDELAZIS MUJEDIN, bloggers

Mohammed Adel is 21 years of age, a student. In 2005 he began blogging. In January 2008 he went to Palestine to photograph and soon began writing and blogging on what he saw in Gaza and on the political scene in Egypt. In November 2008 he was kidnapped, detained and interrogated about his visit to Gaza: blindfolded and tortured in some underground quarters for 16 days. The Security services asked him for his contacts, emails, addresses. He was kept, illegally, for a further 16 days under Emergency Law and taken to jail.

Mohamed Adel said he was charged with blogging and photographing in Gaza. He was not alone but with another blogger. Assuming Mohamed had been kidnapped, lawyers from the Arab Network for Human Rights Information (ANHRI) took the case to court for denying of his arrest and asked for compensation. While the case was in court Mohamed reappeared. The place of detention was in the premises of the Ministry of Interior. The

authorities consider it military premises but legally, according to Gamal Eid²⁵, it is not a military place and not a prison.

Another blogger, Ahmed Aleg who was detained under Emergency Law had a similar experience . In his case there was no investigation was detained for more than seven weeks. He was arrested by the SSI and tortured with electric shocks Then they gave him medicines, cleaned him up to hide the effects of torture before releasing him, so it cannot be proven that he had been tortured. Egyptian Courts do not deal with torture if there are no physical signs. Psychological torture, damage or consequences are not taken into account.

DIAA EL-DIN GAD

A 21 year old student. El Din Gad was kidnapped from his house in the Nile Delta region in February 2009 and driven to Cairo He was accused of going to Palestine.

He says that in fact he went to Rafah three times with the intention of going to Gaza. When refusing to give his password to his blog, he was beaten up and forced to keep awake without eating. On the fifth day he fainted. He was then beaten up again and accused of faking it. He was forced to stand on one leg. He was asked about other bloggers. “If you confess about others, it will be ok. You will not be compromised. If no, you will stay here for ever”.

The security services assumed Gad was connected to Hamas, with people in Gaza and in Lebanon. He soon realized that they were trying to frighten him to confess, making him believe that they had a case against him.

He was kept blindfolded, with his hands tied behind his back for 17 days. On the 18th day he was taken to Al Qanatar jail. For 11 days he was allowed to recover from his bruises and was given medication. They asked him to join the national ruling party in Egypt, “Otherwise we will bury you”.

In jail there were Palestinians and Syrians. No communication was allowed but he heard that the Palestinian had been there 300 days and the other guy, Lebanese, had been there for 100 days. Most prisoners were from North Sinai.

When asked about the reasons for his arrest, Mr Gad explains that he went to Rafah three times but never entered Gaza. He believes the government knows that these bloggers have no connection with Hamas but they are scared that they may talk about the situation in Gaza.

Three bloggers remain in detention. All three are secular people, both Muslims and Christians. What is relevant is that all of them criticize the government, which retaliates with torture or sexual harassment.

It is important to note that Egypt’s draft Broadcast Law which was proposed on June 2008 has been widely criticized for its expansion of restrictions on freedom of expression and intensified penalizing of those who contravene it.

ABDELAZIZ MUJEDIN, blogger

A business student, Mujedin was arrested on 2 November, 2009. He was blindfolded, handcuffed. He was tortured with beatings, electricity, while being held with ropes from a door bar. A large part of his body was bruised.

He was number 17. He was not allowed to speak or ask questions and says he heard screaming all the time. He also went under psychological torture, as for instance some policeman would say to him “We can do anything with you and no one will ever know. We bury people alive”. For three days he could not stand straight or move his neck. Then he spent three months in

25. Lawyer, and director of ANHRI

Wadi El Natroun, and then transferred to detention in Cairo. There he met hundreds of people in detention, like himself, “doctors, lawyers, teachers...for no reason, just a detention order”. According to Mujedin, the political prisoners were mixed with the criminal ones.

Although he was released only after four months, after 22 days he was brought to a judge and was informed that he was accused of “using the internet for insulting Egypt and disturbing the peace in the country”.

According to the Arab Network for Human Rights Information, In 2008 there were 87 cases of bloggers taken by the police, arrested and interrogated for blogging. In Egypt there are about 200 000 bloggers of which 2 000 to 3 000 are activists.

MOHAMMED ABDEL REHIM AL SHARKAWI

The testimony was given by his son Mr. Abdel Rahman Mohamed Al Sharkawi.

