

“Work on Him Until He Confesses”

January 30, 2011

"Work on Him Until He Confesses"

Impunity for Torture in Egypt

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Summary

Throughout June and July 2010 hundreds of Egyptians took to the streets in a rare wave of protests to voice their anger at the police, whom witnesses accused of publicly beating to death Khaled Said, a 28-year-old from Alexandria. Some of these protests were loud and angry, with demonstrators demanding a full investigation into Said's death on June 6, and the prosecution of all those they held responsible, including the interior minister. In one particular event, hundreds of mourners dressed in black lined the Alexandrian coast in Said's memory, staring silently out to sea.

The Khaled Said case-including gruesome pictures of Said's battered body that soon appeared on social networking websites-shook and outraged many in Egypt, where an emergency law grants wide powers to police and security force. Some citizens could identify with Said as victims of police brutality, while many young people could understand the experience of being randomly accosted by police in an internet café – public internet cafés are subject to surveillance and require a national ID to enter. An initial attempt by authorities to cover up police culpability only fueled public anger.

According to Egyptian lawyers and domestic and international human rights groups, which have extensively documented the practice of torture in Egypt, law enforcement officials have used torture and ill-treatment on a widespread, deliberate, and systematic basis over the past two decades to glean confessions and information, or to punish detainees. The United Nations Committee Against Torture has confirmed the systematic nature of torture in Egypt. Criminal Investigations officers and State Security Investigations (SSI) officers, under the authority of the minister of interior, are most often responsible for such abuse. This includes beatings, electric shocks, suspension in painful positions, forced standing for long periods, water-boarding, as well as rape and threatening to rape victims and their family. Since 2004, the ombudsman office of the quasi-official National Council for Human Rights (NCHR) has sent the Ministry of Interior and Office of the Public Prosecutor (*niyaba* in Arabic)-which is responsible for investigating and prosecuting crime-over 50 complaints on torture and deaths in custody.

Over the past 10 years, Egypt's torture record received increased international attention as abusive practices carried out by the United States and European Union (EU) countries such as Sweden in the name of counterterrorism were gradually exposed.

This report focuses solely on torture and death in custody cases in which victims or their families instituted legal proceedings by filing a complaint. It examines how Egypt's government discharges its obligation to investigate and prosecute cases of torture and ill-treatment. It also assesses the government's commitment to confronting torture by law enforcement officers and to the rule of law.

The report finds that the government is failing miserably to provide victims of torture and ill-treatment effective remedy, or to deter such abuses from occurring in the future. Impunity prevails with regard to torture and ill-treatment, since those guilty of such abuses having little expectation or reason to fear they will be held to account. The result is an epidemic of habitual, widespread, and deliberate torture perpetrated on a regular basis by security forces against political dissidents, Islamists allegedly engaged in terrorist activity, and ordinary citizens suspected of links to criminal activity or who simply look suspicious.

The government no longer denies that torture occurs, as it once did. However, it maintains that incidents of torture are isolated-despite regular reports to the contrary in the media and by domestic and international human rights groups. In

addition, the Ministry of Interior tends to respond to accusations of torture by denying the facts, discrediting the complainant, and pointing to training programs and internal disciplinary measures as evidence that it takes human rights seriously. While prosecutors do open investigation files on each formal complaint of torture, most complaints do not go reach court due to an inadequate legal framework, police intimidation of victims who then withdraw complaints, and ineffective and delayed investigations.

As a result, there is a significant gap between the number of torture incidents that victims or their families document or file with prosecutors, and the very small number of complaints that prosecutors transfer to court and result in convictions. According to statistics the government made public in 2009, Egyptian criminal courts convicted and issued final sentences to only six police officers between 2006 and 2009. Moreover, prosecutors-who have the right to make regular unannounced visits to detention sites in their jurisdiction-do not appear to actively perform this role and lack access to SSI detention facilities where detainees are frequently disappeared.

A number of factors impede torture victims gaining redress for abuses, and contribute to abusers enjoying impunity for torture and ill-treatment. One such factor is the absolute discretion prosecutors have to close a torture investigation or transfer it to court, which relates to how the offices of the Public Prosecutor function. The Public Prosecution (*niyaba*) is a hierarchical, centralized institution under the minister of justice that investigates crimes and prosecutes alleged perpetrators. Despite its formal independence as a judicial body, the *niyaba* operates very much as an instrument of the executive. Moreover, its dual power of investigation and prosecution creates structural tensions that can impact the impartiality of investigations. For this reason, many Egyptian human rights lawyers have called for reinstatement of the now-defunct Office of the Investigative Judge so that investigations are conducted by a party fully independent of the executive.

Another factor that contributes to impunity is Egypt's legal framework, which fails to fully criminalize torture in line with the international standard articulated in the UN Convention against Torture, to which Egypt is party. Article 126 of the penal code limits torture to cases of physical abuse, when the victim is "an accused," and when officials employ torture in order to coerce a confession. While confessions are frequently the object of torture, security forces sometimes appear to use it to punish or intimidate a suspect. Moreover, this narrow definition excludes cases of mental or psychological abuse, and cases where the torture victim is someone other than "an accused," such as individuals who are not suspects themselves but are being questioned about a crime, or are being held in administrative detention without charge. In the event that officers are convicted of ill-treatment, the law does not provide meaningful penalties that might represent a deterrent.

Other provisions of the penal code, such as article 129, fail to provide punishments that are commensurate with the seriousness of the crime, and so are therefore too lenient to be a deterrent. In addition, courts frequently use article 17 of the penal code to reduce the sentence of an officer convicted of torture or ill-treatment, citing concern for his or her professional career. The Police Law gives the Ministry of Interior discretion to reinstate the officers to their previous positions once they finish their sentences. In November 2009 the government pledged in its national report to the UN Human Rights Council that it would amend the definition of torture in line with international law, but a People's Assembly legislative committee, dominated by the ruling National Democratic Party, rejected such a proposal submitted by a Muslim Brotherhood MP in February 2010, a few days before Egypt's Universal Periodic Review.

Another factor contributing to impunity is the clear conflict of interest that arises when police are involved in investigating allegations of abuse within their own ranks. Prosecutors rely on criminal investigation divisions in police stations where abuse allegedly occurred to investigate, collect evidence, and produce witnesses related to the complaint. Prosecutors often lack time or the political will to properly assess and scrutinize the evidence that police produce, or the quality of their investigation. Police often delay implementing a prosecutor's order to bring the complainant to a forensic medical doctor for examination so that physical marks of abuse fade. Police also routinely intimidate and threaten victims, their families, and witnesses so that they withdraw a complaint or agree to an out-of-court financial settlement.

The problem of impunity is especially acute when it comes to allegations of torture by State Security Investigations (SSI) officers. A division of the ministry of interior, the SSI is Egypt's primary domestic intelligence agency, entrusted with monitoring and controlling opposition forces, both peaceful and otherwise. The SSI routinely subjects individuals to enforced disappearance in its facilities for extended periods, during which detainees are denied contact with third parties, including lawyers or doctors. SSI facilities are not lawful places of detention: Egyptian law prohibits detention in facilities other than recognized prisons and police stations. The government denies the SSI detains suspects at its sites-where suspects often face torture-despite considerable testimony to the contrary. Detaining an individual followed by denying or refusing to acknowledge their detention constitutes an enforced disappearance that, like torture, is a serious crime under international law.

SSI detainees normally face trial before emergency state security courts created under Egypt's emergency law. These courts try cases related to security, political dissidents, and other politically-motivated issues. State security court trials are notorious for relying on confessions allegedly obtained by SSI officers using torture during periods of enforced disappearance. Suspects tried before these courts have often been disappeared for up to several months, and are returned to SSI custody afterwards. As a result, they are almost always too intimidated and scared of retaliation to complain to a prosecutor about torture. The courageous few who do often find the subsequent forensic medical examination provides no conclusive indications of abuse since too much time has passed. SSI interrogators also usually blindfold suspects and use false names, making it difficult for victims to identify their torturers. In Egypt, a victim's inability to identify his or her torturer is a barrier to pursuing legal remedies.

International law, in addition to including a strict, absolute prohibition on torture, obliges states to prevent, investigate, prosecute, and punish acts of torture and other ill-treatment. For example, the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2001) provide that "[e]ven in the absence of an express complaint, an investigation should be undertaken if there are other reasons to believe that torture or ill-treatment might have occurred." The International Covenant on Civil and Political Rights (ICCPR), to which Egypt is a party, also obligates states to provide victims of human rights violations with an effective remedy that must be accessible and prompt. The obligation to prosecute persons allegedly responsible for acts of torture includes those who both directly and indirectly participate in torture. This includes those in the chain of command who knew or should have known that such acts were perpetrated. International standards on investigations state that these investigations must be prompt, thorough, and impartial.

Human Rights Watch urges the Egyptian government to take concrete steps towards ending torture and ensuring effective

investigations and serious prosecutions. Officials at the highest levels, including the president and minister of interior, should publicly acknowledge the scope of torture in Egypt and declare that they will tolerate neither torture nor ill-treatment. The ministry of interior should immediately end the illegal practice of enforced disappearance and detention in SSI offices, and allow prosecutors to conduct unannounced visits to such sites to verify compliance. The ministry should also announce it will cooperate fully with prosecutors in investigating and prosecuting those allegedly responsible for torture and ill-treatment. The government should also amend the penal code to bring the definition of torture in line with international law, and make penalties for torture and ill-treatment commensurate with the seriousness of the crime.

The Office of the Public Prosecutor should order all prosecutors to investigate credible allegations of torture and ill-treatment, even in the absence of a formal complaint. Prosecutors should conduct these investigations promptly, impartially, and thoroughly, ensuring that all those allegedly responsible, including superiors, are investigated. Forensic medical examinations should occur as soon as possible. The government should also amend the Code of Criminal Procedure to allow victims of police abuse to file criminal suits against those responsible. It is vital that an independent body be established to accept, investigate, and pursue complaints of abuse by law enforcement officers. Reinstating the Office of the Investigative Judge with a mandate to investigate abuse complaints would give the system greater independence, as would establishing a judicial police force to gather relevant material evidence and work with police. Alleged abusers should not gather evidence, or interact with complainants and witnesses.

Taking meaningful steps to investigate, prosecute and punish torturers would demonstrate the government's political will to end the practice and thus comply with its obligations under Egyptian and international law.

The European Union (EU) and United States, which have publicly declared their commitment to upholding human rights in their foreign relations, should speak out publicly against torture in Egypt, as well as the government's failure to prohibit and suppress these practices and punish those responsible.

Human Rights Watch reiterates that governments are strictly obligated by law not to return anyone to countries where there is a risk of torture or inhuman or degrading treatment. It also calls upon governments to make clear to the Egyptian government that torture decreases Egypt's value as a partner in counterterrorism because the information it obtains through torture is both unreliable and inadmissible in a court of law.

Methodology

Given this report's focus on the failure to investigate and prosecute allegations of torture, Human Rights Watch examined only torture and death in custody cases in which victims or their families instituted legal proceedings by filing a complaint.^[1] We then examined the process that followed.

Human Rights Watch interviewed ten victims of torture or families of people who died in custody, two former prosecutors, ten lawyers who have filed numerous torture complaints over the years, and four human rights researchers who gather testimony from victims and their families. A Human Rights Watch researcher conducted the interviews in private and in Arabic. Interviewees who did not wish to be named in the report are referred to by initials in footnotes. Human Rights Watch also reviewed medical reports, prosecutors' reports of investigations, and court decisions on torture.

Human Rights Watch sought government comment regarding the extent to which public prosecutors have complied with official procedures for investigating and prosecuting those allegedly responsible for torture. We wrote to the ministry of interior on August 4, 2010, and to the public prosecutor and Ministry of Foreign Affairs on November 23. We also requested meetings with the public prosecutor in September, but his assistants informed us that his schedule was full. No response had been received at time of writing.

While it is not possible to determine conclusively the overall number of alleged torture cases in which complaints were filed, the sample examined is sufficient to evaluate the government's response because the obligation to provide an effective remedy applies to every individual case. We therefore opted to examine a representative sample of 40 torture cases in which victims or their families filed complaints, which were identified with the help of human rights lawyers and credible Egyptian nongovernmental organizations (NGOs).

Human Rights Watch focused on incidents of alleged torture and ill-treatment documented by human rights lawyers that did not reach court because prosecutors—who have full discretion to determine whether to prosecute a case or formally close an investigation by putting a case on file (*hifz*)-chose to close the investigation.

Human Rights Watch is grateful for the assistance of lawyers and researchers at the following Cairo-based organizations: the Nadim Centre for the Rehabilitation of Victims of Violence, the Egyptian Organization for Human Rights, the Hisham Mubarak Law Center, the Human Rights Center for the Assistance of Prisoners, the Hilaly Center, the Arab Network for Human Rights Information, the Association for Freedom of Thought and Expression, and the Arab Centre for the Independence of the Judiciary.

Key Recommendations

To the Government of Egypt

Acknowledge the scope of the problem of torture and ill-treatment in Egypt, and publicly commit to implementing a policy of zero tolerance for all forms of torture and inhuman or degrading treatment.

Issue and widely publicize directives from the highest authorities, including the president, stating that the government will not tolerate torture and other ill-treatment by law enforcement officials, will promptly and thoroughly investigate reports of torture and ill-treatment, and will hold accountable those responsible.

Put an immediate end to detention in State Security Investigations (SSI) facilities, and ensure that SSI only detain individuals in police stations and prisons, which-unlike SSI facilities- are legally sanctioned for this purpose.

Direct the Office of the Public Prosecutor to investigate, in a thorough, impartial, and timely manner, all torture allegations against law enforcement officials, regardless of rank and whether the victim or family has formally filed a complaint.

Amend the definition of torture in article 126 of the penal code to bring it in line with article 1 of the Convention against Torture, and increase the penalties in article 129 on the use of cruelty by officials, and article 282 on torture in connection with illegal detention to make the penalties commensurate with the seriousness of the offenses.

Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and implement the Protocol through establishing an independent national body to carry out regular and ad hoc unannounced visits to all places of detention.

To the Office of the Public Prosecutor

Investigate all credible allegations of torture and ill-treatment, even in the absence of a formal complaint.

Order prosecutors at all levels to regularly conduct unannounced inspection visits to places of detention and to investigate all allegations of torture and ill-treatment.

Ensure that every investigation is conducted promptly and impartially, and that prosecutors investigate all those alleged to be responsible, including superiors.

Ensure prompt and independent forensic medical examinations of detainees who allege that they have been subject to torture and ill-treatment.

Ensure the safety of victims, witnesses, and families of victims during and after investigation and trial.

To the Ministry of Interior

State publicly that the minister of interior will not tolerate torture and ill-treatment in police stations, prisons, at the hands of Criminal Investigations and State Security Investigations officers and that it will punish those responsible.

Act to put an immediate end to the SSI practice of unlawfully detaining individuals in facilities other than police stations and prisons.

Immediately suspend any law enforcement official when there is credible evidence showing that he ordered, carried out, or acquiesced to, acts of torture or ill-treatment.

I. Background: Egypt's Torture Epidemic

The guys would say they'd be tortured so bad, they'd be screaming, 'Tell me what you want me to say! Tell us what to say and we'll say it!' They'd agree to confirm anything State Security wanted.

-L.S., former SSI detainee, describing the experience of fellow detainees, Cairo, July 11, 2007

Security forces' routine use of torture initially targeted political dissidents, or those suspected of being dissidents, whether armed or peaceful. Torture subsequently became epidemic, affecting large numbers of ordinary citizens who found themselves in police custody as suspects, or in connection with criminal investigations.

The practice of torture in Egypt, and the government's failure to hold perpetrators to account, occurs within the broader context of the state of emergency that has been in place since 1981, which has effectively created a culture of exceptionalism in which security forces operate outside the law. This is most apparent in the practice of arbitrary detention, the role of the State Security Investigations unit (SSI), and the parallel system of state security courts and prosecutors.

An emergency law has been in force almost continuously in Egypt since 1967, and without interruption since Hosni Mubarak became president in October 1981, after Anwar Sadat's assassination.^[2] The law gives the executive-in practice the Interior Ministry-extensive powers to suspend basic rights by prohibiting demonstrations and detaining people indefinitely without charge. The UN Committee against Torture concluded in 2002 that the state of emergency was "hindering the full consolidation of the rule of law in Egypt" and recommended that Egypt "[e]liminate all forms of administrative detention," a position echoed most recently in October 2010 by Special Rapporteur Martin Scheinin in his report on his mission to Egypt.^[3]

The Egyptian government has periodically justified the need to extend the state of emergency on the basis of continued terrorist threats, most recently on May 11, 2010, when it renewed the law for a further two years. At the time, Prime Minister Ahmad Nazif said that terrorists had "targeted the state, seeking to undermine its foundations over the last three decades with political assassinations and attempts to stoke sectarian strife" and that "the application of the emergency law has spared the nation the threats of terrorism and stopped many terrorist crimes before they could be committed."^[4]

Egyptian defense lawyers and human rights groups estimate that at least 5,000 people currently remain in long-term detention without charge under the emergency law, some for more than a decade.^[5] The fact that they are not charged is particularly significant because the definition of torture in article 126 of the Egyptian penal code is limited to "the accused," and therefore excludes detainees who, under the emergency law, are not charged with any crime.^[6] These detainees theoretically have some procedural rights even under these restrictive laws: for example, officers must immediately inform them of the reason for their arrest, allow them to contact family and legal counsel, and provide for the right to appeal their detention after 30 days.^[7] Yet security officials routinely fail to respect even these minimal guarantees provided by the emergency law, and often ignore, with impunity, court orders for the release of detainees. Frequently, SSI officials flatly deny or refuse to acknowledge the detention or the whereabouts of a person, thereby effectively carrying out enforced disappearances.^[8] In a January 2010 UN joint report on secret detentions and international law, two special rapporteurs and two working groups wrote:

...the link between secret detention and torture and other forms of ill-treatment is twofold: secret detention as such may constitute torture or cruel, inhuman and degrading treatment; and secret detention may be used to facilitate torture or cruel, inhuman and degrading treatment.[9]

The decades-long application of emergency law, entailing wide and unchecked powers of law enforcement when dealing with suspected "threats to national security," has impacted police behavior when it comes to dealing with ordinary crime, instilling them with a sense that they are above the law. This perception—that many wary citizens share—is reinforced by the fact that successful prosecutions of ordinary police officers are still extremely rare.

The current epidemic of torture in Egypt is rooted in the practices of security forces, particularly the SSI, in the 1980s and 1990s, after emergency law was re-imposed in 1981. Torture had been a serious problem during the earlier period of emergency rule under President Gamal Abdel Nasser.[10] Anwar al-Sadat, who served as Nasser's vice-president and assumed power when Nasser died in 1970, wrote in his autobiography:

In the first four years of revolutionary rule, when the Revolutionary Command Council wielded all power, there were mistakes and violations of human rights but these were limited in scope. It was after 1956 that they began to acquire huge dimensions.[11]

Human Rights Watch in 2007 released video interviews with Muslim Brotherhood activists who recounted how security forces had detained and tortured them during President Nasser's rule.[12] Speaking in the early 1980s after noting he had been tortured in 1959, Nabil al-Hilaly, a prominent labor lawyer, rights activist, and opposition figure said:

Throughout the 1960s, the practice of torture against political detainees, especially Muslim Brothers and communists, was widespread. But since the end of the 1960s the brutality of the security forces began to lessen to a large extent. One must admit that throughout the 1970s torture did not occur but occasionally.

Unfortunately, after Sadat's assassination [in October 1981], torture of political detainees is once again taking place on a large scale.[13]

Behind Closed Doors, Human Rights Watch's investigation of torture in Egypt between 1989 and 1992, concluded the SSI was responsible for torture that revealed "a pattern of abuse, not isolated cases of aberrant behavior," in order to "extract information or confessions during interrogation, or to deter what is perceived by the state as undesirable political activity." [14] The report also stated that there was "ample evidence that torture and the sub-culture of violence has pervaded ordinary police work," and noted prosecutors' unwillingness to investigate torture allegations, or to prosecute those allegedly responsible.[15]

In April 2003, in the weeks after the start of the US-led invasion of Iraq, Human Rights Watch documented the detention and torture of numerous antiwar protestors who openly criticized Egyptian policies. In one case, security forces apprehended several students and activists on April 12 and 13. One of the people arrested told Human Rights Watch that he and five others were beaten at the time of arrest, and subsequently tortured in SSI custody:

One of them was holding my arm behind my back so I couldn't protect myself. One hit me in the groin and testicles, one hit me in the stomach, one on my chest, and one around the thighs.[16]

The Nadim Center for the Treatment and Rehabilitation of Victims of Violence examined this student and "confirmed testicular congestion" and other injuries consistent with his account.[17] The same student described the fate of fellow detainee Ramiz Gihad, a 25-year-old Cairo University law student:

He stayed a long time upstairs, up to four hours at a time. He was tortured by electricity as well as beatings-he told us. He didn't even have to tell us though, you could tell by his condition. We saw the burn marks from the electrocution. He was nearly comatose when they carried him [into the cell]. His face was extremely swollen and bruised. He was shaking. There were burn marks on his hand and elbows, and the feet and toes.[18]

In October and November 2004 a series of bombings in Taba and other Sinai Peninsula tourist sites near Egypt's border with Israel killed more than 30 people and wounded more than 100. SSI conducted mass arrests in and around al-Arish, the governmental and commercial center of North Sinai. In December 2004 Human Rights Watch interviewed several detainees who had been released. One was Hamid Batrawi, 26, who described how SSI officers had stripped him, bound his feet and hands behind his back, and hung him from the top of an iron door, causing excruciating pain to his shoulders. His toes just touched the floor, which was wet, when his muscles relaxed. He said that over the course of about four hours his tormentors attached wires to his toes and underwear, beat him with a hose, and administered jolts of electricity every couple of minutes.[19]

As the use of torture spread beyond political dissidents to ordinary citizens in police custody or connected to criminal investigations, Human Rights Watch in 2003 documented beatings and sexual abuse of detained street children, and in 2004, the routine arbitrary arrest and torture of men suspected of consensual homosexual conduct.[20]

Over the past ten years, Egypt's torture record received increased international attention as abusive practices carried out by the United States and European Union (EU) countries such as Sweden in the name of counterterrorism were gradually exposed. This practice of rendering wanted persons to Egypt and other countries in the region despite the high risk they would be tortured dates to the mid-1990s, but increased after the September 11, 2001, attacks on New York and Washington. These renditions-like most transfers involving wanted Islamists to Egypt-occurred with no due process protections, such as an extradition hearing before a judicial authority. Once in Egypt, most rendered individuals have been held in prolonged incommunicado detention. In several cases, they have been disappeared-that is, the government refused to acknowledge their whereabouts or even that they were in custody. In the few cases when information does surface, it emerges that the suspects have been tortured or otherwise severely mistreated.[21]

For example, on December 18, 2001, Ahmad `Agiza and Muhammad al-Zari, two Egyptian asylum seekers who had been living for several years without incident in Sweden, were apprehended by national security forces and within hours transferred to Egypt on a US government-leased jet. In 2004, a military tribunal convicted `Agiza of membership in an organization seeking to overthrow the Egyptian government and sentenced him to twenty-five years in prison. These proceedings failed to meet basic fair trial standards. Al-Zari ` was released without charge in October 2003 but remains restricted to his village, and is

forbidden from meeting with journalists or human rights groups.[22]

In November 2006 the UN Human Rights Committee concluded that Sweden's involvement in the US transfer of Mohammed al-Zari to Egypt breached the absolute ban on torture, despite Egypt's assurances of humane treatment before the rendition. The committee stated that Sweden "has not shown that the diplomatic assurances procured were in fact sufficient in the present case to eliminate the risk of ill-treatment to a level consistent" with the ban on torture and other cruel, inhuman or degrading treatment or punishment.[23]

