

EGYPT

Increasing use of the death penalty

In 1999 alone at least 108 people, including 12 women, were sentenced to death. Over the past five years (1996-2001) at least 382 people were sentenced to death in Egypt; an average of 76 people each year. Over the same period at least 114 executions were reported.

While the use of the death penalty is decreasing worldwide, in Egypt its use has increased over the past decade. At the beginning of the 21st century, 111 countries - over half the countries in the world - had abolished the death penalty in law or in practice. Only 84 countries retain and use the death penalty, although the number of countries which actually execute prisoners is much smaller. Indeed, over the past decade more than three countries per year on average have abolished the death penalty in law or, having abolished it for ordinary crimes, have gone on to abolish it for all crimes. Once abolished, the death penalty is seldom reintroduced.

This trend reflects the growing awareness that there are alternative, effective punishments to the death penalty which do not involve the premeditated and cold-blooded killing of a human being by the state in the name of justice. The death penalty has never been shown to deter crime more effectively than other punishments and brutalizes all those involved in its application. The irrevocable punishment of death removes not only the victim's right to seek legal redress for wrongful conviction, but also the judicial system's capacity to correct error.

Amnesty International opposes the death penalty in all cases without exception as a violation of the right to life, as set out in the United Nations Universal Declaration of Human Rights and as the most extreme form of cruel, inhuman or degrading punishment. The right to life and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment are enshrined in international standards to which Egypt is a state party, including the International Covenant on Civil and Political Rights (ICCPR).

The ICCPR and other international standards aiming at the abolition of the death penalty place strict restrictions on its imposition in countries which have not yet abolished it.¹ Death sentences may only be imposed for the most serious crimes, understood as those with lethal or extremely grave consequences.² The imposition of the death penalty on people in certain

¹ The Second Optional Protocol to the ICCPR, adopted by the UN General Assembly in 1989, obliges states parties to take all necessary measures within its jurisdiction to abolish the death penalty. Egypt has not signed or ratified the Protocol.

² Article 6 (2) of the ICCPR; Paragraph 1 of the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty (Death Penalty Safeguards).

categories, including the mentally disabled and people under the age of 18 at the time the offence was committed, is prohibited.³

In view of the irreversible nature of the death penalty, trials in capital cases must comply scrupulously with all international standards for fair trial.⁴ The Human Rights Committee, which monitors states parties' compliance with the ICCPR, has stated that in death penalty cases the procedural guarantees in the ICCPR must be observed, including the right to a fair hearing by an independent tribunal, minimum guarantees for the defence and the right to review by a higher tribunal.⁵ Anyone sentenced to death should have the right to appeal to a higher court and to petition for pardon or commutation of the sentence.⁶

In Egypt, executions continue to be carried out following trials by exceptional courts, namely military and security courts, which grossly violate international standards for fair trial. However, there are also concerns that those sentenced to death by criminal courts may not have the right to a full review before a higher tribunal.

1. Increasing use of death penalty

In defiance of world trends, the use of the death penalty has increased significantly over the past decade in Egypt. From 1991 to 2000 Amnesty International recorded at least 530 death sentences and 213 executions. In comparison, for the period from 1981 to 1990 Amnesty International recorded 179 death sentences and 35 executions.

A report prepared for the UN Commission on Crime Prevention and Criminal Justice on the use of capital punishment in March 2001, based on information supplied by governments, has listed Egypt among those twelve countries worldwide where during the five-year period 1994-1998 more than 100 executions were carried out.⁷

The report also refers to concerns expressed by the UN Special Rapporteur on extra-judicial, summary and arbitrary executions with regard to the death penalty being imposed in

³ Article 6 (5) of the ICCPR; Article 37 (a) of the Convention on the Rights of the Child; Paragraph 3 of the Death Penalty Safeguards.

⁴ Article 6 (2) and Article 14 of the ICCPR; Paragraph 5 of the Death Penalty Safeguards.

⁵ Human Rights Committee, General Comment 6 (on Article 6, the right to life), para 7.

⁶ Article 6 (4) of the ICCPR; Paragraph 7 of the Death Penalty Safeguards.

⁷ E/CN.15/2001.10, UN Commission on Crime Prevention and Criminal Justice: Capital Punishment and the implementation of safeguards guaranteeing protection of the rights of those facing the death penalty, 29 March 2001.