Mohamed Al Sharkawi was detained for the first time in 1981 and then acquitted of charges related to an assassination attempt against a government official.

In 1988, he decided to move to Pakistan where he married a Pakistani woman and got Pakistani citizenship. In 1990 he was arrested in Pakistan and deported to Egypt without a deportation order. Since then he has been detained and imprisoned in Egypt. Orders to release him were simply stamped under the Emergency Law.

During his stay in prison he has been tortured and he is still tortured. He has had no family visits for a year. He is being detained in Upper Egypt, near the Sudan border, despite more than 15 court orders of his release he continues to be detained.

The Egyptian authorities maintain he is an Egyptian not a Pakistani but he still has a Pakistani passport. The UN Working Group on Arbitrary Detention concluded that Mohamed Al Sharkawi was being arbitrarily detained in Egypt.

His son, **Abdel Rahman Mohammed Abdel Rehim El Sharkawi**, is 28 years old. He was 8 when he settled in Pakistan where he was educated. After his father was arrested he tried to run the company but he was 14 and could not so they gave the company to friends and he continued his studies.

On September 11, 2001, everything changed. The police could not make a difference between old residents and new arrivals to Pakistan. They moved to Lahore but they spoke Arabic at home and when the people got to know they had to move again. He settled in Atta because they were afraid of returning to Egypt for fear of being arrested. He was born in Egypt and has dual citizenship. On Ramadan 2004 he went to pick up the rent. On the way back he was arrested together with 15 persons. He was blindfolded and handcuffed and then interrogated for 10 days. He was beaten, tied to a bed and hit with batons. The security services questioned him about people he never heard of. The cell was 1 ½ by 2 metres and he shared it with two other persons. Then he was in solitary confinement for four months. U.S. agents came to interview him with a Lebanese translator. They threatened him to take him to Baghram, (the U.S. military base in Afghanistan.) They asked him strange questions. “Have you been to the United Kingdom, Indonesia?” They threatened him many times. “You’ll never get out.” He was moved to a new place. The cells were made of mud walls and after 14 months he went on a hunger strike. They electrocuted him and beat him up. His cuffs made him bleed at the ankles. There were lots of nationalities there.

When the court ordered him to be released the Ministry of Interior contested the order but the court rejected the minister’s contest. Then the whole process continued without releasing him for a moment. There was never an arrest order issued by the police.

The Egyptians changed his handcuffs in a brutal manner and they twisted them. He was given a tight blindfold. He felt his head was going to burst with high blood pressure. All the way to

the airport he was beaten. During his time of prison in Pakistan he never had family visits, no lawyer, no reading and no radio. The family did not know where he was. They assumed that in fact he had “disappeared.”

After he landed in the airport in Egypt the same conditions prevailed. He was in solitary confinement for two months. There were no interrogations until he was handed over to the State Security. He was kept in a bathroom, a tiny place, the floor covered with two inches of water. He could not sleep. Even inside the cell he was handcuffed and blindfolded.

In Cairo there was not so much physical ill treatment, just more threatening. They took him to other places. He was cuffed to the wall, sitting on the floor, while all the time night and day he could hear the screams of interrogations. His blood pressure shot up. He felt low and he refused to be cuffed to the wall. The officer called a doctor. He checked his blood pressure and his relatives were called in January 2006.

Altogether he remained four weeks in the state police before being released. The State security prevents him from traveling abroad.

SAMI EL LEITHI

Mr. Sami El Leithi is 52 years old, single and a school teacher by profession.

He entered Pakistan in 1986 and twelve to fifteen years later went to Afghanistan. He crossed the borders many times, as he had lots of business in Pakistan. He then joined Kabul University and became a professor of Arabic and English for five years.

By the end of 2001, he says was arrested by the Pakistanis who delivered him to the Americans. He was interrogated by Americans. After a week they took his fingerprints, photos and he was transferred by truck, under full US control to a Pakistani military airbase. The Afghans were unarmed. The U.S. in the airbase received him with “unspeakable brutality and barbarism.” They put a thick rope around his mouth high up around his neck, kept him in the tarmac for several hours and finally he was thrown to the floor of an airplane.

Next morning he was in Kandahar, Afghanistan. Again he had an American reception. They tore down all his clothing, they threw him stark naked on to the ground in the gravel and dust. “They walked all over our bodies, kicking us, twisting arms...everything...” says El Leithi. ” “There was no humanity. I did not feel I was a human being. I was naked in front of everybody”.