In 2003 the United States abducted Hassan Mustafa Osama Nasr , an Egyptian cleric also known as Abu Omar, in Milan and eventually transferred him back to Egypt where he alleges he was tortured, despite the US's stated policy of obtaining "diplomatic assurances" of humane treatment any time it renders someone to a country with a known record of torture.[24] In a December 2007 interview Abu Omar told Human Rights Watch that he was violently abused upon his arrival in Egypt:

You cannot imagine. I was hung up like a slaughtered sheep and given electrical shocks. I was brutally tortured and I could hear the screams of others who were tortured too.[25]

While in prison in Egypt, Abu Omar wrote an 11-page letter that described his torture in graphic detail. He was finally released without charge in February 2007. On November 4, 2009, an Italian court convicted in absentia 23 CIA agents of kidnapping. [26]

Systematic Torture

Today, the habitual, widespread, and deliberate character of torture by security forces in order to extort confessions or to punish and intimidate suspected dissidents is a regular occurrence. As noted, the perpetrators are police officers, especially from Criminal Investigations (*mabahith*), and State Security Investigations (SSI), Egypt's primary domestic intelligence agency and main instrument for monitoring and controlling opposition forces, both peaceful and otherwise.[27]

People are most at risk of torture by Criminal Investigations officers at any stage of detention, from arrest through to formal detention in a prison facility, whereas the risk of detention by SSI officers is most heightened preceding and during investigation. In a November 2009 submission to the UN Human Rights Council, Egyptian human rights organizations that work on torture summarized the situation as follows:

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.[28]

Police and SSI are known to use similar torture techniques, such as beating with hands and fists, as well as with whips and clubs; suspending a person in a painful position from the ceiling or a door; applying electroshocks to his or her body; forcing him or her to stand for long periods of time; and rape and threat of rape of the victim and/or family members.[29] The quasi-governmental National Council for Human Rights (NCHR) confirms it has received credible reports of all of these methods in

use, adding in its 2004/2005 report: "tying hands to feet backwards, hanging by arms or feet, opening cold water on detainees, leaving them naked for long hours in the winter, battery by fists, rods, belts, guns, electric cords, whips."^[30]

Officials continue to use these same techniques. Nasr al-Sayed Hassan Nasr, detained in March 2010, told Human Rights Watch how SSI officers tortured him:

They started with the beating. They beat me on the face and on the back. They stripped me of my clothes, took the handcuffs off and tied my hands behind my back with a blanket so hard that I felt my arms were going to be dislocated. Then they started the electro-shocks. Two officers applied the device all over my body. In the next days, they continued using the electricity but this time they tied me to a bed, naked. I was surrounded by five officers—one beating me, two using the electric shocks, another insulting me. They applied it everywhere in my body: on the soles of my feet and my legs, my arms and my chest, my armpits, in my sensitive parts so that they became completely swollen because they focused on them so much. They hadn't asked me a single question at this stage. They seemed to just want me to collapse. The next day they made me for 40 hours. If I leant against the wall they would beat me. If I tried to bend down they would beat me.^[31]

Police arrested Ahmad Mustafa, a driver for a tourist company, and detained him in the Masr Gedida police station in January 2010. Mustafa described how different shifts of officers beat him over four days:

They blindfolded me and tied my hands behind my back and then hung me up over a door. They left me for an hour until I fainted. They hung me on a wooden pole for around half an hour. They had a small electric device like a stick which they used on my chest, under my arms, and all over my body. They hit me on my face until my left eye was swollen. The suspension dislocated my right shoulder and they brought someone to put it back into place.^[32]

Criminal Investigations Practice

In April 2005 the NCHR in its first annual report expressed its "deep concern at the frequency of torture incidents" and its fear that "this is a reflection of a practice of dealing with detainees and accused."^[33] The experience of torture victims who spoke with Human Rights Watch for this report highlights that, for some people, police brutality is a normal occurrence against which there is no protection because of the broad powers that police enjoy, and their practice of arresting people who simply look vaguely suspicious.

One former prosecutor who served for seven years told Human Rights Watch:

The *mabahith* (Criminal Investigations) are under huge pressure to produce results. Their promotion relies on the number of cases they manage to resolve so they are constantly focused on how to get cases [solved]. The basic problem is one of training: they only learn how to beat information out of people, there are no resources or equipment. They know that torture is wrong but they do it because they think it's necessary to do their job.^[34]

Reliance on torture to extract confessions in criminal cases leads to flagrant miscarriages of justice. One notorious case was that of the actress Habiba Said, who was sentenced to 10 years in jail in 1999, based on a false confession coerced from her using torture that she had robbed and killed her Qatari husband, Atallah Gaafar Attallah. Halfway through Said's prison term, five men arrested in relation to another case confessed that they had killed Attallah.[35] Said was released and filed a torture complaint against the officer in charge of investigating Attallah's murder. In May 2008, the Giza Criminal Court acquitted Said of murdering her husband; it sentenced four of the men to 15 years in jail, and one to 10 years. The court also sentenced Officer Yasser Akkad to a suspended sentence of six months with hard labor, and ordered his removal from office for one year for torturing Said and forcing her to confess falsely to killing her husband.[36] Said has filed a compensation case against the minister of interior for EGP10 million (US\$1,753 million).

Ill-treatment often starts at the point of arrest. Police normally require a warrant issued by a prosecutor to arrest an individual, but there are broad exceptions to this rule, including when the individual is suspected of a drug offense or possession of firearms, or when the person is caught in *flagrante delicto* of an offense that carries a prison sentence of more than three months.[37]

Ahmad Mustafa, the driver, told Human Rights Watch how police arrested him without a warrant:

On January 24, 2010, an officer stopped me at a traffic light in Korba square, told me to pull aside and asked me for my license. I was on my way to pick people up from the airport and was late so I asked for it back and told him I needed to leave. This offended him and he grabbed me and hit me and then several other policemen came up and handcuffed me and took me to the Masr Gedida police station.[38]

In another case of arrest without warrant, Shadi Zaghoul, a fourth-year law student, told Human Rights Watch:

On October 14, 2007, an officer stopped me and asked for my ID in Vodaphone Square, in Sixth of October [a Cairo suburb]. The officer told me: 'If you want me to let you go, bring me a case.' [39] I refused and so he grabbed me and hit me on the face and kicked me in the square. He took me to the Sixth of October police station and filed a report accusing me of selling drugs. That same day, the officers took me to the prosecutor who ordered my detention for four days pending investigation. My face was full of bruises, my left eye was shut. [40]

Ill-treatment will often reach the threshold of torture once police bring a person to the station. Ahmad Abd al-Mo'ez Basha, a 22-year-old driver in Imbaba, Cairo, said:

On July 6, [2010] at around 9 a.m., a group of officers came to the house and arrested me. They said there had been a court decision against me, which wasn't true, and they wanted to ask me some questions. They took me to Imbaba police station and put me in a room by myself. Two officers came in and told me to confess. I asked, "What to?" They answered, "Confess to the theft." The officer said, "Work on him until he confesses (*shidu 'aleih*)." They handcuffed my hands in front of me and hung me from the door for more than two hours. They had whips and hit me on the legs, on the bottom of my feet, and on my back. When they took me down, they

brought a black electric device and applied electro-shocks four or five times to my arms until it started smoking. All of this time they kept saying, "You have to confess." The next morning they beat me again and whipped me with the cable on my back and on my shoulders. I fainted after three hours of the beating. My hands were completely swollen and the officer ordered the policemen to put icepacks on my hands and back. On the third day they whipped the soles of my feet for half-an-hour.[41]

One case of police torture that caused widespread public outrage in Egypt in 2010 was that of Khaled Said, the 28-year-old Alexandrian whom police arrested in an internet café and beat to death on the street. His family suspects that law enforcement wanted to punish him for circulating a video recording that exposed police corruption. Witnesses told Human Rights Watch how two men, whom they said were plainclothes officers, apprehended Said in the Space Net internet café on Boubaset Street. Haitham Misbah, the café owner's son, said he saw the officers beating Said:

Khaled was struggling. They grabbed his head and banged it against the marble shelf. At this point we tried to get them outside, thinking that they wanted to arrest him, but they dragged him into the entrance of the building next door. Khaled's hair was a bit long, and I saw them grab him by the hair and bang his head against the iron door of the building and hit him in the face and the stomach. They kicked him so hard that he fell on the stairs. They held him by the throat and by the hair and banged his head against the stairs.

The last thing Khaled said was, "I am dying." But they didn't stop. I then heard the wife of the doorman screaming. Khaled has stopped moving, but they continued to kick him, saying, "You're pretending to be dead." [42]

Four years earlier, Imad al-Kabir, a microbus driver from the Giza neighborhood of Bulaq al-Dakrur, also experienced severe abuse at the hand of plain-clothes officers. He told Human Rights Watch in December 2006 that officers had detained him on January 18, 2006, after he intervened in an altercation between them and his cousin. Al-Kabir said that the officers first beat him on the street, and then held him in the Bulaq police station, where they bound his arms and legs and severely whipped him. The officers then undressed him, raised his legs, and sodomized him with a stick while another officer videotaped the episode with a mobile phone. Police released al-Kabir after 36 hours without filing any charges against him. According to al-Kabir, the officers circulated the video among other microbus drivers in his neighborhood and told him that they had done so to "break his spirit" and to send a message to the other drivers about who is in charge. The video eventually reached the internet in early November 2006, where it sparked an outcry and intense press interest as well as a prompt investigation and ultimately the sentencing of the officers.[43]

Torture and Enforced Disappearance by State Security Investigations (SSI)

The practice of enforced disappearance by SSI-in which authorities deny detaining or having information about the detainee's whereabouts-continues on a routine basis.

SSI officers will summon individuals or arrest them, after which he or she "disappears" for a period of time, usually up to two or three months. SSI usually detains people at offices in local governorates for a few weeks, but longer-term detention occurs at

SSI headquarters in Cairo according to recent witness testimony and human rights groups. When families of the disappeared make informal enquiries with the police or prosecutor's office, officials either deny knowing the whereabouts of their relative, or inform them verbally and informally that SSI is detaining the person. They may then file a complaint of arbitrary detention and disappearance with the public prosecutor, stating the date, time, place, and circumstances of the arrest. The prosecutor should then order the Prison Authority to reveal if the individual is detained in a recognized prison. In the case of SSI arrests, the Prison Authority invariably responds in the negative. Prosecutors typically then tell defense lawyers who file complaints that they do not know where the individual is being held. They may also informally acknowledge to lawyers that they do not have powers to investigate SSI detention.^[44]

The only legal places of detention under Egyptian law are police stations and prisons, both of which are subject to unannounced visits by prosecutors.^[45] Egyptian law prohibits detention in SSI facilities, which the law does not recognize as legal places of detention. As a result, they are beyond prosecutors' reach when the risk of torture is greatest.

The government denies that detention in SSI offices takes place. The Ministry of Foreign Affairs wrote to Human Rights Watch in February 2010 that:

There is no truth to the allegations regarding the unlawful detention of some individuals inside State Security Intelligence headquarters. In Egyptian law no citizen can be unlawfully detained and the law does not permit the detention of any person except in specified locations, which are public locations, subject to prison regulating laws and under the supervision and monitoring of judicial bodies.^[46]

Yet well-documented cases consistently undermine this assertion. One former SSI detainee and Muslim Brotherhood member, Nasr al-Sayed Hassan Nasr, told Human Rights Watch of his 60-day detention by SSI in 2010, during which he says he was blindfolded the entire time:

On the eighth day, the interrogations began. The officer, who said his name was Shawkat, told me, "This is the biggest citadel in the Middle East for extracting information. You are 35 meters below the ground in a place that nobody except the minister of interior knows about." He started by giving me a lecture, saying, "Our role is to protect the country from filth like you. You and the Christians are working against the regime." They tortured me for seven days before asking me a question; the interrogations began on the eighth day and lasted for around 23 days accompanied by torture. They would interrogate me for up to three sessions in one day and the torture escalated during the interrogation.^[47]

Nasr described the methods that SSI officers used:

They beat me with a shoe across the face. They kicked me in the testicles so that I'd fall to the ground. Once on the floor they used electro-shocks to make me stand up and then would kick me again in the testicles. At one point the officer tried to strangle me. I was still blindfolded and handcuffed and it almost felt like he had a personal desire to kill me. They threatened to hurt the most important thing in my life. The officer would call the guards and say, "By four o'clock I want you to bring Nasr's wife and daughters here and strip them in front

of him." They took photographs of me while I was naked and being tortured and threatened to publish them.

[48]

Nasr's lawyer filed a complaint of arbitrary detention, disappearance, and torture, first with the Banha prosecutor on April 28, 2010, and then with the public prosecutor on May 15. The prosecutor summoned the lawyer and confirmed that Ministry of Interior officials were detaining Nasr under an emergency law detention order, but that he could not disclose the location of detention.[49] Another of his lawyers told Human Rights Watch, "We appealed his detention and the emergency state security court ordered his release and confirmed this order on appeal, and all this time he was still in State Security detention." [50] Nasr told Human Rights Watch that he wanted "to pursue all peaceful legal means to get justice and to expose the brutality" he had endured. The prosecutor summoned Nasr on August 11 to hear his testimony.

In the case of 22 detainees detained en masse in 2007 in what became known as the Victorious Sect case, Human Rights Watch documented the torture of the group while they were disappeared at SSI detention facilities: "[SSI] transferred us to Lazoghli for a taste of systematic torture ... we were beaten up with fists and sticks, and kicked around. [SSI] used electricity on different parts of the body, including sensitive areas." [51]

It has become common for SSI officials to subject individuals arrested in connection with a state security case to enforced disappearance prior to eventually bringing them, months later, before a state security prosecutor. For example, SSI officers in late June/early July 2009 detained 24 persons-22 Egyptians and two Palestinians-in connection with the armed robbery of a Cairo jewelry shop in May 2008 and their alleged plans to carry out attacks on shipping in the Suez Canal, and held them incommunicado for periods of up to two months. The shop's owner, a Coptic Christian, and three employees were killed in the robbery in Cairo's Zeitoun district, prompting the media to refer to the case as the "Zeitoun Cell" trial. A 25th defendant abroad is being tried in absentia.

Their families first learned of their detention when the Ministry of Interior issued a press release on July 9, 2009, stating that officers had arrested the 24 men. Concealment of the whereabouts and further information on detained persons held by the state also constitutes a disappearance under international human rights law.

After that initial statement, the authorities did not provide any further information on the group. SSI officers detained the 24 men under emergency law orders without charge and subjected them to enforced disappearance of between two weeks to two months. From the time of their arrest and while they were still disappeared, defense lawyers filed a series of complaints before the public prosecutor to determine where SSI officers were detaining them, to ensure they had access to a forensic medical doctor, and to seek a judge's order to bring them before the state security prosecutor and charge them immediately. The public prosecutor opened an investigation into one of these complaints on July 19, 2009. Families of the detainees testified about the arrests and their inability to locate the men, but the prosecutor simply told the lawyers he could not determine where the detainees were being held.

Enforced disappearance and incommunicado detention, precisely because they facilitate torture, causes families of SSI detainees great distress. In what is known as the Hizbollah case, SSI officers detained 22 defendants incommunicado from the time of their arrest in late 2008 and early 2009 until they appeared before the state security prosecutor in July 2010. Human

Rights Watch reviewed the report of the criminal laboratory, which examined the mobile phones of the defendants on instructions of the prosecutor. The report, dated May 26, 2010, listed some of the text messages that family members had sent to the phone of defendant Mus'ad Abd al- Rahman al- Sharif, who was disappeared at the time and therefore unable to respond:

May 3/2009 Daddy I miss you, me and my siblings can't sleep because we're worried about you and grandmother will die out of worry, please respond to us

May 3/2009 We beg you, we are his family, his mother is dying of worry, we know he hasn't done anything but please just let us hear his voice

May 3/2009 In God's name please tell me he's OK.[\[52\]](#)

Special rapporteur Martin Scheinin expressed serious concerns about the SSI's practice of incommunicado detention in his report on his 2010 mission to Egypt:

There is an alarming lack of judicial oversight of facilities run by SSI, which as such are not subject to any inspections of the kind referred to above. With this in mind it becomes difficult to fully ignore many reports about terrorist suspects being arrested, transferred to, and held incommunicado in what are mainly referred to as SSI secret underground cells. This is said to occur long before the official registration of their detention. 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.[\[53\]](#)

Although not yet in force, the International Convention for the Protection of All Persons from Enforced Disappearance reflects the consensus of the international community against this serious human rights violation and provides authoritative guidance for safeguards to prevent it. The convention defines "enforced disappearance" in article 2 as:

the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.[\[54\]](#)

Enforced disappearances constitute "a multiple human rights violation."[\[55\]](#) They violate the right to life, the prohibition on torture and cruel, inhuman, and degrading treatment, the right to liberty and security of the person, and the right to a fair and public trial. These rights are set out in the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). This stipulates that states must hold criminally responsible anyone who "commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance," as well as their superiors.

Enforced disappearances violate the right to communicate with legal counsel; the right to communicate, or have

communicated, to a family member or other person of their choice the fact and place of their detention; the right to a medical examination; and the right to humane treatment.^[56] Article 9 of the (ICCPR) states that arrested persons must be informed at the time of their arrest of the reasons for the arrest and the criminal charges, if any, against them. According to the Standard Minimum Rules for the Treatment of Prisoners, "[a]n untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them," subject to reasonable security restrictions.^[57] United Nations human rights bodies have consistently held that incommunicado detention can give rise to serious human rights violations and should be prohibited.^[58] The UN Commission on Human Rights repeatedly reaffirmed this position, most recently in a 2003 resolution, holding the view that "prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture."^[59]

Egypt's Obligations under International Law

The prohibition against torture is a bedrock principle of international human rights law. It is absolute and allows no exceptional circumstances that would justify it, including war, political instability or any other public emergency.^[60] The prohibition on torture is also established as a matter of customary international law, as reflected in the Universal Declaration of Human Rights, and in the major human rights treaties. The Egyptian Constitution prohibits torture in article 42, which states that any person in detention "shall be treated in a manner concomitant with the preservation of his dignity" and that "no physical or moral (*m`anawi*) harm is to be inflicted upon him."^[61]

Egypt is party to a number of the international treaties that prohibit torture and set out a series of obligations states must comply with in order to ensure that the prohibition is respected and any violations remedied. Egypt ratified the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1986, the International Covenant on Civil and Political Rights (ICCPR) in 1982, the African Charter on Human and People's Rights, and the Arab Charter on Human Rights. The government told the Committee against Torture in 1999 that "the Convention [against Torture] is a law of the country, all of its provisions are directly and immediately applicable and enforceable before all State authorities," adding that the Egyptian Constitution "prohibits the subjection of individuals to physical or mental harm."^[62]

International law, in addition to prohibiting torture, obliges states to prevent, investigate, prosecute and punish acts of torture and other ill-treatment. The obligation to prosecute persons alleged to be responsible for acts of torture includes those who are complicit, as well as to those who directly participate, in torture. This includes those in the chain of command who knew or should have known that such acts were perpetrated.^[63] The Convention against Torture obligates a state to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."^[64] The state must ensure that any victim of torture "obtains redress and has an enforceable right to fair and adequate compensation...."^[65]

According to article 2(3)(a) of the ICCPR, governments have an obligation "to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy." The ICCPR imposes on states the duty "[t]o ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of

judicial remedy." [66]

II. The Egyptian Government's Response to Torture Allegations

Egyptian authorities have long contested allegations of pervasive torture at the hands of police and SSI. In recent years they have conceded that abuse does occur, but maintain that prosecutors investigate those cases and bring alleged perpetrators to trial if evidence warrants.

The Ministry of Interior's response ranges from denying the facts to discrediting the complainant and his motives, to pointing to human rights training programs and internal disciplinary measures as evidence of their measures to prevent torture. For instance, in Egypt's 2009 national report to the UN Human Rights Council as part of its Universal Periodic Review process, the Foreign Ministry asserted that the government, "through the Ministry of the Interior, has been taking steps for some time now to teach human rights concepts to officers and ordinary members of the police." This process, it added, began with "curricula in the Police Academy and includes regular human rights training programs for all members of the police, both officers and men."^[67] The Ministry of Interior also points to a human rights training program run since January 2001 by a United Nations Development Program project. The government says this Human Rights Capacity Building Project has trained nearly 10,000 police officers, as well as over 2,000 law enforcement officers.^[68]

However, one former staff member of the project questioned its efficacy:

The fact that the Ministry of Interior was letting in external people to lecture its officers about human rights is significant but the project isn't being run in the most effective way. I remember that those in charge of the project preferred to bring in university professors to give long lectures about international law and did not want to bring in human rights defenders from the NGO community because it might be too sensitive. The officers would literally fall asleep in a lot of the sessions. More than that, in the discussions about how torture violates international law, officers would say in a very matter-of-fact way 'but that's how we get the information to do our job' and didn't seem particularly convinced of the illegality of the practice.^[69]

The following statements illustrate the evolution of government rhetoric over the years:

In 1990 Public Prosecutor Raja' al-Araby stated: "Torture claims are largely exaggerated, and it is extremely rare that torture occurs to force somebody to confess ... what is alleged in regard to deaths as a result of torture, is nothing else than a little rough-handling which the victim accidentally cannot handle and is thus killed."^[70]

In 1999 Egyptian authorities told the UN Committee against Torture that there was only "the occasional case of human rights abuses."^[71]

In 2001 the government stated in its correspondence with the U.N. special rapporteur on torture that "[t]he defense of torture is the most widespread defense invoked before the Public Prosecution and the courts by defendants trying to have the charges against them dropped or seeking acquittal."^[72]

The National Council for Human Rights wrote in its 2004/2005 annual report that the standard Ministry of Interior response to torture complaints was that these were "isolated cases."^[73]

In 2007 General Ahmad Diaa, then-assistant interior minister for legal affairs, told an Egyptian newspaper, "I have admitted scores of times that there are some violations, but these are isolated cases and the minister of interior is the one who refers

them to the *niyaba*. There are no torture instruments inside police stations. I am prepared to go now to any police station to prove that this is untrue." [74]

On January 24, 2010, Egypt's annual Police Day, Minister of Interior Habib al-Adly appeared on a TV talk show where he said: "You say that there were less torture cases before. I say no. I say it's exactly the opposite. The cases might not have been made public because there was a tendency at times to decide to keep this quiet. And I was personally told, once I'd started publicizing and providing information to the *niyaba* and the media about violations and mistakes by officers, I was told that this would harm the reputation of the ministry. I said no ... it's normal for there to be infractions in every public institution ... and we are making them public... and don't forget that the population is increasing." [75]

This shift in rhetoric is partly due to increased public awareness of torture, itself a result of greater media freedom and information dissemination in Egypt in recent years. It is no longer possible to deny that torture takes place when disturbing images of its results are widely available on the internet, social networking sites, and other media. [76] This has prompted authorities to respond more quickly in highly publicized incidents, and in some cases led to investigations and prosecutions. However, this has yet to translate into a broader shift by the Ministry of Interior towards eradicating torture.