Egypt following trials which violate international standards of fair trial.⁸ In 1999 the UN Special Rapporteur noted with regard to Egypt that she continued to receive “reports of death sentences imposed by military and criminal tribunals that fall short of international standards and fail to respect safeguards established by the International Covenant on Civil and Political Rights.”⁹

There is very little official data available on death sentences and executions in Egypt, and the actual number is expected to be significantly higher than that recorded by Amnesty International,¹⁰ whose figures are based chiefly on reports in the Egyptian media. Amnesty International is aware that not all cases are reported. For example, in July 1998 the main executioner gave an interview in the semi-official daily newspaper *al-Ahram* stating that he had executed 42 people since the beginning of the year, while Amnesty International had recorded 30 executions for that period.

2. Offences punishable by death

Crimes punishable by death include offences under the so-called “anti-terrorism” legislation, premeditated murder, rape and drug related offences. Over the past decade, death sentences have been pronounced for all the above-mentioned offences.¹¹

2.1. “Anti-terrorism” legislation

In the 1990s there was an upsurge of political violence in Egypt, when armed Islamist groups launched numerous attacks on public and security officials throughout the country. Other victims have included a secular writer, members of the Christian community and foreign tourists. In response to the violence, President Hosni Mubarak began issuing special decrees in October 1992 referring civilians charged with offences under “anti-terrorism” legislation for trial before military courts.

⁸Ibid. , para 113.

⁹E/CN.4/1999/39/add.1, para 72.

¹⁰The Egyptian government provides in its combined third and fourth periodic report to the UN Human Rights Committee (which was submitted on 13 November 2001) some information on the number of death sentences. It records over the period of two years the number of people who have received final death sentences: 25 people in 1999 and 30 people in 2000. Amnesty International recorded 16 executions in 1999 and 22 executions in 2000.

¹¹Egyptian legislation also provides for the death penalty for other offences, including arson when this results in death and offences against the external security of the state - such as espionage in times of war. The Military Code lists a number of capital offences for serving members of the armed forces.

Law 97 of 1992 introduced new legal provisions against offences of “terrorism” using alarmingly vague and broad language. For example, Article 86 of the Egyptian Penal Code defines the offence of “terrorism” as follows:¹²

“For the purpose of applying provisions of this law, terrorism means any use of force, violence, threat or intimidation perpetrated as part of an individual or collective criminal plan aimed at breaching public order, or endangering public safety and security, if this leads to harming or terrorising individuals or endangering their lives, freedom or security, or causing damage to environment, means of transport or communication, public or private property or buildings, or occupying or appropriating any of these, or preventing or obstructing the authorities, places of worship or educational establishments in the performance of their duties, or preventing the implementation of the Constitution, laws or regulations”.

In July 1993 the UN Human Rights Committee expressed concerns that Egypt’s laws against “terrorism” are overly broad in the range of acts they cover and that they enlarge the number of offences which are punishable by the death penalty. The Committee called on the Egyptian authorities “to bring legislation in conformity with the provisions of Article 6 of the Covenant [the right to life] and, in particular, limit the number of crimes punishable by the death penalty”.¹³

However, Egypt has chosen to ignore these recommendations by the Human Rights Committee. Since 1992 military courts have sentenced 95 people to death (including several *in absentia*) in connection with charges of “terrorism”, and 67 of these have been executed.

In June 2002 the Supreme Military Court is expected to pronounce its verdict in a case against 94 men accused of membership of an armed Islamist group which has been referred to as *Tanzim al-Wa‘ad* (Organization of Promise).¹⁴ Dozens of the accused stated before the Public Prosecution that they were tortured during incommunicado detention at premises of the SSI. The prosecution has demanded the maximum penalty for the accused, including for those charged with offences carrying the death penalty. Eight of them have been charged, under

¹²The Arab Convention for the Suppression of Terrorism of the League of the Arab States which entered into force on 7 May 1999 uses a definition of terrorism which is based on the definition of Article 86 of the Egyptian Penal Code (See *Amnesty International: The Arab Convention for the Suppression of Terrorism - a serious threat to human rights* - AI Index IOR 51/001/2002).

¹³Comments by the Human Rights Committee, 48th session, Egypt, para 13.

¹⁴Case number 24/2001 before the Military Court.

Article 86 (bis a) of the Penal Code, with the foundation or leadership of a “terrorist” organization and are at risk of being sentenced to death.

2.2. Premeditated murder

According to Article 230 of the Egyptian Penal Code, premeditated murder carries the death penalty. Furthermore Article 235 stipulates:

“Partners in a murder carrying a penalty of death for the perpetrator, shall be sentenced to death, or to hard labor for life”.