He complained he lost the power of his legs, gradually after many beatings. When, later on, he arrived in Guantanamo he could walk, play football. He had played it in Kabul University. The daily “recreation” in Guantanamo was beatings, humiliation, surrender of our human dignity, even in the hospital. He was diagnosed with “two damaged vertebrae and a herniated disk.” He did not consent to treatment because the people who wanted to operate on him were the same people who hurt him.

He arrived in Cairo in October 1 2005 in a small airplane and was carried by a stretcher under CIA control. He was accompanied by a doctor, a security agent in plain clothes and another with military uniform. He was still shackled. They refused to allow him to toilet but when he was finally permitted he remained still shackled with the hands tied to his waist. In Cairo they took him to hospital under security agents of the Ministry of Interior. He was kept for a week as a detainee. When he was in Guantanamo the Egyptian government Security visited him twice. He was released when the Americans decided he was not an enemy combatant, along with 38 other people of various nationalities.

At the present time, Mr. El Leithi has no social activities, no friends, no community contacts. Discussing his surgery with Dr. Mona Ahmed from Al Nadim Center, he was adamant he did not want surgery in Egypt.

On the Hezbollah Cell

More recently, in April 2009, The Egyptian security forces announced they had uncovered a Hezbollah cell working on Egyptian soil; the members of the group were accused of belonging to an organization “that was seeking to undermine the state, compromise Egypt’s national security, smuggle weapons and ammunition and plot attacks and of spying for a foreign party with the aim of facilitating operations that would destabilize Egypt. According to a lawyer of the suspects, Abd Almoneim Abd Almaqsoud that FIDH met on 29th April, they deny all charges and insist their only goal was to help the Palestinians in the Gaza Strip.

The lawyers representing the detainees said any confessions should be discounted since they were extracted under duress; they appealed to the State Security attorney general Hisham Badawi for the suspects to be referred for forensic examination to ascertain whether or not they had been tortured. Eight state security cars and trucks were surrounding the building where the tests were taking place in the middle of the night. According to an article published in the daily El Masry El Youm on 22 April 09, “the tests revealed no sign of torture, but only one bruise on one of the suspects’ foot after he hit the car he was pushed in”.

The Egyptian newspaper El Yom Es Sabe’ received on 28 October 2009 a letter written by 24 of the accused in the Hezbollah case from inside their prison, clarifying the extent of violations and harm they have been subjected to and denying any relation with organizations or plans for any aggressive actions in Egypt.

“We, the accused in the Hezbollah cell case wish to inform the Egyptian public opinion of the reality of this case. Everything that the government is saying are allegations and lies. The truth is that our activities were directed towards occupied Palestine and helping the resistance. There was absolutely no planning of any aggressive actions on Egyptian territories. This is not our culture or ideology and there is no one among us who believes or thinks this way. We follow the path and ideology of the resistance against the Israeli enemy. As punishment for this state security intelligence has detained and tortured us in different ways ranging from use of electricity on all parts of our bodies, forcing us to stand all night, while threatening to being our mothers, children and brothers and subject them to torture and make us hear them”.

They add: “We spent 7 months, with our hands tied, blindfolded even when we do the ablution, pray, sleep or eat. When we went to the supreme state security prosecution we realized that it is but the second face of the same coin. The prosecution denied access of our lawyers to the first interrogation sessions until they got the confessions which state security officers forced us to give. There was coordination between the prosecution and state security using a policy, where state security officers would terrorize us with torture and endless detention, while the prosecution tries to tempt us with a release after the end of the interrogations. We currently face the threat of detention if we tell the truth in court. Also, until now no lawyer has been permitted visit us in prison.. We demand a fair trial, we demand a real guarantee that the trial will be fair, we want to be examined by a non governmental medical committee to examine the major physical harms, the evidence of which continues to show on our bodies 10 months after the torture. We demand the actual release of those whom the prosecution has ordered to be released and who were groundlessly detained again by the government.”

V- Conclusion and recommendations

The fact that Egypt has been governed under the Emergency Law for more than 28 years appears as a major obstacle to the strengthening of the rule of law in the country. This law condones the perpetration of serious and systematic human rights violations, under the guise of the fight against terrorism.

FIDH believes that it is the duty of the Egyptian authorities to fight against terrorism, but that respecting human rights in that framework is possible and constitutes an international obligation of the Egyptian authorities. It is also a condition for such a fight to be efficient and credible.