Today, in reports and responses to prosecutors' questions, police routinely continue to describe a person who dies in custody as a wanted criminal, even if he had no prior criminal record, or claim that he was caught in *flagrante delicto*. These claims serve to legitimize police action and impugn the victim's or his or her relatives' allegations of torture. Police also employ a fairly standard repertoire of explanations to account for detainee deaths in custody, including resisting arrest, fighting with cellmates, committing suicide, having fatal accidents, and succumbing to pre-existing health conditions. Col. Dr. Mohamed Ghanam, former head of the Legal Research Office in the Ministry of Interior and a former professor of criminal law at the Police Academy, told Human Rights Watch in 2001 that the ministry instructs its internal Inspection Unit in torture and death-in-custody "to hide the truth ... If possible, they are to write a report that the person was beaten by other inmates." [77]

In the June 2010 case of Khaled Said, for example, the Ministry of Interior initially issued a press release on June 12 that claimed:

To counter the false allegations that have been circulated by the media, that secret policemen attacked Khaled Said in Alexandria and caused his death... The truth of the matter is that two members of the Sidi Gaber police station investigations unit... saw Said accompanied by one of his friends, and when the two police officers approached them, Said swallowed a small packet. It subsequently became clear that this packet contained drugs. Said was asphyxiated when he swallowed it, leading to his death. [78]

The statement also claimed that Khaled Said was a "wanted criminal" with two convictions in absentia for theft and illegal possession of weapons, and that he had evaded his military service. Said's uncle, Dr. Ali Kassem, told Human Rights Watch these allegations were false. Khaled had made several trips out of Egypt, he said, which would have been impossible had he not fulfilled his required military service, or if there were court sentences pending against him. [79] The Ministry of Interior flatly denied that any beating occurred. As an NCHR staff person told Human Rights Watch, "The ministry protects its own-look at the Khaled Said case, those involved were two low-level policemen and yet the ministry officials immediately rushed to protect them." [80]

Internal Disciplinary Measures of Interior Ministry

The Interior Ministry's Inspection Unit is responsible for internal investigations into police abuses and can recommend that an officer be tried before a disciplinary council composed of two high-ranking Ministry of Interior officials and a senior judge.^[81] There is no transparency in this process and the Ministry of Interior does not make public the disciplinary measures that it takes in specific cases. In some cases that Human Rights Watch examined, victims or their families received an initial response from the Inspection Unit after sending a complaint, with the local police station summoning them to take down details of their complaint. But they did not hear anything further, and did not know if the ministry took any action against the accused officer.

In a meeting with Human Rights Watch on June 12, 2010, Ministry of Interior officials outlined the procedure for internal investigations:

The complaint can be filed by the detainee or his family or his lawyers and the Ministry of Interior will then investigate the complaint in complete transparency and impartiality. After that it will decide whether to take disciplinary measures. Every complaint is investigated, even if it is submitted without a signature. We cooperate with the National Council on Human Rights on this and speak to them regularly by phone. We have no statistics on the number of torture complaints received by year, they are not broken down by type and not limited to human rights. The most accurate information available to us is that included in Egypt's national report to the United Nations [Human Rights Council] last year.^[82]

Disciplinary measures in and of themselves, even if applied in the way that ministry officials outlined, would be insufficient to address the seriousness of the crime of torture, and should in no circumstances replace criminal investigations. The UN Human Rights Committee, the body responsible for monitoring state compliance with the ICCPR, has determined that "where extrajudicial executions, enforced disappearance or torture are concerned, it is essential for the remedies to be judicial in nature."^[83]

In 2000 Col. Dr. Ghanam, former head of the Legal Research Office in the Ministry of Interior and former professor of criminal law at the Police Academy, said in an interview with an Egyptian newspaper that "the Ministry of Interior regards torture as a simple administrative offense."^[84] The ministry's Inspections Unit operates with excessive secrecy-refusing to provide information on the number of complaints received or any action it has taken in response; barring victims and their lawyers from investigation procedures; preventing plaintiffs from calling witnesses; and failing to notify plaintiffs of investigation results.^[85]

One of the staff at the NCHR told Human Rights Watch:

I don't believe that they discipline officers internally-and even if they do, we don't know what for: they might be disciplining them for having beaten someone to death in the street instead of inside a police station, or torturing ineptly so that the victims end up dying. We have no evidence that they take measures against officers who torture or that they are trying to deter.^[86]

Human Rights Watch wrote to the Ministry of Interior in August 2010 requesting information about the number of officers

disciplined for torture over the past years but had not received a response at time of writing.

The National Council for Human Rights Ombudsman (NCHR)

The National Council for Human Rights, while formally a national human rights institution, is appointed by the ruling party-dominated upper house of parliament, the Shura Council, which has thus far appointed mostly NDP members to the NCHR. The NCHR's political impotence is therefore limited.^[87] Yet it plays an interesting role in soliciting responses from the government because it has better access to officials, especially within the Ministry of Interior, than do local or international human rights groups, which security officials regard with deep suspicion.^[88]

In its first annual report in 2005, the NCHR said that its ombudsman had received 74 torture complaints, which it defined as those amounting to "blatant torture," the majority of which involved torture in police stations. Torture complaints constituted around six percent of the total complaints submitted to the Ministry of Interior. The NCHR calculated the reply rates to all human rights complaints per ministry: Ministry of Interior (11 percent), Ministry of Justice (5.7 percent), and the Public Prosecutor (0.75 percent). The NCHR only received three replies to torture inquiries from the Ministry of Interior, in which ministry officials wrote that allegations of torture were unfounded, that torture violates ministry policies in jails, and that police stations are subject to inspection by the prosecutor's office.

In 2005-2006, the response rates had changed to Ministry of Interior (47.5 percent), Ministry of Justice (94.5 percent) and Public Prosecutor: (88.2 percent) for all complaints, including torture.

In its 2006-2007 annual report, the NCHR said that the vast majority of government responses to NCHR complaints maintained that the complaints "were without accuracy" and "included a number of allegations without basis." The responses also attacked Egyptian human rights groups, accusing them, according to the NCHR report, of "spreading false information."^[89]

The Ministry of Interior's standard response to complaints received from the NCHR has been that information in the complaint lacked foundation. An NCHR staff member said:

At first the Ministry of Interior did not respond to us much but now they answer most of our complaints, though their answers are not convincing and are often sent too fast for an internal investigation to have taken place... When they send us responses, they always question the content of the complaint and accuse the complainant of being a known criminal or a drug-dealer. We sometimes get a response from the Ministry of Interior the very next day saying there is no truth to the complaint, and we know that they won't have had time to investigate properly.^[90]

III. The Role of the Niyaba

The Public Prosecution (or General Prosecution, *al-niyaba al-'amma*) is nominally a judicial body under the minister of justice, entrusted with investigating and prosecuting crimes and protecting citizens in the criminal justice system. However, the *niyaba* is not independent of the executive, and its combination of investigative and prosecutorial powers creates structural tensions, as well as challenging the impartiality of investigations.

As lawyer Abdullah Khalil writes in *Judges and Political Reform in Egypt*, since its creation in 1875, the *niyaba* "has been trapped between the executive and the judicial authority and has lacked real independence from the Ministry of Justice." Khalil goes on to explain that "because of the desire of the political authority to control the powers of the Office of Public Prosecution, the British deliberately abolished the criminal investigation judge and handed his powers to the Officer of Public Prosecution with an 1895 decree." This was later confirmed in 1952 revolutionary government in Law 353/1952, which also created the State Security Investigation department in the Ministry of Interior.^[91]

Egypt's president appoints the head of the *niyaba*, the public prosecutor. The *niyaba* is a hierarchical, centralized institution with more than 200 *niyaba* offices countrywide. At the lowest level, local *niyaba* offices (*niyaba juz'iya*) in smaller towns and villages are usually physically attached to the court house. They are supervised by district *niyaba* offices (*niyaba kulliya*) in the provincial capitals, which report to the Office of Public Prosecution in Cairo.^[92] The *niyaba* system has a number of specialized departments relevant to human rights abuses in police stations and prisons.^[93] One, the Office for International Cooperation, Execution of Judgments, and Prisoners' Affairs, established in 1999, is responsible for all prison-related questions and is the repository for all *niyaba* prison inspection reports.^[94] The Technical Office, responsible for legal preparation of cases, is the key office with regard to complaints of police torture that the *niyaba* intends to bring to trial.

Access to Places of Detention

The *niyaba* is responsible for inspecting prisons and places of detention on a regular and unannounced basis. Its inspections of police stations are supposed to be conducted on the spot, immediately upon receiving information about illegal practices in a precinct or as part of regular unannounced inspection visits.^[95] If the *niyaba* receives a report that a citizen's rights have been infringed in any detention facility subject to judicial inspection, it must investigate this information immediately.^[96] The Code of Criminal Procedure sets out judicial responsibility, especially with regards to the *niyaba*:

All members of the *niyaba* and the presidents and deputies (*wukala'*) of primary and appellate courts have the right to visit the general and central prisons in their jurisdiction to ascertain that no one is incarcerated illegally. They have the right to study the registers of the prison as well as the arrest and detention warrants and to take a copy. They have the right to communicate with any inmate, and hear any complaint the inmate wants to communicate to them. The director and employees of the prisons must provide them with the necessary support to obtain the information they request.^[97]

The *niyaba* only very rarely publicly reports on the visits it undertakes, and it does not publish statistics on the number of investigations it initiates into arbitrary detention or torture and ill-treatment as a result of its inspections of places of detention. Egyptian media have reported a few of the prosecutor visits, such as the July 2008 unannounced inspection of the

Montaza Police Station, in Alexandria, where prosecutors identified 38 individuals, including 11 women, arbitrarily detained. [98] The *Al-Masry al-Youm* daily newspaper reported that the detained women told prosecutors that police were detaining them as hostages to get their sons to hand themselves in, and that prosecutors had referred one male detainee to a forensic medical investigation after seeing the extent of his injuries. [99]

Egyptian law limits places of detention to police stations and prisons and prosecutors therefore do not have access to illegal places of detention such as SSI offices where detainees are frequently detained incommunicado or disappeared. In an unprecedented incident, on September 28, 2010, three prosecutors Emad Mahaba, Mohamed Abu Yadak, and Mohamed Abu Zeid – sought access to the SSI office in Rashid after receiving complaints from the families of six fishermen who the families said SSI was illegally detaining there. [100] *Al Masry al-Youm* reported that SSI officer in charge insulted the prosecutors, threatened to shoot them and turned them away, denying them access. [101] The public prosecutor ordered an investigation into this incident on September 29 and summoned the SSI officer and the families who witnessed the incident. [102]

The public prosecutor does however respond to enquiries from the NCHR. In January 2010 he sent the NCHR two letters. One listed 101 police stations in different parts of the country that prosecutors had visited unannounced between December 21 and 26, 2009. The second letter listed 29 prisons prosecutors had visited between December 19 and 27, 2009. Neither letter provided information on whether the *niyaba* had initiated any investigations as a result of those visits, only saying that the public prosecutor had immediately raised concerns with the minister of interior. [103]

The UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2001) provide that "[e]ven in the absence of an express complaint, an investigation should be undertaken if there are other reasons to believe that torture or ill-treatment might have occurred." [104] Under Egyptian law the *niyaba* is the only institution authorized to inspect places of detention. Its authority extends only to legally recognized places of detention, and thus not to SSI detention facilities, which the government continues to deny exist. Detainees are at the highest risk of torture when held outside any form of legal review. The UN Human Rights Committee has found that prolonged incommunicado detention may itself amount to inhuman and degrading treatment. [105] Egyptian human rights lawyers have long called for the *niyaba* to have access to SSI detention facilities as a step to counter the practice of incommunicado detention and enforced disappearance.

The NCHR has at times been able to negotiate prison visits with the Ministry of Interior, most recently in May and June 2010. The government does not allow the International Committee of the Red Cross to conduct prison visits, nor has it allowed visits by any human rights organizations, with the exception of one visit by Human Rights Watch in 1992. [106] The UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has twice requested an official invitation to visit Egypt, in 1996 and again in 2007, without success, although Egypt pledged in June 2010 at the Human Rights Council to further examine extending an invitation to the special rapporteur. This process has since stalled.

Lack of Independence

Despite its formal status as a judicial body, the *niyaba* is very much an instrument of the executive. The public prosecutor (*al-na'ib al-amm*)-the presiding figure-is appointed by the president, who can also appoint other senior *niyaba* staff. If the prospective appointees to the *niyaba* do not already hold office in the judiciary, the president must secure the approval of the

six-member Supreme Judicial Council, a body composed solely of judges.^[107] Otherwise, the Supreme Judicial Council is responsible for appointments by promotion within the *niyaba* itself.^[108] The minister of justice formally supervises all *niyaba* staff. According to article 125 of the Law on Judicial Authority:

The members of the *niyaba* are subordinate to their superiors and the Public Prosecutor, and all are subordinate to the Minister of Justice. The minister has the right to monitor and supervise the *niyaba* and its members; the Public Prosecutor has the right to monitor and supervise all members of the *niyaba*. The District Prosecutor [attached] to the courts has the right to monitor and supervise the members of the *niyaba* [attached] to the courts.

In the view of the UN special rapporteur on torture, one of the main causes of impunity is "the conflict of interest inherent in having the same institutions responsible for the investigation and prosecution of ordinary law-breaking being also responsible for the same functions in respect of law-breaking by members of those very institutions." Therefore, he added, "independent entities are essential for investigating and prosecuting crimes committed by those responsible for law enforcement."^[109] In its article 20 confidential inquiry on Egypt in 1996, a procedure invoked in cases of serious allegations of systematic torture, the Committee against Torture recommended the government "set up an independent investigation machinery, including in its composition judges, lawyers and medical doctors, that should efficiently examine all the allegations of torture, in order to bring them expeditiously before the courts."^[110] Egypt did not implement the recommendation.

Under Egyptian law, only the public prosecutor can investigate a torture complaint and order its transfer to a court. The law prohibits torture victims suing their torturers directly in court in criminal cases, delegating this authority solely to the public prosecutor, whose office closes the majority of complaints without indicting anyone. At the start of an investigation by the prosecutor, victims can lodge a civil claim that gives them standing in the case.^[111] If the prosecutor decides to close an investigation, for example because of an inability to identify the perpetrator, the victim can still sue the Ministry of Interior for damages for harm caused during detention in a police station under the ministry's control, which often results in civil courts awarding compensation to the victim.^[112]

In 2001 the Human Rights Center for the Assistance of Prisoners collected and analyzed more than 1,100 civil court compensation judgments for torture victims from the 1990s. They found that "[i]n the majority of cases, [torture victims] prefer not to file lawsuits either due to fear of the perpetrators or to their relief at being released from the hell they experienced."^[113] Not a single one of these 1,100 cases was successful as a criminal case, even though some of the cases detail the abuses in a way which would make criminal prosecution possible. Courts frequently award compensation in civil suits with which the ministry of interior complies.

Prosecutors alone can institute criminal proceedings, but any injured party can summon the offending party to court even if the prosecutor does not institute criminal proceedings, which happens frequently in cases involving complaints between citizens.^[114] However, this is not the case if the alleged offenders are officials, and the alleged offense was committed on duty. According to articles 63 and 232 (2) of the Code of Criminal Procedure, only the *niyaba* can summon an official, and the victim of the offense only has the option to file suit as a civil party. The same holds true for appeals against decisions to close an

investigation; the victim of police abuse, or his/her relatives, cannot themselves appeal this decision but must persuade the *niyaba* to re-open the investigation. This leaves the *niyaba* with complete discretion to decide whether to investigate or prosecute alleged criminal offenses like torture by policemen, and on what charges.

Investigation procedures in torture-related cases are initially handled by the *niyaba* office where the alleged incident occurred. After notifying his superiors and the Ministry of Interior, the local prosecutor (*wakil al-niyaba*) has to decide that the allegation is serious enough to warrant an investigation. He then proceeds to investigate the incident, relying on technical experts like the Justice Ministry's Forensic Medical Authority, questioning witnesses, and examining documentary evidence. The prosecutor then writes a memorandum recommending whether, and on what grounds, he/she should bring the case to trial or discontinue it. He submits this memorandum to his superior, the head of the district *niyaba* and/or the public prosecutor. In torture-related cases, only these high-ranking *niyaba* officials can decide to sustain a complaint. They also have the right to modify the charges suggested by the local prosecutor. Complainants can appeal all *niyaba* decisions to the public prosecutor, whose decision is final. This means that the decision can only be appealed to the same institution, without any independent judicial review.

IV. The Impunity Gap

We know that it's unlikely that we will get justice, but we will hold on to our rights and pursue it nonetheless....

We want to expose them for what they are.

-Ahmad Abd al-Mo'ez Basha, torture victim, Cairo, July 2010

Human Rights Watch has reviewed numerous incidents of torture and ill-treatment documented by human rights lawyers that did not reach court because prosecutors decided to close the investigations. They reveal an impunity gap between the number of torture incidents that allegedly occur and the smaller number of torture complaints that victims or their families file and actually reach court.

Most Torture Cases Never Reach Court

In its most recent articulation of its positions on core human rights issues, the Egyptian government wrote in its national report to the UN Human Rights Council in November 2009 that the "the Office of the Public Prosecutor investigates every complaint which it receives about torture or cruel treatment." For the first time, it also made available statistics on the number of prosecutions that have taken place in recent years:

In 2008 [the Office of the Public Prosecutor] decided to refer 38 cases of cruel treatment and torture to the criminal courts and 1 to a disciplinary tribunal. It also asked the administrative authorities to impose administrative sanctions on defendants in 27 cases. In 2009 the Office of the Public Prosecutor decided to refer 9 cases of cruel treatment to the criminal courts and 1 case to a disciplinary tribunal. It furthermore sought administrative sanctions in 10 cases. The Ministry of the Interior enforces judgments awarding damages to injured parties, as soon as the relevant legal procedures are completed.^[115]

In a letter dated February 22, 2010, the Ministry of Foreign Affairs provided Human Rights Watch with statistics on the number of officers against who faced criminal or disciplinary proceedings between 2006 and 2009: a total of six officers received "final sentences"; courts acquitted ten officers of all charges; and three officers received suspended sentences. The letter also said that during the same period, the Ministry of Interior reduced the salaries of 47 officers; suspended 17 officers; issued one warning; and acquitted 11 officers of all charges against them.^[116]

In its 1999 state party report to the UN Committee against Torture, the government acknowledged receiving 63 complaints against officials in 1993, 71 in 1994, and 51 in 1995. In these years, only about 10 to 15 percent of complaints resulted in the institution of criminal or administrative proceedings; the rest were closed for "lack of evidence."^[117]

Between 2000 and 2002, the report said, eight cases of torture were concluded against police officers and prison officials for deaths in custody: two of the trials resulted in acquittals; in four of the cases, police officers were sentenced to between one and three years in prison; in one case, the officer received a one-year suspended sentence. The most stringent sentences-one for "assault leading to death," the other for torture-was seven years imprisonment.

International Legal Standards on Investigation of Torture Allegations

The Convention against Torture stipulates that states have an obligation to "proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed."^[118] Reasonable allegations of torture, and not just incontrovertible material evidence, are therefore sufficient to launch an investigation. Furthermore, every person subjected to torture has "the right to complain to, and to have his case promptly and impartially examined by, [the] competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."^[119]

International law sets out basic principles that are necessary components of any criminal investigation—namely that they be prompt, thorough and impartial. These principles have been enunciated by various UN entities, including the General Assembly,^[120] the Commission on Human Rights,^[121] treaty bodies,^[122] and special human rights envoys.^[123] They have also been set out by regional human rights mechanisms, such as the European Court of Human Rights^[124] and the Inter-American Court of Human Rights.^[125]

International courts have identified several specific elements as essential for prompt, thorough, and impartial investigations. These include, but are not limited to:

ensuring that findings are capable of leading to the identification and prosecution of those responsible and the provision of effective and transparent remedies for victims;^[126]

ensuring against unwarranted delays in taking witness statements and opening investigation proceedings, or unexplained failure to make progress after a reasonable time;^[127]

protecting complainants, witnesses, families, and investigators from violence or intimidation;^[128]

responsibility by the authorities to provide satisfactory and convincing explanations of incidents where events lie largely or wholly within their exclusive knowledge;^[129]

providing a detailed written report on the methods and findings of the investigation to be made public within a reasonable time;^[130] and

establishing an independent commission of inquiry for cases in which established investigative procedures are inadequate due to lack of expertise or impartiality.^[131]

V. Why Most Torture Cases Never Reach Court

What happened to me is pretty normal, it's happened to a lot of people I know but they are either too scared to make a complaint or they don't believe they will be able to get their rights (*hakkuhum*) and would rather just try to avoid this happened again. I saw on television, on El 'Ashira Masa'an, that some people manage to get their rights, I heard about that case in Alexandria. And that's why I want to pursue this until I get my rights.[132]

-Ahmad Mustafa, torture victim, Cairo, July 2010

There are a number of reasons why most torture cases do not reach court. These include Egypt's inadequate legal framework, which does not properly criminalize torture or provide sufficiently strong penalties; prosecutorial discretion to close investigations; intimidation of victims and witnesses; delays and poor quality of forensic medical examination; conflicts of interest in relying on the police for evidence; drawn out investigations; failure to conduct impartial investigations; and impunity for state security officers. These are explored below.

Inadequate Legal Framework

Article 42 of Egypt's Constitution provides that any person in detention "shall be treated in a manner concomitant with the preservation of his dignity" and that "no physical or moral (*m`anawi*) harm is to be inflicted upon him." [133] The penal code has three main provisions that prosecutors can use to charge members of the police force in cases of alleged torture and ill-treatment: article 126, which criminalizes torture; article 129 on the use of force; and article 282, which specifies a sentence of hard labor "in all cases, [for] anyone who unlawfully arrests a person and threatens to kill him or subject him to physical torture." [134]

Egypt's penal code recognizes torture as a criminal offence in article 126, although the definition of torture falls far short of the international standard. Article 126 states:

Any public servant or official who orders, or participates in, the torture of an accused person with a view to inducing him to make a confession shall be punished by imprisonment at hard labor or a term of 3 to 10 years in prison. If the victim dies, the penalty shall be that prescribed for premeditated murder.¹³⁵

This definition excludes elements covered in article 1 of the Convention against Torture, such as situations when "pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." Furthermore, article 126 limits torture to physical abuse, when the victim is "an accused," and when torture is used to coerce a confession. While confessions are frequently the object of torture, Egyptian security forces also use torture to punish and/or intimidate victims. In addition, this narrow definition improperly excludes cases of mental or psychological abuse, and cases where the torture is committed against someone other than "an accused"-for example, persons being questioned as potential witnesses.

The penal code also fails to treat seriously certain categories of abuses by officials, classifying them as misdemeanors instead of crimes. The penal code divides crimes into three categories: contraventions (*mukhalafat*), punishable by a fine of less than

EGP 100 (US\$17); misdemeanors (*junha*, pl. *junah*) punishable by a fine of more than EGP100 or jail term; and felonies (*jinaya*, pl. *jinayat*) punishable by either prison, prison with hard labor, or the death penalty.^[135] The law classifies torture and "assault leading to death" as felonies, and other offenses, such as arrest without legal grounds (article 280) and the use of cruelty by officials (article 129), as well as some categories of assault, as misdemeanors.^[136] A criminal court (*mahkama al-jinayat*) composed of three judges hears all felony cases.^[137]

The penal code also fails to provide for the effective punishment of law enforcement officials found responsible for torture and ill-treatment.^[138] Article 129 of the penal code states that any official "who deliberately resorts, in the course of duty, to cruel treatment in order to humiliate or cause physical pain to another person shall be subject to a penalty of up to one year's imprisonment or a fine of up to EGP200 [US\$34]." The Court of Cassation defined (in 1944 and 1952 rulings) cruelty as consisting of physiological and psychological ill-treatment in addition to physical ill-treatment and stated that it did not necessarily lead to visible injuries.^[139]

A charge of assault leading to death under article 236 of the penal code carries a maximum penalty of three to seven years in prison, possibly with hard labor. Like other provisions regulating assault, article 236 does not differentiate between offenders: the punishment is identical whether the offender is a citizen or a public official. Only offenders "implementing terrorist aims" are, following the 1992 counter-terror amendments to the penal code, singled out for considerably harsher punishment for assault, and punished by "a term of hard labor or prison ..., and if this was done with premeditation, the punishment will be hard labor, either for life or temporary."^[140] Article 280 of the penal code also provides inadequate penalties regarding illegal detention, and article 282 punishes torture during illegal detention with temporary hard labor.