According to Amnesty International’s research, over the last few years the majority of people sentenced to death have been convicted for murder. Although Egyptian law stipulates the death penalty for the crime of premeditated murder, there remains significant scope for leniency. For example, on 14 September 2001 the semi-official newspaper *al-Gumhuriya* reported that Cairo Criminal Court had initially sentenced three men to death for premeditated murder, but in a retrial before a different circuit of the same court the men were sentenced to life imprisonment. According to the newspaper, the judges had based their decision on Article 17 of the Penal Code, which allows judges to sentence a person convicted of a crime carrying the death penalty to life imprisonment instead.

2.3. Abduction and rape

According to Article 290 of the Egyptian Penal Code the abduction of a woman carries life imprisonment. However, if the abducted woman is raped the punishment is the death penalty.

Egyptian media have reported a number of cases in which men have been sentenced to death for rape. For example, in April 2001 a total of 11 men were sentenced to death following three separate incidents of gang rape.¹⁵ In March 2002 two men were executed in Zaqaqizq Isti’naf Prison for having raped a woman and attacked and injured her husband with a knife.¹⁶

2.4. Drug related offences

Law 182 of 1960 prescribes the death penalty for a variety of drug related offences. Article 33 stipulates the death penalty for the trafficking and production of drugs. Several other drug related offences may also be punishable by death. Amnesty International has recorded a number of death sentences and executions for drug related offences.

¹⁵*al-Gumhuriya* of 2 April 2001 and of 19 April 2001.

¹⁶*al-Gumhuriya* of 26 March 2002.

3. Legal Procedures

Death sentences are passed by exceptional courts as well as by criminal courts.

3.1 Exceptional courts

Trials before military courts and the Emergency Supreme State Security Court are grossly unfair and in flagrant violation of Egypt's obligations under international treaties, such as the ICCPR.

In October 1992 President Hosni Mubarak began issuing special decrees referring civilians charged with offences related to "terrorism" for trial in military courts. Proceedings before these courts violate some of the most fundamental requirements of international human rights law, including the right to be tried before an independent tribunal and the right to appeal to a higher court.

Egypt's military judges are serving military officers appointed by the Ministry of Defence for a two-year term, which can be renewed for additional two-year terms at the discretion of the Minister of Defence.¹⁷ This does not provide sufficient guarantees of independence.¹⁸

In several mass trials of civilians before military courts, attended by delegates of Amnesty International, defence lawyers consistently complained that they were denied sufficient time to prepare their cases or that their case dossiers were incomplete. This is particularly disturbing given the complexity and seriousness of these cases, and the fact that many defendants face the death penalty. In several cases defence lawyers withdrew from the cases in protest at the fact that their specific requests were refused by the judges. In these situations the president of the military court appoints former military judges to be defence lawyers, against the wishes of the defendants.

There is no right of appeal against death sentences passed by military courts.¹⁹ They are subject only to review by the Military Appeals' Bureau, a body composed of military judges which is not a court, and to ratification by the President.²⁰ This is in violation of Article 14 of the ICCPR, which guarantees that everyone convicted shall have the right to have their conviction

¹⁷Articles 54 to 59 of Law 25 of 1966 (Military Law).

¹⁸The right to be tried before a competent, independent and impartial tribunal is guaranteed in several international human rights standards, including Article 10 of the Universal Declaration of Human Rights and Article 14 of the ICCPR.

¹⁹Article 117 of Law 25 of 1966.

²⁰Articles 111 and 112 of Law 25 of 1966

and sentence reviewed by a higher tribunal. Similarly, there is no right of appeal against sentences, including death sentences, issued by the Emergency Supreme State Security Court.²¹

In July 1993 the UN Human Rights Committee reviewed Egypt's record of implementing the ICCPR and expressed grave concern about the trial of civilians before military courts, concluding that "...military courts should not have the faculty to try cases which do not refer to offences committed by members of the armed forces in the course of their duties."

On 23 February 2000 Ahmad Isma'il Othman was executed by hanging as a result of a death sentence passed *in absentia* in an unfair trial before the Supreme Military Court in Cairo in April 1994. On the same day, Ahmad Ibrahim al-Sayyid al-Naggar, who had been sentenced *in absentia* by the Supreme Military Court in 1997, was also executed. Following their forcible return from Albania to Egypt in 1998, the men were sentenced to 15 and 25 years' imprisonment respectively in 1999 in a separate case before the Supreme Military Court. Although both death sentences were pronounced *in absentia*, they were executed. In other cases, following the arrest of those convicted by military courts *in absentia*, retrials have been ordered.

3.2. Criminal Courts

Death sentences by criminal courts have to be decided by consensus of the members of the court.²² Before pronouncing a death sentence, criminal courts have to submit their decision with the case documents to the Mufti, Egypt's highest religious authority, for his opinion. If he does not give an answer within 10 days, the court may pronounce the death sentence.²³ However, the opinion of the Mufti is not legally binding.