The current legal regime and practices involve arbitrary arrests, enforced disappearances, systematic use of torture against people suspected of terrorism, detention in unofficial facilities, violations of the fair trial guarantees, admission of confessions obtained under duress, and violations of the rights to freedom of expression, assembly and association.

Last but not least, as noted by the UN Special Rapporteur Martin Scheinin, practices allowed for by the Emergency Law and related provisions are being used against people who have no clear link with terrorist violence such as bloggers, human rights defenders, members of the opposition group Muslim Brotherhood and journalists.

Based on those findings, FIDH addresses the following recommendations to the Egyptian authorities and other relevant actors:

1. To the Egyptian authorities

On the Emergency Law

Since many of the human rights violations identified in this report are condoned by the provisions of the Emergency Law, and because a state of emergency should by definition be limited in time and to the extent strictly required by the exigencies of the situation, the Emergency Law and related decrees and legal provisions should be repealed altogether.

Any draft counter-terrorism law must likewise be based on the requirements of international human rights law, and in particular take into account the requirements relating to the definition of the crime of terrorism, the necessary respect of the fair trial guarantees, the absolute prohibition of torture, and the abolitionist spirit of the ICCPR.

The emergency and military courts should not have the faculty to try civilians (whether related to terrorism charges or not) and the right to a fair and independent trial should be respected in all circumstances.

On Torture

Torture in all its forms must be prohibited and immediately ended as a practice. Therefore, the Egyptian authorities should notably:

- Ensure that the definition of torture in domestic law is in conformity with international human rights law and goes beyond the prohibition of torture for the purposes of extraction of a confession. The 2002 Concluding Observations of the UN Committee against Torture provide a clear guidance in that regard.
- Ensure that their competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed, in conformity with Article 12 of the UN Convention against Torture.
- Introduce audio and video recording facilities to all places of interrogation.
- Allow independent and external access to and inspection of all detention facilities, in particular those where cases of torture have been reported.
- Ensure that any statement which is established to have been made under torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made (as per Article 15 of the UN Convention Against Torture).
- Guarantee the right of each detainee, including those suspected of terrorist offenses, to challenge the legality of their detention at an early stage following their arrest, pursuant to Article 9 of the ICCPR.
- Ensure the full respect of the right of detainees to meet with their lawyer and relatives, and to receive the visit of a doctor, including in the pre-trial phase.
- Ratify the Optional Protocol to the UN Convention against Torture establishing a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, and the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.

On Detention

FIDH urges the Egyptian authorities:

- To provide figures and details of all those currently held in administrative detention.
- To charge those currently held in detention with a specific crime and prosecute them in a fair and transparent manner, or otherwise release them.
- To abolish the legal provisions allowing for administrative detention by ensuring that anyone arrested is promptly informed of the charges against him/her and brought before a judge.
- To ensure that the constitutional right of access to a lawyer for all those held in detention is incorporated into the criminal procedure code.
- To uphold respect for the independence of the judiciary by ensuring that all judicial decisions – particularly in relation to the release of detainees - are observed and implemented in practice.
- To immediately end all forms of secret and incommunicado detention, notably in unofficial detention places, and put an end to enforced disappearances.

To the international community

- FIDH asks the US government and other members of the international community to support the Egyptian authorities in their efforts towards ensuring compatibility between human rights and the fight against terrorism and therefore to condition their military support to concrete progress in the field of the fight against impunity for extra-judicial killings, torture and enforced disappearances.
- Bearing in mind that the fight against torture is a priority of the European Union under the EU

Guidelines on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, FIDH asks the EU to address the issue of the human rights violations perpetrated in the name of the fight against terrorism in the framework of its bilateral dialogue with the Egyptian authorities.

- The UN Committee against Terrorism should address the issue of human rights violations in the framework of the fight against terrorism on the occasion of the next examination of Egypt's state report, and make public its conclusions.