The penal code does state that superior orders are not a defense and Egyptian courts have recognized that torture is a manifestly illegal act. According to article 63 of the code: "No crime occurs where an act is carried out by a public official in execution of an order given by a superior which he is obliged to follow, or if he believed he was under an obligation to follow it or if he, in good faith, commit an act according to the law, to what he believed to be his sphere of authority." The Court of Cassation interpreted this article in a May 27, 1931 ruling: "the acts of which the defendants stand accused would be manifestly illegal; and that the average man could not assume that this would be a legitimate command from their superiors because it crosses all bounds and harms human dignity."^[141]

Despite consistent criticism from Egyptian and international human rights organizations over the years, the government has defended this legal framework as adequate, saying that the "judicial application" of these penal provisions, "in accordance with the jurisprudence of the Supreme Court," "punishes torture carried out by a member of a public authority or by an individual whether during the arrest, confinement or imprisonment of a person in the legally prescribed circumstances or otherwise."^[142] Yet even the National Council for Human Rights finds that the Egyptian legal framework "is full of loopholes also enables culprits [to] escape punishment."^[143]

The faulty definition of torture was one of the concerns that several Human Rights Council member states raised in their interventions during Egypt's Universal Periodic Review (UPR) in February 2010. Significantly, Egypt had included a pledge in its November 2009 national report that it would "review the definition of torture in Egyptian law in order to ensure consistency with the Convention against Torture" and accepted a number of these recommendations in the February session.

[144] Yet on February 15, 2010, a few days before the UPR session and three months after the government had submitted the national report, the Legislative Committee of the People's Assembly, which is dominated by the ruling National Democratic Party, rejected Muslim Brotherhood MP Hassan Ibrahim's proposal to amend articles 126 and 128 of the penal code. The proposal called for harsher sentence for torture and for revising the definition. Ibrahim told *Al-Masry al-Youm*, "I presented this proposal four years ago and the government kept saying that it was still studying the matter." [145]

In June 2010 government officials told Human Rights Watch they are currently preparing a plan of action for implementing the UPR recommendations, but the government had yet to make public any details in this respect at time of writing. [146]

Under the Convention against Torture, a state is "obligated to eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment." [147] The Committee against Torture, the body of international experts who review state compliance with the convention, has found that "inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice." [148]

Absolute Prosecutorial Discretion to Close Investigations

Articles 63 and 232 (2) of Egypt's Code of Criminal Procedure give the Office of the Public Prosecutor exclusive authority to investigate allegations of torture and ill-treatment, even in the absence of a formal complaint, to bring charges against police and SSI officers, and to appeal court verdicts.

Prosecutors have full discretion to decide whether to transfer a case to court, or to close an investigation formally by putting a case on file (*hifz*) after determining there are no grounds to institute proceedings (*la wajh li-iqamat ad-da'wa*).

There are a number of reasons to do this, and article 805 of the *Instructions to the Niyaba* lists the factors most frequently encountered in Human Rights Watch's review of cases relating to torture and death in custody cases:

Inability to identify the perpetrator;

Insufficient evidence;

Non-relevance of the complaint. [149]

In torture cases, prosecutors may not close the investigation unless they have completed an initial examination of the evidence and summoned the victim or his/her family or lawyer to hear their testimony. [150] Closing a case without conducting this initial determination occurs rarely, and when it does, lawyers can appeal the decision to ensure that the prosecutor at least conducts an initial investigation. For example, the prosecutor immediately put the investigation on file in the 2007 complaint of the torture and sexual assault of Kamal Kamel by police after he was arrested on charges of "habitual debauchery." Kamel's lawyers then appealed the decision to the prosecutor's superiors and the investigation re-opened, although Kamel eventually withdrew the complaint due to police pressure exerted on him and his family. [151]

Under articles 210(1) and 232(2) of the code of criminal procedure, persons filing complaints against police for torture or ill-treatment do not have the right to appeal any decision by the prosecutor's office to an independent judicial body. They can only appeal against the administrative decision to close an investigation by lower-level prosecutors to their superiors; the public prosecutor makes the final decision. For complaints against abusive officials, the only way to change the decision and re-open the investigation is to appeal to more senior *niyaba* members. [152] Victims have to follow the same procedure if the *niyaba*

investigated a complaint and then decided to close the file: the appeal is to a more senior *niyaba* level.^[153] The public prosecutor must make this decision within three months after the appeal is filed, and is final.^[154] If the public prosecutor decides to keep the file open, he refers the case to a different local prosecutor for reinvestigation.^[155]

The *niyaba* must communicate any decision not to sustain a complaint to the complainant, albeit not in a specified time frame.^[156] However, in practice the prosecutor rarely communicates this decision, and lawyers must physically visit the prosecutor's office on a weekly basis until a decision is made in the case.^[157]

Prosecutors' absolute control in deciding which cases reach court, and their lack of independence from the executive, has led a number of Egyptian lawyers to call for the reinstatement of the post of the investigative judge, so that an impartial party conducts the initial investigation into torture allegations. The government's position is that the *niyaba* is an independent institution that fully and impartially investigates every complaint.

Intimidation of Victims and Witnesses

One of the main factors contributing to impunity for torture and ill-treatment in Egypt is fear of reprisals and intimidation by police, which leads victims or their families to either withdraw a torture complaint, or decide against filing one altogether.

Human Rights Watch has documented systematic attempts by officials to pressure or convince families to withdraw complaints and settle with perpetrators. Maha Youssef, a lawyer who works at the Nadim Center for the Rehabilitation of Victims of Torture, told Human Rights Watch that most people whose torture cases the center encounters are too afraid to submit complaints because they fear for their safety. As a result, she said, many people who come to the center choose not to pursue a criminal case.^[158] Sayed Fathy, another human rights lawyer from the Nabil Hilaly Centre, said:

We've now got to the stage where people believe that it's not worth trying to take on the government. It's common to hear people saying 'there is no shame in being beaten by the government' (*darb al-hukuma mish 'eib*) and they would rather avoid problems and not make a complaint. ^[159]

In conversations in Egyptian dialect, people refer to the police as "the government," which solidifies the impression the two are synonymous, and that police are not accountable to a higher authority.

A judge who was a prosecutor for 10 years told Human Rights Watch:

...it's very common for the police to threaten and intimidate families into giving up complaints. This is especially common in the countryside and in Upper Egypt and it can get to the stage where the police will detain members of their family to force them to withdraw the complaint.^[160]

In its first annual report, the NCHR noted that 54 percent of all complaints received in 2004 (a total of 4850) had arrived by mail, which the report said was not only due to geographic distance and the cost of travel, but "fear of repercussions and endangering the safety of the complainants themselves if they were to come to the council in person, such as their arrest or harassment by the agencies and officials they are accusing."^[161]

Police also commonly intimidate or retaliate against witnesses who step forward to give testimony. In most cases, witnesses are also detainees, whom police can easily pressure into remaining silent or force to retract their testimony while in custody or after release. The opportunity for police to intimidate witnesses and the victim's relatives is heightened by long delays between arrest and the start of investigation in an alleged torture case, as well as the relatively long time that an investigation takes, with torture cases potentially lasting up to one or two years. In addition, the centrality of witness testimonies in police abuse cases makes witnesses vulnerable to police pressure and reprisals. "Two of the main reasons that cases don't reach court is that the police pressure the family into settling or intimidate witnesses into changing their testimonies," Mahmoud Kandil, an independent human rights lawyer, told Human Rights Watch. [162]

In the case of the fatal beating of Khaled Said in 2010, one of the key witnesses, Haitham Misbah, told Human Rights Watch that initially only he, his father, the doorman of the building where Said was beaten and a friend of Khaled's who was standing outside were willing to testify out of dozens of people present. He said:

I spent days trying to convince people to go and testify, but everyone was too scared. Especially because after the incident, officers from Sidi Gaber police station came to our area and indirectly threatened people not to cause trouble. Everyone was scared that the same thing could happen to them if they reported what had happened. People were only reassured after the Alexandria appeals prosecutor came to the area and encouraged people to testify and assured them that he would guarantee their protection. [163]

In the end all four testified in court on October 23, in addition to a further seven witnesses who came forward.

An uncle of Fadl Abdullah, who died in custody in Dir Miwas police station in Minya on March 31, 2010 (see below), echoed the difficulties of getting witnesses to testify:

There were other people detained along with Fadl in the police station who saw what had happened, but when we tried to get them to go and testify in front of the prosecutor they told us the officer had threatened to create a drugs or illegal possession of weapons case to imprison them. We eventually managed to convince them and the prosecutor assured them of his protection and five of them agreed to testify. But even their testimony won't be enough without a medical report confirming their story. [164]

The police will often pressure families into "reconciliation" (*sulh/tasaluh*) out-of-court settlements, which prosecutors will accept as grounds to close an investigation, though only on an informal basis since Egyptian law does not allow for reconciliation with felonies such as torture. According to Taher Abul Nasr, a human rights lawyer who specializes in torture cases at the Nadim Center:

...Pressure on the families to reconcile is another of the problems in torture cases. The complainant will tell the prosecutor that they've decided to withdraw the complaint and the prosecution will close the investigation. I've seen prosecutors put down reasons like "out of consideration for the accused's career, the disciplinary measures [of the ministry of interior] will be considered sufficient punishment." [165]

"Reconciliation" is possible in most areas of the law, excluding felonies like murder and assault leading to death, but including misdemeanors (*junah*) where the maximum penalty would be jail term or a fine of not more than EGP100 (US\$17).^[166] In practice, "settling" a case involving a torture complaint entails the implicated officer paying monetary damages directly to the aggrieved party, who in turn withdraws the complaint against the officer. If the case is still under investigation, withdrawal of a complaint stops *niyaba* proceedings.^[167]

One reason why intimidation effectively scares off complainants is because they know how easy it is for officers to detain them on trumped-up charges. They also know how painful detention will be, even if it is only for a few days, because of the likelihood of torture. This is particularly the case when detainees are expected to report a complaint of torture whilst still in the custody of law enforcement officers.

The 2007 case of Shadi Maged Zaghoul, 26, a microbus driver and fourth-year law student at Cairo University, illustrates the vulnerability of detainees. Zaghoul said:

The prosecutor asked me about the bruises on my face. When I told him [the three officers] had hit me and I wanted to make a complaint that they had beaten me, he ordered a medical examination. After that the police took me back to the station. This is when they hit me for over an hour, until I almost fainted. There were three of them: two doing the beating and one officer supervising. They hit me with wooden batons on my back and on my legs, they hit me with a hose. They tied my hands together beneath my knees, put a stick and hung me. They hit me every day for 10 days. They wanted me to withdraw the complaint I'd made to the prosecutor. ^[168]

On October 24, 2007, Zaghoul's family filed a complaint before the Sixth of October prosecutor, saying police were beating him. That day, the prosecutor summoned him to his office. When Zaghoul told him what had happened, the prosecutor ordered an immediate medical examination, but the officers took Zaghoul back to the police station and kept him there for an additional three days, only taking him to the forensic doctor on October 28. Zaghoul's pre-trial detention came up for review on October 31 and the judge ordered his release on bail. After his release, Zaghoul said he started receiving threatening messages on his mobile phone telling him to withdraw the complaint or his family-whom he had already relocated for their safety-would suffer. On March 10, Zaghoul decided to file a complaint about the threats with the Sixth of October prosecutor, accompanied by his wife and three-month-old daughter. The prosecutor recorded the phone numbers from which Zaghoul had received the threatening messages. Zaghoul said:

On my way out of the prosecutor's office, three uniformed officers arrested me and my wife and my child and took us to the police station where I had been tortured. They detained us for four days to force me to withdraw the complaint, and I was very worried about my wife and child. So on the fourth day I agreed and one of the officers took me to the prosecutor's office where I said I wanted to withdraw the complaint. The prosecutor asked me at the time if I was being pressured but I said no and that I just wanted to end the process. After that I went back to the police station and they let me take my wife and child home.^[169]

On April 5, 2009, Zaghoul went back to the public prosecutor and filed a complaint that he had been forced to withdraw his

complaint under threat. He told Human Rights Watch that "at this stage, lawyers of the officer contacted me offering me EGP10,000 (US\$1,728) to withdraw the complaint and settle the case but I refused." His torture complaint was reinstated and the case reached court on December 7, 2009, as a misdemeanor. After five sessions, the court convicted the officer of using force and sentenced him to a month in detention and a fine of EGP200 (US\$34).

In an earlier case, 'Imad al-Kabir told Human Rights Watch that after the *Al Fajr* newspaper had reported the story of his torture and sexual assault in December 2006, he received several calls to his mobile phone threatening him and his family if he did not remain silent. On December 12 Egypt's semi-official newspaper *Al-Ahram* ran a brief story correctly reporting that al-Kabir had disavowed the account published in *Al-Fajr* and intended to sue the paper for publishing the story. The following day, however, with the encouragement of human rights lawyer Nasser Amin, al-Kabir explained to a prosecutor that he had retracted his story in response to the threats and that he wanted the prosecutor to protect him and to press charges. The prosecutor promptly opened an investigation and later transferred the case to court.^[170]

More recently, Ahmad Mustafa, who was arrested, tortured, and brought before a prosecutor in January 2010, described similar intimidation after he complained to the prosecutor about being beaten.

The officers started to threaten me, saying "we will keep you detained and you'll never see the sun again. You're under our control, we won't let you go until you take back what you said to the prosecutor." Later, after they released me, I received a number of phone calls from officers from the Masr Gedida police station. One of the officers who called me said he wanted to mediate and told me, "There's no need to get the *niyaba* involved in this, it was a mistake, they didn't mean anything," and wanted me to withdraw the complaint from the *niyaba*. I refused to withdraw it because I want to get my rights back.^[171]

Blogger Mohamed al-Sharqawi told Human Rights Watch that after his arrest on May 25, 2006, his captors beat him for hours and then raped him with a cardboard tube at the Qasr al-Nil police station before transferring him to the State Security Prosecutor's office in Heliopolis. Al-Sharqawi, who had before this incident campaigned against torture and other human rights abuses at street protests and in his personal blog and media interviews, told Human Rights Watch that an officer he recognized as having been present when he was abused in custody was stationed below his apartment after the incident and that unidentified men have come to his door to see if he was home and ask if he lives alone. Around 7 p.m. on March 10, 2007, he came home to find his laptop, which he said contained a new, unreleased video of police abuse, missing. Though cash and other valuables were lying around the apartment, nothing else was taken. After this, al-Sharqawi decided not to sleep at home. Al-Sharqawi's lawyers said they filed three written requests with the public prosecutor, Mohamed Faisal, to investigate his allegations of torture, and al-Sharqawi told Human Rights Watch that he himself repeatedly told the prosecutor he had been tortured in custody but that the prosecutor closed the investigation, claiming lack of evidence^[172]

Egyptian law punishes using force against a witness to prevent him or her from testifying or falsifying testimony.^[173] It likewise provides for a prison term of up to two years if a person threatens another party, either directly or indirectly (relying on a third party).^[174] The government claims that witnesses can request police protection from coercion of this kind.^[175] These provisions might be effective to protect witnesses and complainants in civil suits, or in criminal suits involving other

citizens, but they do not adequately protect witnesses or complainants from police abuse. Egyptian human rights lawyers have repeatedly called for the establishment of a judicial police that would guarantee enforcement of judicial decisions, like *niyaba* release orders, and protect witnesses and complainants.

The Convention Against Torture states in article 13 that "steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."^[176] The Committee against Torture has asserted that states must "ensure the right of victims of torture to lodge a complaint without the fear of being subjected to any kind of reprisal, harassment, harsh treatment or prosecution, even if the outcome of the investigation into his [*sic*] claim does not prove his or her allegation."^[177]

For this reason, international guidelines on investigating torture require that officials implicated in torture be removed from positions of control or power over witnesses. According to the Istanbul Protocol:

Those potentially implicated in torture should be removed from any position of control or power, whether direct or indirect over complainants, witnesses and their families as well as those conducting investigations. Investigators must give constant consideration to the effect of the investigation on the safety of the person alleging torture and other witnesses. ^[178]

Delays and Poor Quality of Forensic Medical Examination

Human rights lawyers who work on torture cases have repeatedly affirmed the centrality of obtaining a medical report detailing injuries, their cause, and confirming that they were sustained during the period of detention in order for the *niyaba* to bring the case to court.

Only the *niyaba* can order a forensic medical examination by a medical doctor at the Justice Ministry's department of forensic medicine, and courts do not accept ordinary medical certificates from hospitals in cases where the accused is a public official. If the initial medical investigation determines that there are no signs of any abuse, defense lawyers can ask the prosecutor to order a second medical investigation by a committee of three forensic doctors. The prosecutor has full discretion to decide whether or not to grant this request. It can take forensic medical doctors between two and six months to issue each report, although this can be shortened to a few weeks in exceptional and highly publicized cases.

In cases where torture victims are still in detention, forensic reports often do not find evidence of torture or ill-treatment because police try to postpone—often by several days—a prosecutor's order to bring the complainant to a forensic medical doctor for examination. Aida Seif el Dawla of the Nadim Center for the Rehabilitation of Victims of Torture, who was recently short-listed for the position of UN special rapporteur on torture, told Human Rights Watch that this is enough time for bruises to fade—especially in cases involving beatings.^[179] As the Committee against Torture has noted: "promptness is essential... because in general, unless the methods employed have permanent or serious effects, the physical traces of torture, and especially of cruel, inhuman or degrading treatment, soon disappear."^[180] The Human Rights Committee has said that medical examinations should be "automatically provided following allegations of abuse."^[181]

This is particularly evident with cases before state security courts, where defendants are typically detained incommunicado for

up to several months before seeing a prosecutor, who then orders a forensic investigation that takes place several weeks after the end of the torture.^[182] In the Zeitoun case, defendants who said they had been tortured only saw a forensic doctor three months after the alleged torture had taken place; the doctor's reports said that he had found no physical traces to prove that torture had taken place.

On May 25, 2006, SSI officers arrested Mohamed al-Sharqawi and took him to Kasr El Nil police station where they beat and raped him. When his lawyers saw him at the prosecutor's office late that night, they immediately asked that he receive a forensic medical examination and treatment for his injuries, which one lawyer described as the worst case of police abuse that he had seen in 12 years. The prosecutor refused this initial request, but noted al-Sharqawi's injuries. Al-Sharqawi only saw a forensic medical doctor four days later.^[183]

In the case of Shadi Zaghoul, discussed above, it took police three days to comply with a prosecutor's order for him to have a medical exam after a *mabahith* officer beat and kicked him on October 14:

My face was full of bruises left eye was shut. The prosecutor asked me about the bruises on my face and when I told him they had hit me and I wanted to make a complaint that they had beaten me, he ordered a medical examination. But the officers didn't take me to the forensic doctor until October 17, by which time a lot of the bruises had faded.^[184]

Delays in issuing the medical report significantly slow down the investigation, and are largely due to the bottleneck created by the very small number of forensic doctors authorized to produce the reports. In an interview with *Al-Masry al-Youm*, Dr. Ayman Foda, former head of the Ministry of Justice's department of forensic medicine, explained:

In 1980 there were around 32 forensic pathologists... and now there are around 71 in the whole of the country [out of a population of some 79 million people]. The department itself can house 96 doctors but it's never been at full capacity because many of them are seconded to Arab countries where they earn between 35-40,000 Egyptian pounds (US\$5,800-6,9000) per month... Every year, the department receives between 30-32,000 cases. This is a huge quantity, and means each doctor has to handle an average of 65 cases per month, which is why I believe the Department of Forensic Medicine needs fundamental restructuring.^[185]

For this reason, Egyptian human rights lawyers who work on torture cases argue that torture victims should be allowed to obtain medical certificates from hospitals, as they would in a case involving violence between two private citizens. At present, when a public official is accused of abuse, prosecutors only accept a report by the Forensic Medical Authority, adding to the centralization of procedure and decision-making in the hands of the *niyaba*.

Another problem is the limited extent to which forensic medical doctors are able to operate independently, without pressure from the police or other parties. As part of the ministry of justice, they are not independent of the government, nor are they afforded protections from potential reprisals by the police. As a result, some medical doctors feel very vulnerable.^[186] The UN Human Rights Committee has said that states must "have suspects examined by an independent doctor as soon as they are arrested, after each period of questioning and before they are brought before the examining magistrate or released."^[187] The

special rapporteur reiterated this in his report on a visit to Turkey in 1999, in which he wrote that medical personnel conducting medical examinations:

...should be independent of ministries responsible for law enforcement or the administration of justice and be properly qualified in forensic medical techniques capable of identifying sequelae of physical torture or ill-treatment, as well as psychological trauma potentially attributable to mental torture or ill-treatment.[188]

There are also concerns about the quality of forensic medical reporting and the extent to which it complies with international guidelines to ensure impartiality and thoroughness. In the case of Khaled Said, whom officers beat to death on an Alexandria street in June 2010, the first medical report, published on June 10, claimed that he died of asphyxiation and did not mention other injuries. On June 15, Public Prosecutor Abd al-Meguid Mahmoud ordered the investigation reopened and transferred the case to the Alexandria appeals prosecution unit. He ordered officials to exhume Said's body and appointed three doctors to conduct a new forensic investigation. The prosecutor made public this second forensic medical report, confirming the cause of death as asphyxiation, on June 23. However, the second medical report also reported a number of injuries on Said's body and concluded that there was "nothing to prevent the injuries from having occurred as a result of beating during the arrest of the victim." [189] An independent assessment of the June 10 and June 27 forensic reports by the heads of two international institutes of forensic medicine found that:

The report of the first autopsy, performed on 7th June 2010 reveals that it did not comply with the minimum international standards for forensic autopsies and that there were numerous significant deficiencies.... The supposedly compelling diagnosis of death by asphyxia is not sufficiently supported by the data provided, and most of the aspects described, such as cyanosis or congestion, are non-specific and inconclusive on their own...

It added that the second report was "a little more careful," but had "the same weaknesses and deficiencies as the first, and is much beneath the minimum international standards acceptable for forensic autopsies." [190] This, it said, was "even more perplexing and significant" given that it was a second opinion that "seeks to prove the facts described in the first and compensate for its manifest inadequacies." [191]

Conflict of Interest: Relying on Police for Evidence

Another factor underlying Egypt's persistent failure to investigate and punish acts of torture by law enforcement officers is the conflict of interest that arises from placing the responsibility to monitor detention facilities, order forensic exams, and investigate and prosecute abuses by law enforcement officials within the same office that is responsible for ordering arrests, obtaining confessions, and prosecuting criminal suspects.