Death sentences passed by a criminal court can only be appealed against by review or cassation before the Court of Cassation. However, grounds of appeal are rather limited and must be made on points of law, but not on the facts of the case.²⁴ In the event that the Court of

²¹Article 12 of Law 162 of 1958 as amended (Emergency Law).

²²Article 381 of the Criminal Procedures Code as amended by Law 627 of 1955.

²³Article 381 of the Criminal Procedures Code.

²⁴According to Article 30 of Law 57 of 1959 (as amended by Law 106 of 1962) death sentences can be appealed against before the Court of Cassation on the following three grounds:

- (1) where the verdict is based on a violation, misapplication, or misinterpretation of the law,
- (2) where the verdict is invalid, or
- (3) where procedural irregularities had an impact on the verdict.

Article 441 of the Criminal Procedures Code defines five grounds for appeal by review. These relate

Cassation²⁵ turns down an appeal, the verdict is final and may not be appealed against before another tribunal.²⁶

If an appeal by review is upheld, the Court of Cassation may either order a retrial or nullify the verdict which implies an acquittal of the convicted party.²⁷ If an appeal by cassation is upheld, the Court of Cassation can only order a retrial. In the event that the Court of Cassation decides to order a retrial the case is referred to a different circuit of the criminal court²⁸. If the retrial results in a conviction and is appealed against, the Court of Cassation rules on the case and pronounces a final verdict²⁹.

According to Article 46 of the Criminal Procedures Code, the Public Prosecution has to submit every death sentence, accompanied by a note of its opinion on the case, to the Court of Cassation. Therefore, all death sentences issued by criminal courts are brought before the Court of Cassation, including those cases where the defendant does not file an appeal, and the court may or may not order a retrial.

However, it remains alarming that those sentenced to death by criminal courts do not have the rights to a full review of their case by a higher tribunal, but may only file an appeal to the Court of Cassation on limited grounds.

mainly to exceptional circumstances, namely:

- (1) where someone is convicted of killing, but the victim turns out to be alive;
- (2) where verdicts in other trials are in conflict with the case in question and require a reassessment;
- (3) where a witness or informant in the trial has been convicted for false testimony or for forgery of documents presented during the examination of the case;
- (4) where the verdict was based on the verdict of a civil court which has subsequently been nullified;
- (5) where new information or evidence comes to light after the verdict.

²⁵Provisions for appeal before the Court of Cassation are also applicable for verdicts by the Supreme State Security Court, established under emergency legislation, but not the Emergency Supreme State Security Court, whose verdicts can not be appealed against by cassation (see above).

²⁶Article 38 of Law 57 of 1959 (as amended by Law 106 of 1962).

²⁷Article 446 of the Criminal Procedures Code.

²⁸Article 39 of Law 57 of 1959 (as amended by Law 106 of 1962).

²⁹Article 45 of Law 57 of 1959 (as amended by Law 106 of 1962).

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has expressed concern about cassation review procedures which are limited to a review of questions of law rather than an examination of the law and facts of the case, on grounds that defendants do not benefit fully from the right to appeal as set forth in international standards.³⁰

3.3 Ratification by the President

Final death sentences are submitted for ratification to the President of the Republic or his nominee; they may decide on whether or not to grant clemency by ordering a pardon or a reduction of the sentence. If no clemency or reduction of the sentence is granted, the death sentence may be carried out after 14 days.³¹

4. Recommendations

Amnesty International recalls Resolution 2002/77, adopted by the UN Commission on Human Rights in April 2002³² regarding the death penalty. The Resolution calls upon all states that maintain the death penalty:

“(a) Progressively to restrict the numbers of offences for which the death penalty may be imposed;

(b) To establish a moratorium on executions, with a view to completely abolishing the death penalty;

(c) To make available to the public information with regard to the imposition of the death penalty.”

Amnesty International also calls on the Egyptian authorities:

- to commute all pending death sentences;
- to move towards the abolition of the death penalty and to respect international standards restricting the scope of the death penalty pending abolition in line with the recommendations of the UN Human Rights Committee in 1993;

³⁰Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, 7 December 1993, UN Doc: E/CN.4/1994/7.

³¹Article 470 of the Criminal Procedures Code.

³² E /CN.4/RES/2002/36.

- to ensure the most rigorous standards for fair trial are respected in cases involving the death penalty, by:

- stopping immediately the trial of civilians before exceptional courts, namely military courts and the Emergency Supreme State Security Court;
- guaranteeing the right to a fair public hearing by a competent independent and impartial tribunal; and
- ensuring immediately that all those sentenced to death before criminal courts have the right to a full review of their case before a higher tribunal.