Annexes

ANNEX 1: PERSONS AND ORGANIZATIONS MET BY THE MEMBERS OF THE FIDH MISSION, Egypt 26 April-3 May 2009

- Dr. Ahmed Fathy Sorour, President of the People's Assembly (Speaker the Egyptian Parliament);
- Prof. Ahmed Kamal Aboelmaged, vice-President of the National Council for Human Rights;
- Mr. Ahmed Seif El Islam, Director of the Hesham Mubarak Law Center;
- Mr. Gamal Eid , Executive Director, Arab Network for Human Rights Information (ANHRI)
- Mr. Mohamed Khaled, Program Coordinator, and other members of ANHRI
- Moshen Bashnasy and Jess Hassen of Association for Human Rights and Legal Aid (AHLRA);
- Mr. Hafez Abu Seada, Secretary General of the Egyptian Organization for Human Rights (EOHR);
- Mr. Sameh Ashour, head of the Lawyers Association;
- Mr. Nicola Bellomo, representative of the EU Commission to Egypt;
- Judge Ashraf A. El Baroudi, President of the Supreme Court of Appeal of Egypt,
- Judge Ahmed Mekki, of the Court of Appeal in Alexandria,
- Judge Hossam El Geryani , Vice-President of the Supreme Court of Appeal of Egypt.
- Dr. Aida Seif Al Dawla and Dr. Mona Iman of El Nadim Center for the Rehabilitation of Victims of Violence, Cairo.
- Victims of torture and other human rights violations, and their families, included:
 - Mr. Abu Omar El Masri and his brother Hatem
 - Family of Ahmed Seif El Isham
 - Abdel Rahman (on behalf of his father Mohamed Abdel Rehim El Sharkawy
 - Diaa El Din Gad, author of the blog Sawt Ghadib (Angry Voice)
 - Abdelazis Mujedin, blogger
 - Mohammed Adel, blogger
 - Sami El Leithy

Persons and places scheduled to meet or visit but not met or visited:

- Dr. Mofid Shehab, Minister Of State For Legal And Parliamentary Affairs,
- Ambassador Mokless Quotd, Secretary General, National Council for Human Rights
- Persons accused of being member of the Hezbollah party and prisoners in El Arish, or their families.
- Abdel Moneim Abdel Maqsood, Hezbollah's lawyer
- Visit to the detention facilities at Wahid El Gedid and Tora prison.

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This report was elaborated with the support of the European Commission. The points of view presented herein reflect the opinion of the organizations endorsing the report and not under any circumstances the official point of view of the European Union.

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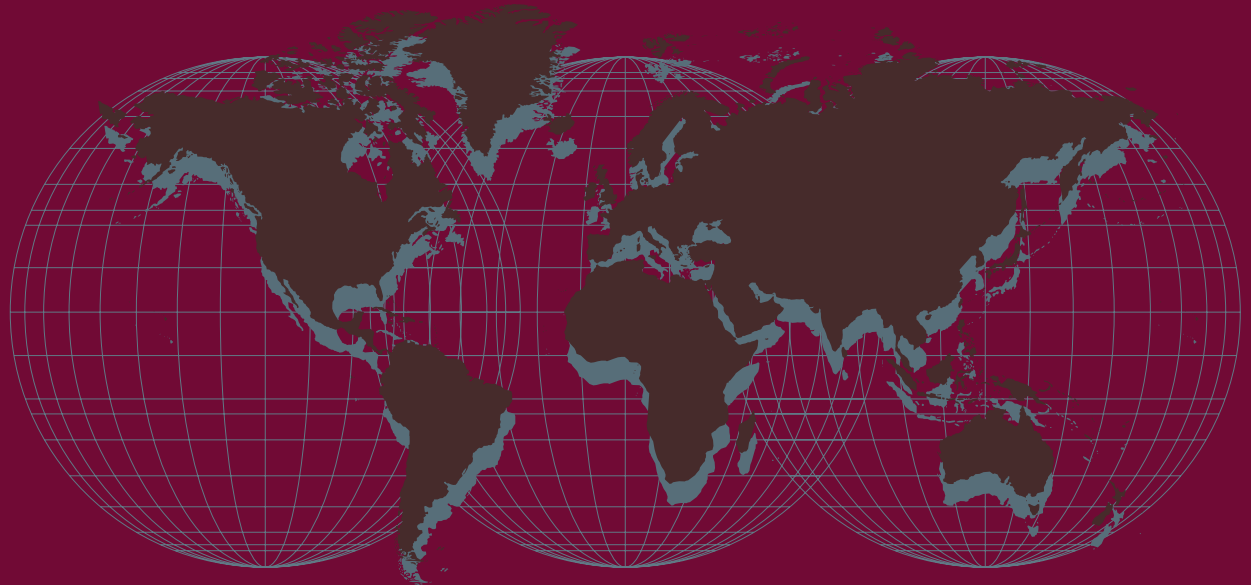
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of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest,

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