A former prosecutor, who wished to remain anonymous, told Human Rights Watch:

The other problem is that the *niyaba* does not do the investigations (*tahareyaat*) itself, it relies on the police. It's not the prosecutor's job to look for the evidence, unless they take a personal interest in it. The prosecutor is usually much too overloaded to question the evidence presented by the police. It's the police that bring the

witnesses and the evidence. So if I order the police to go and summon a witness and they come back saying they couldn't find him or he no longer lives there, there's not much I can do about it. Plus they can always tamper with the evidence or pressure witnesses to change their testimony.^[192]

A judge who was a prosecutor for 10 years agreed:

One of the main problems in cases of police abuse that don't reach court is that the gathering of evidence (*tahareyat*) is not done by a neutral party. This is why we need a judicial police. In places like Imbaba where there is a lot of crime, all the investigations by the police conclude that "there is no truth to the allegations of abuse." Minor incidents are often especially difficult to prove and also for us to make a fuss about because we can't question the police every time they produce evidence and we have to refer the matter to our superiors. But if a limb was broken or there's permanent damage or a very heavy beating, the police can't cover it up.^[193]

Article 189 of the *Instructions to the Niyaba* requires the public prosecutor to request the technical assistance of police and security, such as the provision of police cars if needed. Additionally, the *Instructions* call upon *niyaba* members to exercise restraint in summoning officers, doctors and prison officials for interrogation, and to maintain a collegial, yet critical, relationship towards police officers:^[194]

If an investigator, after due scrutiny, wants to exclude information that he obtained from a law enforcement official and does not want to depend upon it as evidence in any specific case, he should do that tactfully in order not to devalue the effort exerted by the law enforcement official and not to lose the trust of those who cooperate with him in fulfilling his duties.^[195]

One case that illustrates the importance of the police report in providing evidence in an investigation is that of Ashraf and Awad Nasr Awad, two brothers in Al Homoud, a town in the governorate of Kafr El Sheikh. Police arrested the siblings at home on January 15, 2010, saying they had been accused of theft. Awad told Human Rights Watch that while they were in the station, police forced them to lie face down, handcuffed their hands behind their backs, and kicked and punched them for around 30 minutes. "They punched me in the face and I broke my tooth." Ashraf said, "They hit me with fists and with a stick on my legs; they stood on my head and kept threatening to do terrible things to us." On January 18 Ashraf Awad filed a complaint with the prosecutor's office saying the police had beaten them:

The prosecutor ordered a forensic medical investigation and the report confirmed our injuries and said that they were consistent with our testimony. The prosecutor sent the investigations officer in charge, Hisham Rashad, more than eight summonses before he appeared. Despite the fact that the forensic report confirmed our complaint, the prosecutor decided to close the investigation based on the findings of the police's investigations, so the official reason was lack of evidence.^[196]

Human Rights Watch believes this is a fundamental structural problem that protects torturers and permits impunity, and that the government should create a judicial police so that those accused of abuse do not interact with witnesses or gather evidence-

a clear conflict of interest.

Delays in Investigations

For a remedy to be effective, it must also be prompt. *Niyaba* investigations are generally protracted, often taking between three and twelve months. Torture-related cases usually take even longer, typically between one and two years, although high-profile cases can be expedited to take two to three months.

Such delays are particularly difficult for victims of torture who are dealing with trauma and fear, as well as medical difficulties and costs, and sometimes loss of livelihood due to their injuries. During that time the complainant has no protection against police hostility and pressure, nor does the *niyaba* provide protection for key witnesses. Egyptian law provides no protection guarantees.

The length of *niyaba* investigations into torture-related cases also diminishes the likelihood of successful prosecution. Witnesses become harder to find, and if they are found, are more likely to have forgotten details or to have been pressured by police or third parties into changing testimony. In most cases, several years elapse from the day that an individual is tortured or dies in custody to the day that the *niyaba* issues its legal opinion on the case.

In its first annual report in 2005, the National Council for Human Rights (NCHR) listed 10 death-in-custody cases, noting that:

[T]hough the public prosecution is responsible for investigating these cases and referring them to criminal courts, this process takes a very long time. Between the time of the incidents of death in custody under torture that we documents in 2004, only one case has been transferred to court in which the Cairo criminal court sentenced the policeman to five years imprisonment.[197]

The Committee against Torture has noted that "promptness is essential ... to ensure that the victim cannot continue to be subjected to such acts..."[198] The committee found with regard to a case in Spain that the failure to investigate allegations of torture from the time when they were first raised until the initiation of criminal proceedings by the court more than two weeks later was "incompatible with the obligation to proceed to a prompt investigation, as provided for in article 12 of the Convention," as was the delay of more than three weeks "from the time that the court received the medical report from the penitentiary centre on 17 February 1992 until the author was brought to court and made her statement on 13 March." [199]

Failure to Conduct an Impartial Investigation

Prosecutors decision whether or not to pursue an investigation ultimately depends on a number of factors. Some may be personal, such as their perception of what is acceptable force, or the diligence with which they do their job.

According to one former prosecutor, for example, the first step the prosecutor is legally obligated to take when allegations of ill-treatment arise is to personally examine the victim's injuries (*munazra*), something that he or she does not always do as conscientiously as necessary.[200] The prosecutor went on to explain that prosecutors usually only pursue cases where are serious injuries, a handicap, or death, and are less likely to pursue less serious injuries because "in terms of initiating an

investigation [against an officer], we've learned with experience that a certain acceptable amount of force is necessary to enable the police to do their jobs." [201]

Another former prosecutor explained to Human Rights Watch that "the *mabahith* officer has to have prestige (*heiba*) in the neighborhood, and people have to fear him to obey him." As a result, he "has to be able to use some force to do his job." [202] Victims and their families frequently share the perception that "light" use of force by the police is "normal" and many decide not to pursue a complaint for fear of further abuse, especially when it involves their neighborhood police force.

The Convention Against Torture stipulates in article 12 that investigations must be impartial as well as prompt. In the case of *Ben M'Barek v. Tunisia*, the Committee against Torture found that the state had breached its obligations in articles 12 and 13, concluding that:

the magistrate, by failing to investigate more thoroughly, committed a breach of the duty of impartiality imposed on him by his obligation to give equal weight to both accusation and defense during his investigation, as did the Public Prosecutor when he failed to appeal against the decision to dismiss the case. [203]

In a 1990 trial of persons accused of involvement with a violent Nasserist organization, the Supreme State Security Court (Emergency) found *niyaba* investigations to be prejudiced to the extent that the *niyaba* "had failed to record all testimonies and facts, threatened and humiliated [the accused], and tried to please [*mujamala*] the law enforcement officers." The court called for:

the amendment of legislation: investigative judges alone should be entrusted with investigation of freedom of expression cases (*qadaya al-ra'i*) ... an amendment like this would be the only safeguard for the rights of the accused in freedom of expression and political cases since some security officers entertain a private feud [*khusuma khassa*] with this type of [accused], and commit infractions and resort to torture. [204]

In the 1991-1993 trial against those accused of murdering Rif'at al-Mahjub, former speaker of the People's Assembly, the Supreme State Security Court (Emergency) appointed an investigative judge to investigate torture allegations raised by the accused against SSI officers, not trusting the *niyaba* to undertake these investigations. [205]

By law, the *niyaba* must be notified of all suspicious or sudden deaths of persons, in police custody, in hospitals, or in prisons. Immediately after such a death, the *niyaba* is responsible for examining the corpse for any external signs of unnatural death. [206] The prosecutor orders an autopsy only if he suspects criminal wrongdoing. The *Instructions to the Niyaba* state: "In general, if the investigation and the external medical exam do not reveal any criminal wrongdoing causing the death, there is no reason to conduct an autopsy, even if the examining doctor declares that he cannot determine the cause of death until after an autopsy." [207] Since only the *niyaba* can order an autopsy, it alone can obtain conclusive medical evidence needed for an investigation into deaths in custody, on the assumption the investigation will be performed speedily and without outside interference. [208] However, cases that Human Rights Watch reviewed for this report show that the *niyaba* does not always meet this responsibility. In cases of deaths in police custody, it is often the insistence of the victims' family that forces the *niyaba* to act.

In the case of the fatal police beating of Khaled Said, the Sidi Gaber prosecutor who first investigated the case failed to do so in a thorough and impartial manner: he did not visit the scene of the crime and interrogated only two witnesses, both provided by police. These witnesses claimed that Said had swallowed a packet of drugs when he saw the policemen approach, and denied that the police had hit Said. The prosecutor ordered a medical examination, which concluded that Said had died of asphyxiation after he allegedly swallowed a packet of drugs, and ordered the body to be buried. His family protested this decision. After intense media scrutiny and public demonstrations against the ministry of interior, the public prosecutor ordered the Sidi Gaber prosecutor in Alexandria to reopen the investigation.

Other less publicized cases do not receive the same attention from the *niyaba*. For example, police officers from the Dir Muwas police station in Minya arrested Fadl Abdullah on March 31, 2010, in his home and took him to the police station. His brother and nephews told Human Rights Watch that they received a call from the hospital the next day saying that Abdullah was dead and they should pick up his body. [209] The hospital report said that he had died because his blood circulation had stopped, without identifying what induced this or identifying any injuries that may have been sustained due to use of force.

In a video testimony Human Rights Watch reviewed, Ali Ismail, a detainee in the police station when Abdullah was brought in, said that he saw police beat and then kick him in the chest, and continue to do so even after he had fallen face forward to the ground. Four other witnesses have since come forward to testify before the Dir Muwas prosecutor. The first forensic medical report, however, merely repeated the hospital's assessment and did not confirm any injuries as a result of force. The family's lawyer appealed these findings and requested that the public prosecutor order a second medical investigation by a committee of three doctors. Fadl's brother, Qutb, told Human Rights Watch:

The accused officer is well known in Dir Muwas, there have already been two other deaths in that police station, but the families settled and the police paid blood money. The officer is still there in the same position and the prosecutor hasn't even summoned him for interrogation. They could at least have transferred him to another police station; it's very painful for us as a family to see him there. [210]

His other brother Hussein told Human Rights Watch:

It's been six months now and all we're trying to do is to get a proper investigation. This is why some of us in the Sa'eed turn to force to get our rights. We are an educated and a peaceful family and we want to get our rights through the justice system but when the justice system fails us what do you expect? [211]

The *niyaba's* failure to fulfill its responsibility to proactively investigate deaths in custody points to the conflict of interest inherent in the structure of Egypt's judiciary. As the European Court of Human Rights has noted, those responsible for investigating unlawful killings by state agents must be independent from those implicated in events, meaning "not only a lack of hierarchical or institutional connection, but also a practical independence." [212]

An additional problem is that the ministry of interior often seeks to protect its officers. Tarek Zaghoul, lawyer and executive director of the Egyptian Organization for Human Rights, told Human Rights Watch that in his assessment:

The essential element to getting a torture case into court is to have a strong medical report, witnesses and good defense lawyers. We've worked on torture cases where there is very strong documented evidence of torture, but then the accused officer produces a letter from the Ministry of Interior saying he was in another governorate that day.[213]

Impunity for State Security Investigations Officers

Despite consistent and credible reports of torture by SSI officers over the years, criminal investigations of alleged SSI perpetrators have been extremely rare and there has never been a conviction of a SSI officer for torture and ill-treatment.[214]

In meetings with Human Rights Watch in February 2004 and again in February 2005, a top Egyptian interior ministry official confirmed there have been no criminal investigations or internal disciplinary measures taken in response to allegations of torture and ill-treatment by SSI officials since 1986.[215] On that one occasion, the authorities investigated and prosecuted 40 SSI officers on 442 counts of torture. The trial, which lasted two years, from 1986 to 1988, ended in their acquittal: the court concluded that officers had in fact tortured suspects belonging to the Al-Gihad armed group, but said "there was insufficient evidence to link the particular [SSI] officers on trial with torture." [216]

In 1996 the UN Committee against Torture "noted with concern that no investigation has ever been made and no legal action been brought against members of state security intelligence since the entry into force of the Convention for Egypt in June 1987." [217] Special Rapporteur Martin Scheinin wrote in his October 2009 report that, while there had been "a small number of cases where police officers have been subject to investigations and trial following torture complaints," he was "troubled that complaints against SSI officers in this regard have produced no results," and "gravely concerned" by information that terrorist suspects subjected to detention by SSI officers were at particular risk of torture.[218]

Failure to prosecute SSI officers is due to several factors. These include the fact that complainants are unable to describe an individual perpetrator or give their name in their complaint because they are blindfolded during interrogation and officers use fake names.[219] The special rapporteur on torture has written that "the practice of blindfolding and hooding often makes the prosecution of torture virtually impossible, as victims are rendered incapable of identifying their torturers. Thus, blindfolding or hooding should be forbidden." [220] In addition, prosecutors do not have access to SSI places of detention, which the government continues to deny exist, and the SSI enjoys political protection as one of the most powerful security agencies within the Ministry of Interior.

One notorious case of failure to investigate SSI officers suspected of torture is the 1994 death in custody of Abd al-Harith Madani, a 33-year-old lawyer whose clients included Islamist defendants. The SSI arrested Madani at his law offices on the night of April 26, 1994, held him incommunicado, and later claimed that he had died of an asthma attack, although they only notified his family of his death 11 days later, on May 7. Officials denied the Cairo Bar Association's request for a second autopsy by independent pathologists.[221] SSI officers delivered Madani's body to his family in a sealed coffin, placed a contingent of guards around the grave, and warned family members not to speak with human rights investigators or journalists.[222] Then-Prosecutor General Raga'a al-Arabi conceded that Madani's death appeared to be "criminal," but the government has never publicized the results of the investigation promised at the time. A high-level SSI official told Human Rights Watch in

November 2007 that the prosecutor was still-after 13 years-unable to establish evidence pointing to individual perpetrators, but that the investigation was "still open."^[223]

A second known case in which authorities prosecuted an SSI officer for torture also ended in the officer's acquittal. On September 4, 2006, a Cairo court acquitted SSI officer Ashraf Mustafa Hussain Safwat on charges that he tortured to death Mohamed Abd al-Kader, who died in SSI custody in 2003. Safwat was the first SSI officer to be investigated for alleged torture since 1986.^[224] An autopsy performed soon after Abd al-Kader's death showed bruises, and burns on his mouth, nipples, and penis. A forensic doctor said these injuries had been sustained within eight hours of Abd al-Kader death, and could be consistent with electric shocks. Abd al-Kader's family filed a complaint at the local police station regarding his death in custody on September 21, 2003. Prosecutors ordered forensic doctors to inspect the body the following day, an order Dr. Hatim Mahmud Nabil ` Abbas Ibrahim promptly carried out. His forensic report (No. 555/2003), dated September 22, noted injuries sustained within eight hours of the time of death, including serious bruises on the head and abdomen, and burns on the nipples, lower lip, and penis such as might be inflicted by an electrical wire. A committee of three senior forensic physicians then examined the original autopsy and in an April 2005 report concluded that Abd al-Kader's injuries had been sustained shortly before his death, and noted that Safwat had accompanied Abd al-Kader to the hospital twice on the night of his death. Strangely, they also felt it was necessary to state explicitly "that defendant Ashraf Safwat wasn't responsible for these injuries in the period from September 16-20, 2003, which is the period the person in question spent in his custody." The committee of three physicians did not address the question of how Abd al-Kader's mouth and penis were burned, but did conclude that the burns on his nipples were from a defibrillator used in an attempt to revive his heart, and that Abd al-Kadir "died due to a heart disorder which resulted in a sudden failure in the heart in spite of the medical treatment that couldn't revive the heart, and [that he] wasn't subjected to torture or physical aggression."^[225]

On May 22, 2005, the head of the Prosecution Office referred the case to Public Prosecutor Mo`ataz Sidiq, who in turn referred the case to the Cairo Appeals Court, charging that Safwat "tortured a suspect, victim Muhammad Abd al-Kadir al-Sayyid, causing injuries described in the autopsy report, for the purpose of making him confess, as shown in investigations."^[226] The trial opened on June 19, 2006. On November 4, 2006, Safwat's lawyers produced papers from ` Abd al-Qadir's family revoking the power of attorney they had given lawyers from the AHRLA and dropping their request for compensation. On January 10, 2007, the family's lawyers told Human Rights Watch that State Security had pressured them to drop the case by using its continued custody of Samih ` Abd al-Qadir, Muhammad's brother, as leverage. On February 3 the family failed to respond to an invitation to testify in court as to why they had dropped the case, and the court reopened the case. Mohsin Bahnassi, a lawyer who has worked on torture cases for the past decade, told Human Rights Watch:

This was a special case because it involved a SSI officer whom the family could identify because Mohamed's brother was detained along with him. The court acquitted the officer in the end because the medical report was inconsistent on one point, so the judge considered this a contradiction and acquitted the officer.^[227]

VI. State Security Court Reliance on Confessions Obtained under Torture

State security courts, created under the emergency law, are notorious for relying on confessions obtained under torture to secure convictions, and for tolerating long periods of enforced disappearance before prosecutors see defendants.^[228] Human Rights Watch has investigated several cases that were tried before state security courts—such as the 2003 Queen Boat case in Cairo and the 2006 trial of persons charged in the Taba bombings, as well as some which did not reach trial, such as the Victorious Sect case (see below)—and found they consistently relied on confessions obtained through torture when defendants were held by the SSI in arbitrary detention.^[229]

State security prosecutors are particularly responsible for perpetuating impunity for torture because in many cases they interrogate detainees who have been disappeared for several weeks and tortured and subsequently returned to SSI detention facilities. While other prosecutors can argue they do not know where a disappeared prisoner is being detained, state security prosecutors actually see and speak to detainees in illegal detention. As a result, they are complicit in allowing illegal detention and, at times, enforced disappearance by SSI officers.

State security prosecutors, who are formally subordinate to the public prosecutor, are responsible for pre-trial investigations in State Security Court cases, but often do not properly investigate the arbitrary detention and disappearance of detainees.^[230] Ahmad Saif al-Islam, a human rights lawyer who has represented defendants before state security courts for more than a decade, told Human Rights Watch that "state security prosecutors are complicit through their failure to interrogate detainees about where they are being detained and under what conditions. Prosecutors have the power to order detention and this must take place under their jurisdiction not the SSI's."^[231]

SSI officers consistently hold detainees in incommunicado and unacknowledged detention, often for several months and traces of torture have faded before taking them to see a prosecutor.^[232] This usually makes it impossible for a forensic medical examination to confirm that torture took place.^[233] In addition, trials before state security courts consistently fail to meet international standards on due process because they do not provide the right to an appeal, and do not give defendants adequate access to lawyers outside the courtroom.

They also often rely on confessions obtained under torture—contrary to Egypt's Constitution that states in article 42, "if a confession is proved to have been made by a person under any of the aforementioned forms of duress or coercion, it shall be considered invalid and futile."^[234] The UN special rapporteur on torture has stated that "[w]here allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment."^[235] The UN Guidelines on the Role of Prosecutors expand on this in article 16:

When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for

using such methods are brought to justice.[236]

Lawyer Mohsin Bahnassi told Human Rights Watch that in recent state security cases, defense lawyers never get to see their clients while they are in detention, even though this can last several months: the first time they see them is when they appear before the prosecutor.

In cases concerning jihadist groups, SSI officers detain them at their [SSI] offices for four to five months, until they have obtained all the information. During this time, after a couple of months of enforced disappearance, they may take them before the state security prosecutor for questioning. The defendants are brought by SSI, handcuffed, into the prosecutor's office and are then taken back to SSI offices. I tried to tell my client not to be afraid to tell the prosecutor that he'd been tortured. He looked at me and asked me where I was going after this? I said I was going home. He responded, "Well I'm going back to SSI where they are torturing us." He told me that the officers had instructed him what to confess to the prosecutor. [237]

Human rights lawyer Sayed Fathi told Human Rights Watch:

In state security cases these days, the detainees are brought into the building of the *niyaba* blindfolded, handcuffed behind their backs, which is the state they are in while in SSI detention. The guards only take the blindfold off when they get to the office of the prosecutor. Or sometimes the detainees are brought to the office of the prosecutor in the middle of the night, at 1 a.m. The defendants don't feel safe. When we protest, the prosecutors tell us off the record that these are security measures over which they have no control. And then SSI [officers] take the defendants back to detain them at an unknown location.[238]

The following three case studies illustrate the highly problematic reliance of state security prosecutors and state security courts on confessions obtained through torture. Human Rights Watch research, anecdotal evidence from victims, and the work of local and international NGOs suggest they are reflective of a far larger problem of protecting SSI officers from prosecution so they can continue to torture and disappear detainees with impunity.

The 2006 Taba Trial

In 2006 Human Rights Watch monitored the trial of the three men charged with terrorism, murder, and belonging to a terrorist group in connection with the 2004 attacks on Sinai tourist sites. Human Rights Watch concluded that the trial was unfair because of serious allegations of torture and forced confessions, as well as prolonged enforced disappearance and lack of access to counsel.[239]

State Security officers detained Mohamed Jayiz on October 22, 2004, and held him without charge. Despite repeated requests they refused to grant him access to a lawyer until the first day of his trial, on July 2, 2005. At Jayiz's first court hearing, he testified that State Security officers had kept him blindfolded, bound, and unaware of his location, had hung him by his arms and legs, and used electrical currents to torture him for a week before he confessed at his second meeting with a state security prosecutor, on November 4, 2004. In his testimony to the court, Jayiz emphasized that he had agreed to the confession only

because he feared further torture, and that while he had told the prosecutor about his torture and requested medical attention and a lawyer, the prosecutor had denied his requests. Jayiz only obtained a lawyer when Egyptian human rights lawyer Ahmed Seif al-Islam presented himself to the court during the first trial date and said he wished to represent him. It was his first contact with the defendant.

At that time the court granted his request for a medical examination. The court went into closed session, which a lawyer on behalf of Human Rights Watch was allowed to attend. During this session Jayiz was stripped so the court could examine whether he had physical signs of torture, and subsequently allowed a doctor to examine him. A medical report from this exam, dated July 7, 2005-more than eight months after Jayiz alleged the torture took place-noted injuries that could be consistent with torture, but said that "because time had passed, and because they were not inspected at the time [the injuries] were received, it was impossible to tell how or when they were received." [240] Seif al-Islam was able to meet with Jayiz in prison on July 13, 2005, but only in the presence of a State Security officer. On November 30, the State Security Court sentenced Jayiz to death. He has been on death row ever since.[241]

In the same case, SSI officers had arrested Osama Mohamed on August 12, 2005, one of hundreds of men detained after three explosions killed 67 people in the resort town of Sharm al-Sheikh on July 23. He first saw a state security prosecutor on August 22, 2005, and signed a written confession on his role in the Taba bombings during this first meeting. He later testified that state security officers had tortured him during his initial detention. A lawyer did not represent Mohamed until he first appeared in court. During his trial, he was only able to communicate with his lawyer through the bars of the cage in the courtroom with a state security officer standing close by. The court granted his lawyer's request for a medical examination when his trial opened on March 26, 2006, although this did not occur until two months later-nine months after Mohamed said he was first tortured. The report, dated May 27, noted injuries that could be consistent with torture, but was unable to determine the cause of his injuries because so much time had passed.

The court sentenced Mohamed to death for terrorism, being an accessory to a murder, belonging to a terrorist group, and other crimes related to the Taba attacks.

The Victorious Sect Case

In a December 2007 report, *Anatomy of a State Security Case: The 'Victorious Sect' Arrests*, Human Rights Watch examined the case of a group of 22 young Egyptians charged with plotting to carry out attacks on tourists and other civilian targets in Cairo. Human Rights Watch determined that authorities arrested the 22 men in February and March 2006, well before their detention was announced in April. For those first weeks, the men were held in enforced disappearance in various SSI facilities around Cairo. It was during this initial period of detention that the worst abuses occurred. Human Rights Watch found that the Egyptian authorities had little or no evidence for their allegations. Instead, SSI subjected the detainees to torture and other serious abuses to obtain confessions. Said Shehata, an attorney for several of the detainees, saw approximately 10 of them when they were brought to the SSI prosecutor's office in July through September 2006, and spoke with six during the proceedings. He told Human Rights Watch:

I talked to many of them in the prosecutor's office. They were *all* mistreated at Lazoghli. The ones I talked to,

they told me that State Security had handcuffed them behind their back, and lifted up the handcuffed arms behind. Some said they had cigarettes put out on their skin, in sensitive areas. Some were also subjected to electric shocks. For instance, some told us they were handcuffed to a metal bed, like a hospital bed, but without a mattress, and they'd prop them up [perpendicularly], and they'd run electrical current through the bed, shocking them.[242]

Mohamed Nasr was the only detainee who wanted to tell the prosecutor about the abuse, Shehata said:

Mohamed Nasr , in particular, still had some marks and he asked to be inspected by medical staff, and he wanted to show his injuries to the prosecutor-he asked two times-but the prosecutor refused.... Other detainees told me about the abuse, but didn't want to say anything in front of the prosecutor-the first time. Later, when they became used to the prosecutor's office, some of them told the prosecutor about the torture.... Most of the guys were really scared and didn't want to ask for the examination [in court]. But a lot of the kids cannot pursue these cases, or don't want to. They're scared. State Security tells them, "Listen, after you're taken to the prosecutor's office, you're coming back here, so don't say anything, don't do anything stupid." So they keep quiet.[243]

In mid-2006 the State Security prosecutor dismissed all charges against the 22 detainees for lack of evidence and ordered their release.

The Zeitoun Case

In the Zeitoun trial in 2010 defendants first saw a prosecutor after several weeks of enforced disappearance at SSI detention facilities. Many of the defendants said that SSI officers had tortured them in custody and obtained confessions from them under torture about plans to make weapons to conduct attacks. In the case of Khaled Adel Hussein, lawyer Mohamed Shabana filed a torture complaint on July 11, 2009, while Hussein was still disappeared. SSI finally brought him before a state security prosecutor who ordered a forensic medical investigation on August 30. The exam took place on September 3 and concluded that there were no traces of any violence having occurred.

SSI had arrested Mohamed Hussein, Ahmad Ezzat and Ahmad Saad on July 2 but they saw a prosecutor for the first time on September 12. Mohamed Khamis first saw a prosecutor on July 27, 25 days after his arrest and disappearance. On July 29, the prosecutor ordered a forensic medical examination of Khamis but it did not take place until December 4. The examination concluded there were no injuries that the doctor could trace back to torture. On August 3, Khamis told the prosecutor, in the presence of his defense lawyers, that he had been tortured and that he had "confessed all that because I was scared and I was tortured at SSI." [244]

Despite the risk of being tortured once more, some defendants in state security cases do tell the prosecutor they were tortured. Mohamed Shabana, a defense lawyer for Mohamed Fahim Hussein, told Human Rights Watch that his client had told the prosecutor in August that SSI officers had tortured him.[245] Ahmad Adel Hussein, another defendant, told the prosecutor on August 30, 2009, that SSI officers had tortured him with electric shocks after his arrest on July 2 and that the torture

continued for two weeks. The prosecutor ordered an examination by a forensic medical doctor on September 3, three months after the alleged torture. The doctor's report said that he had not found physical traces to indicate that torture occurred.

In the second session of the Zeitoun trial, on March 20, 2010, defendant Mohamed Khamis shouted that he had been tortured, removed his shirt in the cage where defendants stand during court proceedings, and turned his back to show media in the courtroom the marks on his back.^[246] The judge ordered him to approach the bench and questioned him. Defense lawyer Haitham Mohamadein was present during the session and told Human Rights Watch:

Mohamed Khamis told the judge that SSI officers had tortured him back in September 2009 and showed him the marks that were still visible. He said they had tortured him when he retracted his confession before the *niyaba* because he'd said that under duress. After this, seven other defendants also said they had been tortured and the judge ordered their referral to a forensic medical doctor for examination.^[247]

Defense lawyers requested the referral go to a committee of three forensic doctors. However, the judge ordered the same doctor who had written the first reports to examine them. He again concluded there were no traces that indicated use of force.

In continuing to refer cases for trial before state security courts, Egypt is in breach of its obligations to protect and ensure the right to fair trial. The courts' failure to throw out confessions obtained under torture means that it is also in breach of the prohibition against torture.

The Convention Against Torture provides that statements extracted by torture shall not be used as evidence in any proceeding "except against a person accused of torture as evidence that the statement was made."^[248] The UN Human Rights Committee states in its General Comment No. 20 that "it is important for the discouragement of violations under article 7 that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment."^[249]

VII. Lenient Sentencing and Failure to Discipline

Deterrent rulings proportionate to the enormity of the crime are seldom delivered.

-National Council for Human Rights, Annual Report 2007/8, p.21

Charging a police officer under article 126 of the penal code (that prohibits torture) for deaths in custody is extremely rare, not only because of the shortcomings in the legal framework discussed earlier, but also the undeclared policy of charging officers accused of torture with lesser offenses-if they are charged at all. Given a choice, the *niyaba* tends to bring more lenient charges, rather than more stringent ones, against police-for example, charging them with "assault leading to death" instead of torture.[250] A judge who spent 10 years as a prosecutor told Human Rights Watch that "it is extremely rare" for case to be referred under article 126, and that most are instead referred under article 129 on the use of force. [251]

Penalties for torture are inadequate even in the rare cases where evidence, the investigation, the resolve of the victim's family and witnesses, and the *niyaba's* commitment, actually produce a conviction and police who have tortured detainees are brought to justice.[252]

Illegal detention carries an undefined prison term or a fine of EGP200 (US\$35).[253] If illegal detention is accompanied by forgery of police reports, the penalty is a prison term; if accompanied by bodily harm or death threats, the sentence will be a prison term of hard labor. A charge of assault leading to death under article 236 of the penal code carries a maximum penalty of three to seven years in prison, possibly at hard labor. Like other provisions regulating assault, article 236 does not differentiate between offenders: the punishment is identical whether the offender is a citizen or a public official. Only offenders "implementing terrorist aims" are, following the 1992 counter-terror amendments to the penal code, singled out for a considerably harsher punishment for assault and punished by "a term of hard labor or prison ..., and if this was done with premeditation, the punishment will be hard labor, either for life or temporary." [254] Article 280 of the penal code provides similarly inadequate penalties regarding illegal detention, and article 282 punishes torture during illegal detention with "temporary hard labor."

In addition to the lenient sentences provided by law, courts often further reduce sentences in cases of police abuse. Article 17 of the penal code gives judges discretion to reduce sentences for reasons of "mercy" (*ra'fa*) from life imprisonment to imprisonment; from "aggravated [i.e., longer] imprisonment" to not less than six months; and from imprisonment to detention of not less than three months.

In the case of 'Imad al-Kabir, the microbus driver from Giza, his torture and sexual assault was documented on video-including footage of him screaming and begging for mercy while being raped. This led to widespread public outrage and the investigation was much faster than usual, with the *niyaba* doing all it could to get a prompt referral to court, according to Naser Amin, al-Kabir's lawyer.[255] Media closely followed the trial, which Human Rights Watch monitored.[256] Yet even in this case, the Giza Criminal Court sentenced police captain Islam Nabih and non-commissioned officer Reda Fathi to three years in prison-the most lenient possible sentences for the crimes of illegally detaining, beating, and raping al-Kabir. In its judgment, the court explained it had decided to "apply mercy" within the bounds of article 17 of the penal code, and sentenced the accused to

imprisonment rather than aggravated imprisonment because of the fact they "are still in the beginning of their careers in the police force and are therefore inexperienced and were unaware of the honorable mission of security men in Egypt..."[257]

After serving a reduced sentence, Islam Nabih and Reda Fathi were released in late March 2009, and Nabih returned to active service in the police. A group of human rights lawyers filed a case before the Council of State, a high court of administrative justice, on April 12, 2009, urging the court to overturn the ministry of interior's decision to reinstate the two officers. The lawyers argued that because the officers had been convicted of a crime of honor they should have been dismissed as provided for under Egyptian law. The Council of State rejected the case on January 26, 2010, on admissibility grounds, arguing it was not competent to hear the case.[258]

Since courts do not order that convicted police officers be dismissed from their positions, the ministry of interior frequently reinstates them in the same rank they held before their imprisonment. Under article 54 of the Police Law, an officer convicted by a criminal court is suspended for the duration of his sentence, after which the law leaves it to the discretion of the assistant minister of interior to determine if there will be further disciplinary measures.[259] These measures could include a warning, salary reduction, suspension, or dismissal.[260]

An NCHR staff person told Human Rights Watch:

The problem is that all the officers who get sentenced to a year or two serve their time and then go back to the same position-for example, the 2001 case of officer Arafa Hamza who was sentenced to a year imprisonment for a death-in-custody case. He served his sentence in the Salah Salem Central Security prison to ensure good treatment and then a year later he was back in the Giza police station.[261]

According to human rights lawyer Mahmoud Kandil, who has worked on torture cases for over a decade in Egypt, light sentencing and the court's tendency to reduce sentences mean that "there is no real deterrent and [this] ultimately contributes towards impunity." In addition, officers are not suspended, so in the case of the officer who tortured actress Habiba Said (in Al Haram police station in 2004), the Ministry of Interior transferred him to Sharm al-Sheikh and later brought him back to Cairo after promoting him.[262]

In Habiba Said's case, the court stated that while the crime committed by the officer was "dangerous enough for the perpetrator to get 10 years in prison... the court will mitigate this punishment to six months imprisonment because the court feels comfortable that the convict will not return to this crime again. The court nevertheless will insist that the convict will be suspended from his job for one year as appropriate punishment." [263] The court thereby left open the possibility that the officer, Yasser al-Akkad, could return to duty, contravening international guidelines on investigating torture that require that officials implicated in torture are removed from positions of control or power over witnesses:

Those potentially implicated in torture should be removed from any position of control or power, whether direct or indirect over complainants, witnesses and their families as well as those conducting investigations. Investigators must give constant consideration to the effect of the investigation on the safety of the person alleging torture and other witnesses.[264]

In the case of *Gafgen v Germany*, the European Court of Human Rights found that the transfer of the accused officers to other posts that did not involve the investigation of criminal offences was insufficient. The court reiterated that:

where State agents have been charged with offences involving illtreatment, it is important that they should be suspended from duty while being investigated or tried and should be dismissed if convicted...Even if the Court accepts that the facts of the present case are not comparable to those at issue in the cases cited herein, it nevertheless finds that D.'s subsequent appointment as chief of a police authority raises serious doubts as to whether the authorities' reaction reflected, adequately, the seriousness involved in a breach of Article 3 – of which he had been found guilty. [265]

VIII. Conclusion: Impunity and Denial of Effective Remedy

The whole process has been exhausting and expensive; it's taken years of my life so I want to see it through until the end. People have said to me, 'You're crazy to think you can take on the government.' But the officers are people like us and the law should apply to them as it applies to us. -Shadi Maged Zaghloul, torture victim, Cairo, July 2010

Egypt's government is failing abysmally in its duty to properly investigate, prosecute, and punish those responsible for the vast majority of cases of torture at the hands of law enforcement officers. This is due to many factors, including the ability of the SSI to operate outside the law with impunity, failure to protect victims and witnesses of torture from retaliation and further torture if they pursue complaints, an inadequate legal framework, poor prosecution policies, and the *niyaba's* limited resources and lack of independence.

Police abuse becomes commonplace when there is effective impunity for security officers and their superiors who participate in, order, or ignore it. Pursuing meaningful investigations capable of leading to successful prosecutions and establishing effective institutional mechanisms for accountability that make that possible would indicate the government is committed to ending torture and impunity. More robust and effective enforcement of existing legislation, and stronger media vigilance and independent monitoring of the problem, are also crucial.

The failure to effectively investigate and prosecute torture and ill-treatment amounts to denial of the right to an effective remedy. This right is closely linked to accountability, which is a key element in ensuring respect for the prohibition of torture and ill-treatment. Accountability has two main components: redressing past grievances, and correcting systemic failures.

Regional and international treaties establish the basic right of individuals to an effective remedy when their human rights have been violated. The UN Human Rights Committee's General Comment No. 7 states that articles 7 and 2 of the covenant obligate states to:

ensure an effective protection through some machinery of control. Complaints about ill-treatment must be investigated effectively by competent authorities. Those found guilty must be held responsible, and the alleged victims must themselves have effective remedies at their disposal, including the right to obtain compensation.

[266]

The committee emphasized that the remedies for human rights violations must be "accessible and effective" and take into account "the special vulnerability of certain categories of person." It further noted, "A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant." [267]

IX. Recommendations

To the Government of Egypt

Publicly acknowledge the scope and gravity of the problem of torture in Egypt and commit to taking all necessary measures to end the systematic practice of torture.

Issue and widely publicize directives stating that acts of torture and other ill-treatment by law enforcement officials will not be tolerated, that reports of torture and ill-treatment will be promptly and thoroughly investigated, and that those found responsible will be held accountable.

Direct the Office of the Public Prosecutor to fulfill its responsibility under Egyptian law to investigate, in a thorough, impartial, and timely manner, all torture allegations against law enforcement officials, regardless of rank and whether the victim or family has filed a formal complaint.

Ensure that victims of torture or ill-treatment can receive appropriate compensation from the government in accordance with Egyptian law.

Ensure that trained prosecutors regularly visit prisons at least once a week, inspect all wards, and receive prisoner complaints. These prosecutors must have powers to enter any place where persons are detained, at any time, and to speak to any prisoner. They must also have access to State Security Investigations headquarters and offices.

Establish a judicial police force that will conduct independent investigations to gather evidence on torture complaints submitted against police officers and ensure the protection of witnesses.

Make the Forensic Medical Institute both functionally and formally independent from the Ministry of Justice.

Provide, in law, that medical and psychiatric reports from university research and teaching hospitals, and other expert bodies, may also be entered as evidence in courts in support of allegations of ill-treatment.

Ensure that interrogations can only take place at places that the law recognizes as being official locations.

End the practice of SSI detention by acknowledging that it takes place, publicizing and condemning it, and prosecuting all SSI officers responsible for it occurring.

Prevent any official suspected or accused of crimes involving prisoners from having contact with prisoners, and remove them from positions where they can improperly influence the investigation.

Amend the Code of Criminal Procedure to allow victims of police abuse to file private criminal suits against those responsible.

Ratify the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Set up an independent domestic prison inspection mechanism, meeting the requirements set out in the Optional Protocol, and strengthen the powers of the National Council for Human Rights (NCHR) to conduct such inspections.

Give Egyptian lawyers and medical professionals, as well as international human rights organizations, access to places of detention.

To the Office of the Public Prosecutor

Investigate promptly and impartially all allegations of torture or ill-treatment by security or law enforcement officials of any rank, and prosecute to the fullest extent of the law, in a court that meets international fair trial standards, any official found responsible for ordering, carrying out, or acquiescing to torture or ill-treatment.

Ensure that every investigation is conducted promptly and impartially, introduce regulatory timeframes for providing

evidence, and ensure that prosecutors investigate all those responsible, including superiors.

Ensure prompt and independent forensic medical examinations of detainees who allege that they have been subjected to torture and other abuse.

When allegations of misconduct are made against a police officer, the unit to which s/he belongs should be immediately excluded from any role in conducting the police investigation of the incident, beyond that of providing witness statements.

Authority should be immediately handed over to the prosecutor. Police teams from other stations should provide assistance as necessary.

Reinstate the role of the investigative judge to ensure the impartiality of investigations.

Ensure the safety of witnesses and victims' families during and after the investigation and trial.

Admit medical reports obtained from accredited hospitals as technical evidence of injuries sustained in addition to reports by the Forensic Medical Authority.

Allow access for Egyptian and international human rights monitors to places of detention, including unauthorized detention facilities such as SSI facilities, and the opportunity to conduct confidential discussions with detainees of their choosing.

Order the State Security Prosecutor to seek access to detainees immediately after their arrest, investigate diligently all allegations of torture, and order prompt and impartial forensic medical examinations.

To the Ministry of Interior

State publicly that the Ministry of Interior deplores and will no longer tolerate the practice of torture and ill-treatment in police stations, prisons and SSSI detention facilities, and that it will punish all those responsible.

Immediately suspend any security official under investigation for ordering, carrying out, or acquiescing to acts of torture or ill-treatment. Ensure their dismissal if convicted.

Discipline or prosecute commanding officers who know, or who should have known, about such acts, and fail to act to prevent and punish them.

Inform victims and their families about the outcome of internal investigations and disciplinary measures, and make this information public to show the ministry will not tolerate abuse.

Ensure that all detainees are held only in legally-sanctioned detention facilities, and that detainees are not held or interrogated by any other branches or parts of the Interior Ministry outside of those legally authorized to hold detainees.

To the Egyptian Parliament

Amend the definition of torture in article 126 of the penal code in line with the definition in article 1 of the Convention Against Torture.

Amend provisions prohibiting torture and ill-treatment by officials, in particular Penal Code article 129 on the use of cruelty by officials, and article 280 on illegal detention, to make the penalties commensurate with the seriousness of the offenses and reclassify these offences as felonies rather than misdemeanors.

To European Union Member States and the United States

Speak out publicly against the practice of torture in Egypt, and the government's failure to take effective measures to combat it.

Condition parts of the development aid to Egypt to the government's taking rapid steps to address gaps in compliance with international human rights law regarding torture and ill-treatment.

Include conditions on the eradication of torture in Egypt in the development assistance provided to Egypt with

recommendations on the establishment of effective investigations, independent of the police, into the endemic nature of torture.

Ensure that US and EU government officials and politicians visiting Egypt are briefed on the state of Egyptian compliance with international human rights law concerning torture and the government's efforts and transparency in addressing human rights violations in places of detention and are requested to raise these concerns.

In line with the Guidelines to EU Policy towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, EU member states should, through confidential démarches and public statements, urge Egypt to take effective measures against torture and ill-treatment, bring all those responsible for torture and ill-treatment to justice, and provide redress to victims.

Halt pending deportations and extraditions to Egypt in cases where there is a risk of torture or inhuman or degrading treatment, and do not rely on "diplomatic assurances" issued by the Egyptian government in this regard.

In the context of counter-terrorism cooperation, stress to the Egyptian government that the practice of torture decreases Egypt's value as a partner in intelligence-gathering because the information Egypt obtains through torturing suspects will be both unreliable and inadmissible in any court of law.

Investigate any cases of refoulement where EU member states or the United States returned individuals to Egypt despite high risk of torture by Egyptian security forces, and hold accountable all those involved in the decision to return them.

Acknowledgments

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Appendix

HRW Letter to Ministry of Interior [Original in Arabic]

August 4, 2010

General Hamdy Abdelkarim

Assistant Minister of Interior

Ministry of Interior

Cairo

Dear General Abdelkarim,

I am writing to thank you for meeting with my colleagues Maria McFarland and Heba Morayef on June 12. They greatly appreciated the opportunity to discuss various issues of mutual concern, including the recent and upcoming elections and the renewal of the emergency law, and to hear the ministry's position on these issues.

In the meeting, my colleagues also inquired about the internal complaints mechanisms at the Ministry of Interior in cases of alleged human rights violations by ministry officials or public security officers operating within the ministry's jurisdiction, and it is on this subject that I am writing to you today.

We are currently researching the question of how the government of Egypt fulfills its obligation under Egyptian and international law to investigate and, where warranted, prosecute officials alleged to have been responsible for acts of torture or, cruel, inhuman or degrading treatment. To complete the picture we need information on what measures the Ministry of Interior takes internally to investigate such allegations and to discipline officers in cases where there is evidence that the officer may have been responsible for acts that constitute torture or cruel, inhuman or degrading treatment.

In particular, we hope that your office will be able to provide us with statistics on the number of complaints on torture and ill-treatment that the Ministry has received, either directly from persons alleging such violations or from the National Council on Human Rights, alleged to have been committed by officials working for the Ministry Interior. This would include officers in the State Security Investigations agency, the Criminal Investigations agency and the police. We hope that you can provide these statistics with a breakdown by year in which the complaint was received. We understand from previous communications from the Ministry of Foreign Affairs that the ministry has compiled relevant information going back at least to 2006; if possible we would like to have this information going back to the year 2000.

We would also like to know the disciplinary measures taken, with a breakdown of types of disciplinary measures and year. We would also like to know how many cases the ministry has referred to the Public Prosecutor for criminal investigation. Finally, we would like to know the number of complaints in which no disciplinary steps or referral occurred. We would also welcome any explanatory documents that you feel would be relevant to this inquiry.

Here is the specific information we are requesting: The total number of complaints of torture or ill-treatment received by the

Ministry of Interior since 2000, broken down by year

The number of torture complaints received since 2000 which resulted in disciplinary measures taken against public security officers or ministry officials, broken down by year and by disciplinary measure (e.g., suspension; reduction in rank; fine).

The number of torture or ill-treatment complaints against Ministry of Interior Officers received since 2000, by year, that resulted in a criminal investigation by the prosecutor.

The number of torture or ill-treatment complaints against Ministry of Interior officers, by year, that resulted in court convictions.

What is the definition of torture that the Ministry of Interior uses for purposes of classifying a complaint?

Once the ministry has determined that there is a credible torture complaint, how does it investigate the claims? Is there any communication or coordination with the office of the Public Prosecutor on this? Does the officer involved remain on active duty during the investigation?

How many torture complaints received from the National Council of Human Rights have resulted in disciplinary proceedings against officers or referral to the Public Prosecutor for criminal investigation?

How many torture complaints received from citizens have resulted in disciplinary proceedings against officers or referral to the Public Prosecutor for criminal investigation?

How many torture complaints received from other sources, such as independent non-governmental human rights organizations, have resulted in disciplinary proceedings against officers or referral to the Public Prosecutor for criminal investigation?

What is the procedure the Ministry of Interior follows when it receives a complaint about torture or ill-treatment from a citizen: are all complaints processed and responded to, or is there an initial filtering process? Is the process the same if the complaint is relayed by the National Council for Human Rights or a non-governmental organization (NGO)?

When a court has convicted an officer for the crime of torture or unlawful use of force, what are the consequences for his or her employment with the ministry? Is he suspended for the period of his sentence and then re-instated or are there other measures taken?

How many officers from the Ministry of Interior have been sentenced to prison terms since 2000? In particular, how many of those officers were State Security Investigations Officers, how many were officers from other branches such as Criminal Investigations Officers and how many were policemen?

How many officers have been served with disciplinary measures as a result of torture complaints or complaints of ill-treatment? How many officers have been placed on the "General Orders Roll" since 2000 as a result of torture and ill-treatment?

We request this information in order that we can fully reflect the efforts of the Ministry of Interior to comply with the law and to respond to complaints received regarding torture and abuse. We are also interested in being able to include the perspective of ministry officials in any report that we may issue on this subject. For this reason, we would be grateful if we could have your response no later than August 5.

Sincerely,

Joe Stork

Middle East and North Africa Deputy Director

Human Rights Watch

HRW Letter to Public Prosecutor [Original in Arabic]

November 21, 2010

Dear Counselor Abdel Meguid Mahmoud,

I am writing to seek your office's position on the issue of prosecution of torture in Egypt which Human Rights Watch is currently researching in preparation for the publication of a report on the subject. We have attempted to request a meeting with you on three occasions through Counselor Adel al-Said but understand that you have been very busy in the past two months.

We are currently in the process of researching the Egyptian government's commitment to confronting the reality of torture in Egypt and to accepting that its law enforcement officer must be subject to the rule of law, by examining how it investigates and prosecutes cases of torture and ill-treatment. Taking meaningful steps to investigate, prosecute and punish torturers would be indicative of the government's political will to end the practice and thus comply with its obligations under Egyptian and international law.

We are aware that the government made public some statistics in November 2009 about the investigation and conviction of police officers in cases of torture and ill-treatment but have been unable to find additional statistics. We were particularly interested in this paragraph:

In 2008, [the Office of the Public Prosecutor] decided to refer 38 cases of cruel treatment and torture to the criminal courts and 1 to a disciplinary tribunal. It also asked the administrative authorities to impose administrative sanctions on defendants in 27 cases. In 2009, the Office of the Public Prosecutor decided to refer 9 cases of cruel treatment to the criminal courts and 1 case to a disciplinary tribunal. It furthermore sought administrative sanctions in 10 cases. The Ministry of the Interior enforces judgments awarding damages to injured parties, as soon as the relevant legal procedures are completed.

I am attaching a summary of our findings below but we have a number of additional questions we would like to put to you.

As part of Human Rights Watch's methodology we always seek input from the authorities so that we can reflect their position in our work. For that purpose we would be grateful for a response from you by December 15 to the following questions:

We understand that as a matter of procedure, the *niyaba* regularly produces statistics on how many cases are closed, put on file and transferred to trial: how many cases of torture and ill-treatment did prosecutors refer to court in 2010, 2009, 2008, 2007 and 2006 respectively? How many investigations of torture and ill-treatment did prosecutors order closed.

Of the cases of torture and ill-treatment that prosecutors transferred to court, how many involved charges under Article 126 of the penal code on torture? How many involved charges under Articles 129 or 282?

Since 2006, how many cases of torture and ill-treatment before the courts resulted in the conviction of police officers? And how many of those sentences were confirmed on appeal?

How many investigations involving State Security Investigations Officers on charges of torture, ill-treatment or use of force have taken place since 2006?

How many of these investigations against SSI officers have resulted in the transfer of the case to court?

When prosecutors receive a complaint regarding the enforced disappearance of a detainee in state security premises, how do they investigate it? Do they have access to SSI detention facilities and do they conduct visits to these places?

How many unannounced visits to places of detention has the prosecution made since 2006?

How often does a prosecutor go to the scene of the crime of torture to collect evidence and how often do they rely on Criminal Investigations police to collect the evidence for them?

Are prosecutors aware of the attempts by police to intimidate families into withdrawing their complaints or accepting settlements in cases where a police officer is being charged with torture, ill-treatment or use of force?

Finally, we would like to share with you the summary of our findings so far and invite you to comment, clarify or suggest corrections to any of the information and analysis contained below.

We look forward to receiving a response from you by December 15 at the latest

Joe Stork

Deputy Director

Middle East and North Africa Division

[1] Since we were only able to examine cases where victims or their families filed complaints, it was not possible to provide an overall accurate estimate of the number of torture incidents that occur. Most families are too afraid to file complaints the number of torture cases, according to human rights lawyers and staff of human rights organizations who help to familiarize victims and their families with the judicial options available to them, and the number of torture cases that receive attention from the prosecuting and judicial authorities is a small fraction of the cases of ill-treatment that occur in Egypt. As a result, most torture cases go unreported, especially outside Cairo and Alexandria.

[2] Egypt's Emergency Law 162 of 1958.

[3] Committee against Torture, "Conclusions and Recommendations, Egypt," U.N. Doc. CAT/C/CR/29/4 (2002), para. 5(c); Report submitted by Mr. Martin Scheinin, special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, to the Human Rights Council, October 14, 2010, A/HRC/13/37/Add.2, http://www2.ohchr.org/english/issues/terrorism/rapporteur/docs/A_HRC_13_37_Add2.doc (accessed July 17).

[4] Prime Minister Ahmad Nazif's speech before the People's Assembly, May 11, 2010, <http://www.cabinet.gov.eg/Media/speeches.aspx> (accessed September 21, 2010).

[5] For example, the Ministry of Interior has detained Mohamed Abd al-Rahim al-Sharkawy under the emergency law since May 1995. "Rights Groups Challenge Detention without Charge or Trial in Egypt... Case of Detainee Imprisoned 15 Years Reaches African Commission," the Egyptian Initiative for Personal Rights and the Open Society Justice Initiative, December 14, 2010, <http://www.eipr.org/en/pressrelease/2010/12/14/1021> (accessed December 18, 2010).

[6] For a discussion of the provisions of Egyptian law dealing with torture and police abuse and the legal loopholes see Section V: Inadequate Legal Framework.

[7] Under the emergency law, the interior minister may order a person's detention without charge for 45 days, and indefinitely renew the order. After 30 days, a detainee can appeal before the state security court. The court can confirm the detention or order the person's release. The Interior Ministry may appeal a release

order, but the court makes a final decision.

[18] See Section I below and for recent cases see e.g. "Free Blogger Held Under Emergency Law," Human Rights Watch news release, April 23, 2010, <http://www.hrw.org/en/news/2010/04/23/egypt-free-blogger-held-under-emergency-law>; "Hundreds Still Held over Gaza Protests," Human Rights Watch news release, March 4, 2009, <http://www.hrw.org/en/news/2009/03/04/egypt-hundreds-still-held-over-gaza-protests>.

[19] Joint report on global practices in relation to secret detention in the context of countering terrorism submitted by the special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances to the Human Rights Council, 13th session, January 26, 2010, A/HRC/13/42, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.doc>; in which they cite General Assembly resolution 60/148; Commission on Human Rights resolution 2005/39, para. 9 and Human Rights Chamber for Bosnia and Herzegovina, Decision on Admissibility and Merits, Case no. CH/99/3196, *Avdo and Esma Palić v. The Republika Srpska*, para. 74., <http://www.hrc.ba/database/decisions/CH99-3196%20Palic%20Admissibility%20and%20Merits%20E.pdf> (accessed November 26, 2010).

[10] President Nasser imposed a state of emergency in Egypt from 1956 to 1964 and, and again in 1967. Anwar al-Sadat continued to rule under emergency law until he ended the state of emergency in May 1980. After al-Sadat's assassination in October 1981, the government declared a state of emergency that Hosni Mubarak has renewed ever since.

[11] Anwar el-Sadat, *In Search of Identity* (New York: Harper & Row, 1977), p. 209.

[12] See in particular the interviews with Mahmud `Izzat Ibrahim and Rashad al-Bayumi. Human Rights Watch, "Egypt: Faces of a Crackdown: Video Interviews with former Muslim Brotherhood detainees," <http://www.hrw.org/legacy/video/2007/egypt05/index.htm> (accessed September 7, 2010).

[13] Quoted in Middle East Watch [Human Rights Watch], *Behind Closed Doors: Torture and Detention in Egypt* (New York, 1992), p. 6. <http://www.hrw.org/en/reports/1992/07/01/behind-closed-doors>.

[14] *Ibid.*, p.9.

[15] Middle East Watch [Human Rights Watch], *Behind Closed Doors*, pp. 1, 115-134.

[16] "Egypt: Torture in State Security Headquarters," Human Rights Watch news release, April 23, 2003, <http://www.hrw.org/en/news/2003/04/23/egypt-torture-state-security-headquarters>.

[17] *Ibid.*

[18] *Ibid.*

[19] Human Rights Watch, *Egypt: Mass Arrests and Torture in Sinai*, February 2005, p. 36 <http://www.hrw.org/en/reports/2005/02/21/egypt-mass-arrests-and-torture-sinai-0>.

[20] Human Rights Watch, *Charged with Being Children: Egyptian Police Abuse of Children in Need of Protection*, February 2003 <http://www.hrw.org/reports/2003/egypt0203/>; Human Rights Watch, *In a Time of Torture: The Assault on Justice in Egypt's Crackdown on Homosexual Conduct*, February 2004, <http://www.hrw.org/reports/2004/egypt0304/>

[21] Human Rights Watch, *Black Hole: the Fate of Islamists Rendered to Egypt*, May 9, 2005, <http://www.hrw.org/en/reports/2005/05/09/black-hole-0>;

[22] Human Rights Watch, *Still at Risk*, pp. 57-66; Human Rights Watch, *Empty Promises*, pp. 33-36.

- [23] UN Human Rights Committee, Decision: *Alzery v. Sweden*, CCPR/C/88/D/1416/2005, November 10, 2006, para. 11.5, <http://www.unhchr.ch/tbs/doc.nsf/0ac7e03e4fe8f2bdc125698a0053bf66/13fac9ce4f35d66dc12572220049e394?OpenDocument> (accessed January 1, 2007).
- [24] "US: Halt Deportation to Torture in Egypt: Promises of Humane Treatment Insufficient to Override Federal Court Finding," Human Rights Watch news release, May 31, 2007, <http://www.hrw.org/en/news/2007/05/31/us-halt-deportation-torture-egypt>.
- [25] "Italy/US: Italy/US: Ruling Expected in Historic CIA Rendition Case: Italian Prosecution Highlights Inaction of US Justice Department," Human Rights Watch news release, November 3, 2009, <http://www.hrw.org/en/news/2009/11/03/italyus-ruling-expected-historic-cia-rendition-case>.
- [26] "Italy/US: Italian Court Rebukes CIA Rendition Practice: Historic Verdict Sentences US Agents in Absentia," Human Rights Watch news release, November 4, 2009, <http://www.hrw.org/en/news/2009/11/04/italyus-italian-court-rebukes-cia-rendition-practice>.
- [27] The SSI also closely monitors human rights groups and activists along with other nongovernmental organizations that criticize government policies.
- [28] Forum of Independent Human Rights Organizations, Joint NGO submission to the UPR, November 2009.
- [29] Human Rights Watch, *Egypt: Mass Arrests and Torture in Sinai* (2005). For torture methods employed by police, see also: Egyptian Organization for Human Rights (EOHR), "Legal protection for the perpetrators of the crimes of torture," (Cairo, 2001), pp. 9-10. Amnesty International, "Egypt: Torture remains rife as cries for justice go unheeded," (MDE 12/001/2001) (London, February 2001), pp. 4, 32. On torture methods employed by prison officials and SSI, see: Human Rights Center for the Assistance of Prisoners (HRCAP), "Torture in Egypt is a Judicial Reality," (Cairo, 2001), pp. 37-39; EOHR, "Victims without rights," p. 21.
- [30] National Council for Human Rights, *Annual Report 2004/2005*, <http://nchregypt.org/ar/images/files/1stannualreportar.pdf>, accessed June 17, 2010. The government established the NCHR by presidential decree in 2004. It is funded by the government and publishes an annual report.
- [31] Human Rights Watch interview with Nasr Al-Sayed Hassan Nasr, Banha, July 13, 2010. For more on his case see Section I: Torture and Enforced Disappearance by State Security Investigations
- [32] Human Rights Watch interview with Ahmad Mustafa Abdullah, Cairo, July 10, 2010.
- [33] National Council for Human Rights, *Annual Report 2004/2005*, p.258, <http://nchregypt.org/ar/images/files/1stannualreportar.pdf>, accessed June 17, 2010.
- [34] Human Rights Watch interview with former prosecutor, name withheld, Cairo, July 7, 2010.
- [35] Human Rights Watch interview with Mohamed Zari', lawyer, Cairo, July 6, 2010.
- [36] Ahmad Shalaby, "Habiba Innocent of Killing her Husband... Five Thieves Convicted and the Officer," *Al-Masry al-Youm*, May 9, 2007, <http://www.almasry-alyoum.com/article2.aspx?ArticleID=56888&IssueID=661> (accessed September 21, 2010).
- [37] CCP, arts. 34, 40.
- [38] Human Rights Watch interview with Ahmad Mustafa, Cairo, July 10, 2010. See below for Mustafa's subsequent treatment at the hands of police.
- [39] "Bring me a case" in this context means the officer was asking him to work with the police to report cases of drugs or other criminal activity in his neighborhood.
- [40] Human Rights Watch interview with Shadi Maged Zaghoul, Cairo, July 10, 2010.
- [41] Human Rights Watch interview with Ahmad Abd al-Mo'ez Basha, Cairo, July 14, 2010.

[42] Human Rights Watch interview with Haitham Misbah, Alexandria, June 16, 2010.

[43] "Egypt: Hold Police Accountable for Torture," Human Rights Watch news release, December 22, 2006, <http://www.hrw.org/en/news/2006/12/22/egypt-hold-police-accountable-torture>. For an account of the Emad. See below for more information on the investigation and trial in this case.

[44] Human Rights Watch interview with lawyer Sayed Fathy, Cairo, June 30, 2009.

[45] See Section III: The Role of the Niyaba.

[46] Egyptian Ministry of Foreign Affairs, letter to Human Rights Watch, February 22, 2010.

[47] Human Rights Watch interview with Nasr al-Sayed Hassan Nasr, Banha, July 13, 2010.

[48] Ibid.

[49] Human Rights Watch phone interview with lawyer Abd al-Hakim Al-Deeb, August 4, 2010.

[50] Human Rights Watch interview with lawyer Abd al-Hakim Al-Deeb, Banha, July 13, 2010.

[51] Account based on Human Rights Watch interview with Hussein Metwalli, journalist who interviewed families and released detainees, Cairo, June 13, 2007, in *Egypt: Anatomy of a State Security Case*, December 10, 2007, <http://www.hrw.org/en/reports/2007/12/10/anatomy-state-security-case>;

[52] Report of the Criminal Evidence Laboratory, State Security Case file 2009/284, Directorate of Criminal Evidence, Ministry Interior, May 26, 2009.

[53] Report submitted by Martin Scheinin, special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, to the Human Rights Council, October 14, 2010, A/HRC/13/37/Add.2, http://www2.ohchr.org/english/issues/terrorism/rapporteur/docs/A_HRC_13_37_Add2.doc (accessed July 17, 2010).

[54] International Convention for the Protection of All Persons from Enforced Disappearance, adopted December 20, 2006, G.A. Res. 177 (LXI), U.N. Doc. A/RES/61/177 (2006). The convention has not yet reached the required 20 ratifications by member states to come into force.

[55] United Nations Commission on Human Rights, "Report submitted January 8, 2002, by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearance, pursuant to paragraph 11 of Commission Resolution 2001/46" (New York: United Nations, 2002), E/CN.4/2002/71, 36.

[56] See ICCPR, arts. 10(1) and 14(3).

[57] Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977), rule 92.

[58] In General Comment No. 20, adopted in 1992, the Committee recommends that provisions be taken against incommunicado detention. UN Human Rights Committee, General Comment No. 20, para. 11.

[59] UN Commission on Human Rights, Resolution 2003/32, para. 14. The UN Human Rights Council replaced the Commission in 2006.

[60] See Committee against Torture, General Comment 2, Implementation of article 2 by States Parties, U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4 (2007), para. 11.

[61] Egyptian Constitution, article 42.

U.N. Committee against Torture, "Supplementary reports of States parties due in 1996: Egypt 28/01/99." CAT/C/34/Add. 11, para. 12. Article 42 of the Constitution states: "Any citizen who is arrested or imprisoned or whose freedom is restricted in any way must be treated in a manner conducive to the preservation of his human dignity. No physical or mental harm shall be inflicted on him." (Cited in *Ibid.*, para. 121).

[63] Committee against Torture, General Comment 2, Implementation of article 2 by States Parties, U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4 (2007), para. 8.

[64] Convention against Torture, art. 2(1).

[65] *Ibid.*, art. 14.

[66] ICCPR, art. 2 (3)(b). See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of international Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, adopted by the 60th session of the United Nations General Assembly, A/RES/60/147, principle II.3.(d). "The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: (d) Provide effective remedies to victims, including reparation, as described below."

[67] National report of the Egyptian government submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, 16 November 2009, A/HRC/WG.6/7/EGY/1, <http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CEGSession7.aspx> (accessed July 15). This was the Egyptian government's report to the Human Rights Council in preparation for the Council's February 2010 Universal Periodic Review of Egypt's human rights record. All official documents related to Egypt's UPR are available on this UN website <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/EGSession7.aspx> (accessed November 25, 2010).

[68] For more information see project website. The UNDP training is based on an agreement with the Ministry of Foreign Affairs.

<http://www.benaa-undp.org/english/index.php?pageid=2&page=About%20Benea> (accessed November 25, 2010).

[69] Human Rights Watch interview with HM, Cairo, June 16, 2010.

[70] Makram Mohamed Ahmad, "Prisons, Torture and Detention: an interview with the Public Prosecutor," *Al-Musawwar*, January 26, 1990.

[71] U.N. Committee against Torture, Summary Record of the 385th meeting, May 14, 1999, U.N. doc. CAT/C/SR.385, para. 11

[72] Report of the Special Rapporteur, Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, January 25, 2001, U.N. doc E/CN.4/2001/66 para. 473.

[73] National Council for Human Rights, *Annual Report 2004/2005*, p.111, <http://nchregypt.org/ar/images/files/1stannualreportar.pdf> (accessed June 17, 2010).

[74] "Torture creates new confrontation between the Brotherhood and the Interior in the People's Assembly," *Al-Masry al-Youm*, May 23, 2007,

<http://www.almasry-alyoum.com/article2.aspx?ArticleID=61880&IssueID=683> (accessed June 23, 2010).

[75] Mufid Fawzy interview with General Habib El Adly, minister of interior, January 24, 2010, <http://www.youtube.com/watch?v=OgkjzHHbj2w&feature=related>

(accessed August 3, 2010).

[76] The widespread images of torture inflicted on 'Imad al-Kabir in January 2006 and Khaled Said in June 2010 are cases in point.

[77] Human Rights Watch interview, Colonel Dr Mohamed Ghanam, Cairo, April 6, 2001.

[78] Ministry of Interior news release, June 12, 2010.

<http://www.moiegypt.gov.eg/Arabic/Departments+Sites/Media+and+public+Relation/Ministry+Releases/by12062010.htm>, (accessed June 13, 2010).

[79] Human Rights Watch interview with Dr. Ali Kassem, Alexandria, June 15, 2010.

[80] Human Rights Watch interview with NCHR staff person, Cairo, June 30, 2010.

[81] Police Law 109/1971, art. 57. The judge is appointed from the Fatwa-Administration at the administrative court (Council of State). The prosecution is represented by the Ministry of Interior's Inspection Unit. Higher ranking officers are tried before a different committee, composed of two Ministry of Interior representatives, the president of Cairo's Appeal Court, the public prosecutor and one representative of the higher police council, Police Law, art. 62.

[82] Human Rights Watch meeting with General Ahmad Ibiary, General Sherif Galal, Brigadier Hisham Abd al-Hamid and Brigadier Hisham Abdu, State Security Investigations headquarters, Cairo, June 12, 2010.

[83] Communication No 778/1997, *Case of Coronel et al (Colombia)*, United Nations Documents CCPR/C/70/D/778/1997, October 13, 2000, para. 6.4.

[84] Mohamed Ghanam, "The Golden Age of Torture," *al-Sha'ab*, February 8, 2000.

[85] Due to difficulties of access, Human Rights Watch did not focus its research on the inspection unit or the administrative tribunals at the Ministry of Interior, which suffer from the same lack of transparency.

[86] Human Rights Watch interview with NCHR staff person, Cairo, June 30, 2010.

[87] The International Coordinating Committee of National Human Rights Institutions accredited the NCHR with A status. For a full list of National Human Rights Institutions accredited with A status see http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf.

[88] The ministry's SSI department has one or more persons assigned to monitor human rights and other critical NGOs. That person regularly calls key staff in the NGOs for "updates."

[89] National Council for Human Rights, Annual Report 2006/2007, p.28, <http://nchregypt.org/ar/images/files/2ndannualreport.pdf> (accessed June 18, 2010).

[90] Human Rights Watch interview with NCHR staff person, Cairo, June 30, 2010.

[91] Abdullah Khalil, "The General Prosecutor between the Judicial and Executive Authorities," in Nathalie Bernard-Maugiron, ed., *Judges and Political Reform in Egypt* (Cairo: American University in Cairo Press, 2008), p.60.

[92] Baudouin Dupret and Nathalie Bernard-Maugiron, "Egypt and its Laws", Baudouin Dupret and Nathalie Bernard-Maugiron (eds.) *Egypt and its Laws*. (London: Springer, October 2002). Additionally, there are specialized *niyaba* offices, e.g. for juvenile offenders and drugs.

[93] In 1993, the *niyaba* established an Office for Human Rights at the office of the Public Prosecutor, "to receive reports and complaints of relevance to human rights." Public Prosecution, Circular 12/1993 on decree of Public Prosecutor 2213/1993, November 17, 1993. The office appears to be defunct at this writing.

[94] General Prosecution, Decree 1884/1999, on Establishment of the Office for International Cooperation, Execution of Judgments and Prisoners' Affairs and Determination of its Authority, art. 18.

[95] CCP, art. 24 obliges law enforcement officers to bring any information relating to a crime to the attention of the *niyaba* immediately. Art. 25 provides that "whosoever shall learn of the commission of a crime ... must inform the *niyaba* or a law enforcement officer..."

[96] Prison Law 396/1956, art. (1) states that penitentiaries, general prisons, central prisons are subject to judicial inspection.

[97] CCP, art. 42.

[98] "Surprise Inspection by Prosecutors Reveals Serious Human Rights Violations," Egyptian Organization for Human Rights news release, July 16, 2008, www.anhri.net/egypt/eohr/2007/pr0716.shtml (accessed September 19, 2010).

[99] Nasser Sharkawy, "Prosecution team discovers 40 Arbitrarily Detained in Montaza Police Station," *Al-Masry al-Youm*, July 17, 2007, <http://www.almasry-alyoum.com/nsection.aspx?SectionID=301&IssueID=738> (accessed September 21, 2010).

[100] Human Rights Rights phone interview with families' lawyer, name withheld, September 29, 2010.

[101] Tarek Amin, "SSI officer threatens to Shoot Three Prosecutors to Prevent them from Inspecting SSI detention Facilities," *Al Masry al-Youm*, September 28, 2010, <http://www.almasry-alyoum.com/article2.aspx?ArticleID=271394> (accessed September 29, 2010).

[102] Yasser Shamis and Tarek Amin, "Public Prosecutor Summons SSI officer accused of threatening three prosecutors and preventing them from inspecting SSI office," September 29, 2010, <http://www.almasry-alyoum.com/article2.aspx?ArticleID=271511&IssueID=1908> (accessed September 29, 2010).

[103] Letters reproduced in National Council for Human Rights, *Sixth Annual Report 2009/2010*, <http://nchregypt.org/ar/images/files/6th%20annual%20reporteng.pdf> (accessed August 3, 2010).

[104] Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Punishment ("Istanbul Protocol"), August 9, 1999. The United Nations General Assembly in its resolution 55/89 of February 22, 2001, drew the attention of governments to the Principles on the Effective Investigation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (Istanbul Principles) emanating from the Istanbul Protocol.

[105] *Polay Campos v. Peru*, communication No 577/1994(CCPR/C/61/D/577/1994), para. 8.4 and *Steve Shaw v. Jamaica*, communication No. 704/1996 (CCPR/C/62/D/704/1996), paras. 2.5 and 7.1.

[106] Human Rights Watch, Middle East Watch [Human Rights Watch], *Behind Closed Doors*, p. 6.

[107] The Ministry of Justice determines the composition of the Supreme Judicial Council, the body that nominates, promotes, and gives judges their assignments. The Minister of Justice may appoint any competent judge to occupy eight of the Supreme Judicial Council's 15 seats. The seven other members—the general prosecutor, the minister of state for justice, the head of the Court of Cassation, two other justices from the Court of Cassation, the president of the Court of Appeal, and the chief justice from the Tribunal of First Instance in Cairo—occupy their seats by virtue of their positions. Since the executive appoints the general prosecutor, the minister of state for justice, and the head of the Court of Cassation, 11 of the 15 Supreme Judicial Council members are directly appointed by the executive. This makes it possible for the executive to determine which judges sit in key seats.

[108] Law on Judicial Authority 46/1972, arts. 77 (bis) (1), 119; see, Brown, *Rule of Law*, pp. 96-97. Members of the Supreme Judicial Council are the president of the Cairo Court of Appeal, the public prosecutor, and four senior judges of the Court of Cassation and other appeals courts.

[109] Report of the special rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, Commission on Human Rights Fifty-seventh session, E/CN.4/2001/66, January 25 2001, http://ap.ohchr.org/documents/alldocs.aspx?doc_id=2380 (accessed October 28, 2010).

[110] Committee against Torture art. 20 Examinations Re: Systematic Torture, CAT A/51/44 (1996).

[111] CCP, art. 76.

[112] Human Rights Watch interview with lawyer Taher Abul Nasr, Cairo, September 22, 2010.

[113] Human Rights Center for the Assistance of Prisoners (HRCAP), "Torture in Egypt is a Judicial Reality," (Cairo, 2001), p. 27.

[114] CCP, art. 1.

[115] National report of the Egyptian government submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, November 16, 2009, A/HRC/WG.6/7/EGY/1, <http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CEGSession7.aspx> (accessed July 15, 2010).

[116] Ministry of Foreign Affairs, letter to Human Rights Watch, February 22, 2010.

[117] Supplementary Reports of States parties due in 1996: Egypt, January 28, 1999, U.N. doc CAT/C/34/Add.11 paras. 152-154. [hereafter quoted as CAT/C/34/Add.11] See below for the precise percentage.

[118] CAT, art.12.

[119] CAT, art.13.

[120] See, e.g., UN General Assembly. Resolution 55/111, December 4, 2000, para. 6 (regarding the "obligation of all Governments to conduct exhaustive and impartial investigations" into all suspected cases of unlawful killings).

[121] See, e.g. Commission on Human Rights, Resolution 2001/62, April 25, 2001, para. 6 (allegations of torture and ill-treatment "should be promptly and impartially examined by the competent national authority").

[122] See, e.g. Human Rights Committee, Decision dated November 13, 1995, Communication No. 563/1993, Case of Nydia Erika Bautista (Colombia), UN doc. CCPR/C/55/D/563/1993, para. 8.6 (states parties are "under a duty to investigate thoroughly alleged violations of human rights"); Conclusions and recommendations of the Committee against Torture: The Russian Federation, UN Doc. CAT/C/RUS/CO/4, February 6, 2007, para. 12.

[123] See, e.g., UN special rapporteur on extra-judicial, summary or arbitrary executions, Report of the Special Rapporteur, Philip Alston, March 8, 2006, E/CN.4/2006/53, para. 36 ("Armed conflict and occupation do not discharge the State's duty to investigate and prosecute human rights abuses.... States are also held to a standard of due diligence in armed conflicts as well as peace").

[124] See, e.g. European Court of Human Rights, Judgment *Aksoy v. Turkey*, December 18, 1996, application no. 00021987/93, para. 98.

[125] See Inter-American Court of Human Rights, Judgment of 29 July 1988, para. 174 (the "state has a legal duty to ...use the means at its disposal to carry out a serious investigation").

[126] See European Court of Human Rights, Judgment, *Hugh Jordan v. The United Kingdom*, May 4, 2001, Application no. 24746/94, para. 109.

[127] See European Court of Human Rights, *Bati and others v. Turkey*, September 3, 2004, Application nos. 33097/96 and 57834/00 ("While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, it may generally be regarded as essential for the authorities to launch an investigation promptly in order to maintain public confidence in their adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts.") art. 136. Lapses in cases range from one to five years, and delays in taking witness statements from four months to several years. For a summary of cases see C. Buckley, *Turkey and the European Convention on Human Rights, A report on the Litigation Programme of the Kurdish Human Rights Project*, London, July 2000, p. 143, n. 781.

[128] Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989).

[129] European Court of Human Rights, Judgment, *Hugh Jordan v. The United Kingdom*, May 4, 2001, Application no. 24746/94, para. 103.

[130] Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR

Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989).

[131] Ibid.

[132] El 'Ashira Masa'an is a popular daily talk-show on a private satellite station in Egypt which discussed the case of Khaled Said who police beat to death on the street in Alexandria.

[133] Egyptian Constitution, art. 42.

[134] Penal Code, arts. 126, 129, 236, 241, 242, 280.

135CCP, art. 9.

[136] Penal Code, arts. 126, 129, 236, 241, 242, 280.

[137] CCP, art. 366.

[138] For more on lenient sentences see Section VII: Lenient Sentencing and Failure to Discipline below.

[139] As quoted in CAT/C/34/Add.11, p. 32.

[140] While initially a separate law on terrorism, law 100/1992 has been integrated into the Penal Code.

142 1999 report to the CAT, para. 47.

[142] Penal Code, art. 63.

[143] National Council for Human Rights, Annual Report 2007/2008, p. 21 <http://nchregypt.org/ar/images/files/1stannualreportar.pdf> (accessed June 17, 2010).

[144] National report of the Egyptian government submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, 16 November 2009, A/HRC/WG.6/7/EGY/1, <http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CEGSession7.aspx> (accessed July 15) [hereinafter Egypt National Report to UPR].

[145] Mohamed Abd al-Kader, "Shaab Legislative Committee refuses to increase the penalty for torture ... Altercation between MPs," *Al-Masry al-Youm*, February 16, 2010, <http://www.almasry-alyoum.com/article2.aspx?ArticleID=244193&IssueID=1683> (accessed October 18, 2010).

[146] Human Rights Watch meeting with Ambassador Wael Abul Magd, Egyptian Ministry of Foreign Affairs, June 21, 2010.

[147] Committee against Torture, General Comment 2, Implementation of article 2 by States Parties, U.N. Doc. CAT/C/GC/2/CRP. 1/Rev.4 (2007), para. 4.

[148] Committee against Torture Summary Account of the Results of the Proceedings Concerning the Inquiry on Turkey, Official Records of the General Assembly, Forty-eight Session, Supplement No. 44 (A/48/44/Add.1), para. 39, <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/A.48.44.Add.1.En?Opendocument> (accessed August 1, 2010).

[149] A finding that there is no crime to prosecute, [at times because the parties reconciled], or that no damage was caused.

[150] The Arabic *la wajh li-iqamat ad-da'wa*, literally means "no reason to institute proceedings." Center for Legal Research and Studies, *General Instructions to the Niyaba in Penal Matters*, (Cairo, 2001), arts. 805 (2), 868. "The niyaba is not allowed to issue a decision to put the case on file if it already undertook any investigative measure ... in that case, a decision to close the file is to be issued." Art. 812. However, in practice the distinction appears to be less fine.

[151] Human Rights Watch interview with lawyer Taher Abul Nasr, Cairo, September 22, 2010; Human Rights Watch interview with Adel Ramadan, lawyer, Cairo,

September 20, 2010.

[152] If the case involves a misdemeanor or contravention, and the defendant is another citizen, complainants can raise a civil case directly in court even if the *niyaba* decided not to sustain their complaint: *Instructions to the Niyaba*, art. 810; CCP, art. 63.

[153] CCP, art. 210 (1).

[154] *Instructions to the Niyaba*, art. 872.

[155] *Ibid.*, arts. 783, 871.

[156] CCP, art. 62 and *Instructions to the Niyaba*, arts. 531, 809. The *niyaba* must notify the complainant only if he also intends to sue for civil damages.

[157] Human Rights Watch interview with Adel Ramadan, lawyer, Cairo, September 20, 2010.

[158] Human Rights Watch interview with Maha Youssef, lawyer, Cairo, July 6, 2010.

[159] Human Rights Watch interview with Sayed Fathy, lawyer, Cairo, June 30, 2010. Lawyers Maha Youssef and Mohamed Shabana made the same comment.

[160] Human Rights Watch interview with judge and former prosecutor, name withheld, Cairo, July 14, 2010.

[161] National Council for Human Rights, *Annual Report 2004/2005*, p.111, <http://nchregypt.org/ar/images/files/1stannualreportar.pdf> (accessed June 17, 2010).

[162] Human Rights Watch interview with Mahmoud Kandil, human rights lawyer, June 23, 2010.

[163] Human Rights Watch interview with Haitham Misbah, Alexandria, June 16, 2010.

[164] Human Rights Watch interview with Mohamed Hussein Abdullah, Ahmad Saber Abdullah and Qutb Abdullah, relatives of Fadl Abdullah, Cairo, July 14, 2010. For more on the case of Fadl Abdullah, see Section V: Failure to Conduct an Impartial Investigation.

[165] Human Rights Watch interview with Taher Abul Nasr, Cairo, July 4, 2010.

[166] CCP, arts. 18 (bis), 18 (bis) (1).

[167] *Instructions to the Niyaba*, art. 805 (4).

[168] Human Rights Watch interview with Shadi Maged Zaghoul, Cairo, July 10, 2010.

[169] Human Rights Watch interview with Shadi Maged Zaghoul, Cairo, July 10, 2010.

[170] "Egypt: Hold Police Accountable for Torture," Human Rights Watch news release, December 22, 2006, <http://www.hrw.org/en/news/2006/12/22/egypt-hold-police-accountable-torture>. For more on the trial of 'Imad al Kabir see below under VII. Lenient Sentencing and Failure to Discipline.

[171] Human Rights Watch interview with Ahmad Mustafa Abdullah, July 10, 2010.

[172] "Egypt: Investigate Torture, Rape of Activist Blogger," Human Rights Watch news release, March 18, 2007, <http://www.hrw.org/en/news/2007/03/18/egypt-investigate-torture-rape-activist-blogger>.

[173] According to penal code article 300, the punishment for pressuring a witness into perjury or not giving testimony depends on the gravity of the offense in question, and is either a prison term or labor (Penal Code, arts. 294-298).

[174] Penal Code, art. 327.

[175] CAT/C/34/Add. 11 para. 114.

[176] CAT, art.13.

[177] Concluding Observations of the Committee against Torture: Tunisia, 11//19/1998, A/54/44, paras. 99-105, <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/A.54.44.paras.88-105.En?Opendocument> (accessed July 7, 2010).

[178] Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol"), August 9, 1999, p.19.

[179] Human Rights Watch interview with Aida Seif El Dawla, Cairo, May 17, 2010.

[180] *Encarnación Blanco Abad v. Spain*, Communication No. 59/1996, U.N. Doc. CAT/C/20/D/59/1996 (1998), para. 8.2, <http://www1.umn.edu/humanrts/cat/decisions/59-1996.html> (accessed July 17, 2010)

[181] Report of the Human Rights Committee, October 3 1995, A/50/40, para. 94, referring to Tunisia, <http://www.un.org/documents/ga/docs/50/plenary/a50-40.htm> (accessed July 17, 2010).

[182] See I Torture and Enforced Disappearance by State Security Investigations and VI State Security Court Reliance on Confessions Obtained Under Torture

[183] "Egypt: Investigate Torture, Rape of Activist Blogger," Human Rights Watch news release, March 18, 2007, <http://www.hrw.org/en/news/2007/03/18/egypt-investigate-torture-rape-activist-blogger>

[184] Human Rights Watch interview with Shadi Maged Zaghloul, Cairo, July 10, 2010.

[185] Daren Farghaly, "Dr. Ayman Foda, Former Chief Forensic Medical Doctor: the Department requires Fundamental Restructuring and the Khaled Said report was Unsound," *Al-Masry al-Youm*, June 30, 2010, <http://www.almasry-alyoum.com/article2.aspx?ArticleID=260729&IssueID=1817> (accessed June 30, 2010).

[186] Human Rights Watch phone interview with international NGO staff, name withheld, September 23, 2010.

[187] Special Rapporteur on Torture, Report to 52nd session of the General Assembly (1997), A/52/40, para. 109, referring to Switzerland.

[188] Report of the Special Rapporteur on torture: Visit to Turkey, E/CN.4/1999/61/Add.1, para. 113(d), http://ap.ohchr.org/documents/alldocs.aspx?doc_id=1500.

[189] Ministry of Justice Forensic Medicine Department, Office of the Chief Forensic Doctor, Forensic report No. 123/2010, concerning case no 4783/2010 administrative Sidi Gaber, June 27, 2010.

[190] It cited the standards of the Minnesota Protocol or Recommendation No. R(99) 3 on the harmonization of medico-legal autopsy rules from the Council of Europe, available in the *International Journal of Legal Medicine*, No. 113, 1999, pp. 1-4.

[191] Duarte Nuno Vieira and Jørgen L.Thomsen, "Expert evaluation of the forensic reports issued in the Khaled Mohamed Said Sobhi case," <http://www.alnadeem.org/en/node/306> (accessed December 3, 2010).

[192] Human Rights Watch interview with former prosecutor, name withheld, Cairo, July 7, 2010.

[193] Human Rights Watch interview with judge and former prosecutor, name withheld, Cairo, July 14, 2010.

[194] *Instructions to the Niyaba*, art. 189.

[195] *Ibid.*, art. 167.

[196] Human Rights Watch interview with Awad and Ashraf Nasr Awad, Cairo, July 14, 2010.

[197] National Council for Human Rights, *Annual Report 2004/2005*, <http://nchregypt.org/ar/images/files/1stannualreportar.pdf> (accessed June 17, 2010).

[198] *Encarnación Blanco Abad v. Spain*, Communication No. 59/1996, U.N. Doc. CAT/C/20/D/59/1996 (1998), para. 8.2, <http://www1.umn.edu/humanrts/cat/decisions/59-1996.html>. (accessed October 28, 2010).

[199] *Ibid.*, paras. 8.5 and 8.7, <http://www1.umn.edu/humanrts/cat/decisions/59-1996.html> (accessed October 28, 2010).

[200] Human Rights Watch interview with former prosecutor, name withheld, Cairo, July 7, 2010.

[201] Human Rights Watch interview with judge and former prosecutor, name withheld, Cairo, July 14, 2010.

[202] Human Rights Watch interview with former prosecutor, name withheld, Cairo, July 7, 2010.

[203] *Ben M'Barek v. Tunisia*, Communication No 60/1996 : Tunisia. 01/24/2000, CAT/C/23/D/60/1996, <http://www.unhcr.ch/tbs/doc.nsf/0/00c2952fe36f0b46802568b8004e05de?Opendocument> (accessed October 5, 2010).

[204] Judgment, Supreme State Security Court (Emergency), case 382/1986, al-Abdin, 198/1986 District Prosecution Central Cairo, February 13, 1990, as quoted in Khalil/Mohamed, *Legislation restricting rights*, pp. 354-355.

[205] Judgment, Supreme State Security Court (Emergency), case 2903/1991 Felonies Imbaba, 164/1991 District Prosecution North Gizah; EOHR Press Release, "Torture of accused in murder of al-Mahjub and the responsibility of the *niyaba*," August 1, 1991.

[206] Military Order 14/1956 on Administration of Prisons, art. 27 "If a death was not natural or sudden, the commander [of the prison] has to notify the *niyaba*."; Memorandum by Director of Judicial Inspection Abd al-Majid Mahmud to public prosecutor, March 7, 2000; *Instructions to the Niyaba*, art. 442.

[207] *Instructions to the Niyaba*, art. 445 (1).

[208] *Ibid.*, art. 442.

[209] Human Rights Watch interview with Mohamed Hussein Abdullah, Ahmad Saber Abdullah, and Qutb Abdullah, Cairo, July 14, 2010.

[210] *Ibid.*

[211] Human Rights Watch phone interview with Hussein Abdullah, August 15, 2010. The Sa'eed, the Arabic name for Upper Egypt, is known for tribal vendettas where families resort to force, and blood feuds can rage until a settlement between the families is reached over blood money.

[212] European Court of Human Rights, *Hugh Jordan v. The United Kingdom*, para. 107.

[213] Human Rights Watch interview with Tarek Zaghloul, Cairo, June 29, 2010.

[214] See above, Torture and Enforced Disappearance by State Security Investigations (SSI), in Section 1. See also Human Rights Watch, *Egypt: Anatomy of a State Security Case*; Human Rights Watch, *Black Hole: the Fate of Islamists Rendered to Egypt*; Human Rights Watch, *Egypt: Mass Arrests and Torture in Sinai*; "Egypt: Torture in State Security Headquarters," Human Rights Watch news release, April 23, 2003, <http://www.hrw.org/en/news/2003/04/23/egypt-torture-state-security-headquarters>.

[215] The meetings were with Gen. Ahmad `Umar Abu al-Sa`ud, a member of the cabinet of Minister of Interior Habib al-`Adli, on February 28, 2004, and

February 22, 2005, in Cairo.

[216] See Middle East Watch [Human Rights Watch], *Behind Closed Doors: Torture and Detention in Egypt* (New York, 1992), p. 117-118.

<http://www.hrw.org/en/reports/1992/07/01/behind-closed-doors>.

[217] Committee against Torture, art. 20 Examinations Re: Systematic Torture, CAT A/51/44 (1996).

[218] 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, October 14, 2009, http://www2.ohchr.org/english/issues/terrorism/rapporteur/docs/A_HRC_13_37_Add2.doc (accessed July 17).

[219] For consistent reports of blindfolding during SSI interrogations see Human Rights Watch, *Egypt: Anatomy of a State Security Case*; Human Rights Watch, *Black Hole*; and Human Rights Watch, *Egypt: Mass Arrests and Torture in Sinai*.

[220] A/56/156, para. 39(f). The recommendation, as proposed in an earlier report of the special rapporteur on torture, was endorsed by the UN Commission on Human Rights in resolution 1994/37 of 4 March 1994.

[221] See Human Rights Watch, *Egypt: Hostage-Taking and Intimidation by Security Forces*, January 1995, pp. 26-27.

[222] Human Rights Watch, *World Report 1995* (New York: Human Rights Watch, 1995), Egypt chapter, p.

263, www.hrw.org/legacy/reports/1995/WR95/MIDEAST-02.htm#P170_51357.

[223] Human Rights Watch meeting with SSI officials, Cairo, November 17, 2007.

[224] "Egypt: Police Officers Get Three Years for Beating, Raping Detainee," Human Rights Watch news release, November 6, 2007,

<http://www.hrw.org/en/news/2007/11/06/egypt-police-officers-get-three-years-beating-raping-detainee>.

[225] Report of the Forensic Medical Authority, Ministry of Justice, April 2005, on file with Human Rights Watch.

[226] Report of the Public Prosecutor, Ministry of Justice, May 22, 2005, on file with Human Rights Watch.

[227] Human Rights Watch interview with Mohsin Bahnassi, Cairo, June 29, 2010.

[228] The Law on the State of Emergency, Law No. 162 of 1958, art. 7.

[229] Human Rights Watch, *In a Time of Torture: The Assault on Justice in Egypt's Crackdown on Homosexual Conduct* (New York: Human Rights Watch, 2004); Human Rights Watch, *Egypt: Anatomy of a State Security Case*; "Egypt: Terrorism Trial Shows Serious Flaws: Torture Allegedly Used to Coerce Confessions," Human Rights Watch news release, December 12, 2006, <http://hrw.org/english/docs/2006/12/13/egypt14829.htm>; Human Rights Watch, *Egypt: Mass Arrests and Torture in Sinai*. For more on these courts see also Human Rights Committee, "Concluding Observations, Egypt," U.N. Doc. CCPR/CO/76/EGY (2002), para. 16(b). See ICCPR, art. 14.

[230] CCP, art. 126 bis, as amended by Law No. 95 of 2003.

[231] Human Rights Watch interview with Ahmad Saif al-Islam, lawyer, Cairo, December 7, 2010.

[232] For more on SSI's practice of disappearing people, see Background section.

[233] See below for examples of this in Taba Trial and in Zeitoun trial. Human Rights Watch interview with Taher Abul Nasr, Cairo, September 22, 2010.

[234] Egyptian Constitution, art. 42. The first part of art. 42 states: "no physical or moral harm is to be inflicted upon him. He may not be detained or imprisoned except in places defined by laws organizing prisons."

[235] General Recommendations of the Special Rapporteur on Torture, E/CN.4/2003/68, para. 26, <http://www2.ohchr.org/english/issues/docs/recommendations.doc> (accessed September 15, 2010).

[236] United Nations Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990, <http://www2.ohchr.org/english/law/prosecutors.htm> (accessed September 15, 2010).

[237] Human Rights Watch interview with Mohsin Bahnassi, lawyer, Cairo, June 29, 2010.

[238] Human Rights Watch interview with Sayed Fathi, lawyer, Cairo, June 30, 2010.

[239] "Egypt: Terrorism Trial Shows Serious Flaws: Torture Allegedly Used to Coerce Confessions," Human Rights Watch news release, December 12, 2006, <http://hrw.org/english/docs/2006/12/13/egypt14829.htm>; For more on the arbitrary arrest and detention of thousands of men after the Taba bombings and on the torture they experienced see Human Rights Watch, *Egypt: Mass Arrests and Torture in Sinai*.

[240] "Egypt: Terrorism Trial Shows Serious Flaws: Torture Allegedly Used to Coerce Confessions," Human Rights Watch news release, December 12, 2006, <http://hrw.org/english/docs/2006/12/13/egypt14829.htm>.

[241] "Egypt: Halt Execution of Accused Taba Bombers: Government Should Give Alleged Attackers a Fair Trial," Human Rights Watch news release, June 10, 2007, <http://www.hrw.org/ar/node/73706>.

[242] Human Rights Watch interviews with Said Shehata, attorney for multiple detainees, Cairo, July 9 and 11, 2007. Shehata told Human Rights Watch that in his experience representing SSI detainees, it was rare for detainees to be taken before a prosecutor while they were still suffering injuries or effects of mistreatment; most were brought to the prosecution office later: "State Security usually waits until wounds are healed before bringing detainees before the prosecutor. And anyway, even if there are marks, the forensic experts will usually write down that they are 'marks of an old wound.'"

[243] Human Rights Watch interview with Said Shehata, attorney for multiple detainees, Cairo, July 9, 2007.

[244] Human Rights Watch interview with Mohamed Shabana, defense lawyer, Cairo, March 28, 2010.

[245] *Ibid.* Mohamed Fahim was arrested on July 2 and first saw a prosecutor on August 19.

[246] See *El Youm El Sabi'* for pictures, <http://www.youm7.com/News.asp?NewsID=203359&SecID=12&IssueID=0> [accessed October 27, 2010].

[247] Human Rights Watch interview with Haitham Mohamadein, lawyer, Cairo, March 22, 2010.

[249] Human Rights Committee, General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7), October 3, 1992, <http://www.unhcr.ch/tbs/doc.nsf/0/6924291970754969c12563ed004c8ae5?Opendocument>.

[250] This practice also permits the government, in its reporting to the U.N. Committee against Torture and with regard to other international scrutiny, to claim fewer cases of torture than actually occur.

[251] Human Rights Watch interview with judge and former prosecutor, name withheld, Cairo, July 14, 2010.

[252] NCHR Annual Report 2007/2008, p. 21.

[253] Penal Code, art. 280.

[254] While initially a separate law on terrorism, law 100/1992 has been integrated into the penal code.

[255] "Egypt: Hold Police Accountable for Torture," Human Rights Watch news release, December 22, 2006, <http://www.hrw.org/en/news/2006/12/22/egypt-hold-police-accountable-torture>; Human Rights Watch interview with Nasr Amin, lawyer, Cairo, July 8, 2010.

[256] "Egypt: Police Officers Get Three Years for Beating, Raping Detainee," Human Rights Watch news release, November 6, 2007, <http://www.hrw.org/en/news/2007/11/06/egypt-police-officers-get-three-years-beating-raping-detainee>.

[257] *Public Prosecution v. Islam Nabih Abd al-Salam Awad and Reda Fathi al-Sayed Abu Fatma*, Giza Criminal Court, Case Number 2006/47686, Boulak Dakrou Number 2006/5888, judgment, November 5, 2007.

[258] Ahmed Saif al-Islam, Aida Esmat Saif al-Dawla, Laila Mostafa Soueif et al. v. Minister of Interior, Council of State, Case Number 33796, Decision, January 26, 2010.

[259] Police Law, Law No. 109 of 1971.

[260] Police Law, art. 48.

[261] Human Rights Watch interview with NCHR staff, Cairo, June 30, 2010.

[262] Human Rights Watch interview with Mahmoud Kandil, human rights lawyer, June 23, 2010.

[263] Cited in Human Rights Centre for the Assistance of Prisoners UPR submission to the Human Rights Council, http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/EG/HRAAP_UPR_EGY_S07_2010_HumanRightsAssociationfortheAssistanceofPrisoners.pdf (accessed October 5, 2010).

[264] Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol"), August 9, 1999, p.19.

[265] European Court of Human Rights, *Gafgen v Germany*, judgment of June 1, 2010, www.echr.coe.int/ (accessed November 18, 2010).

[266] United Nations Human Rights Committee, General Comment No.7 on torture or cruel, inhuman or degrading treatment or punishment (art. 7 of the ICCPR) of May 30, 1982.

[267] United Nations Human Rights Committee, General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add/13 (2004), para. 15.

<http://www.hrw.org/en/reports/2011/01/30/work-him-until-he-confesses>

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