

EGYPT

Follow-up - State Reporting

i) Action by Treaty Bodies, Including Reports on Missions

CCPR A/59/40 vol. I (2004)

CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

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260. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. Of the 27 States parties (detailed below) that have been before the Committee under the follow-up procedure over the last year, only one (Republic of Moldova) has failed to provide information at the latest after dispatch of a reminder. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

261. The table below details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided to take no further action prior to the period covered by this report.

<u>State party</u>	<u>Date information due</u>	<u>Date reply received</u>	<u>Further action</u>
...			
<i>Seventy-sixth session (October 2002)</i>			
Egypt	4 November 2003	26 September 2003 (partial reply)	A complete response was requested to supplement the partial reply.

CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

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233. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the comprehensive table presented below. Since 18 June 2004, 15 States parties (Egypt, Germany, Kenya, Latvia, Lithuania, Morocco, the Netherlands, the Philippines, Portugal, the Russian Federation, Serbia and Montenegro, Slovakia, Sweden, Togo and Venezuela) have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, only six States parties (Colombia, Israel, Mali, Republic of Moldova, Sri Lanka and Suriname) have failed to supply follow-up information that had fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

224. The table below details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided to take no further action prior to the period covered by this report.

<u>State Party</u>	<u>Date Information Due</u>	<u>Date Reply Received</u>	<u>Further Action</u>
...			
<i>Seventy-sixth session (October 2002)</i>			
Egypt	4 November 2003	26 September 2003 (partial reply)	At its eightieth session, the Committee noted the State party's partial reply. A response to paragraph 16 (c) was requested by the Special Rapporteur.
		22 October 2004 (further replies)	At its eighty-fourth session, the Committee decided to take no further action.

Follow-up - State Reporting
ii) Action by State Party

CCPR CCPR/CO/76/EGY/Add.1 (2003)

Comments by the Government of Egypt on the concluding observations of the Human Rights Committee

1. Following its consideration of Egypt's third and fourth periodic reports (CCPR/C/EGY/2001/3) in October 2002, the distinguished Human Rights Committee asked Egypt to supply additional information, within the year, in response to the recommendations contained in paragraphs 6, 12, 16 and 18 of the Committee's concluding observations (CCPR/CO/76/EGY), which refer to the state of emergency, the death penalty, torture, terrorism and anti-Semitic articles.

2. The following is a detailed explanation of the additional information we have been asked to provide.

The State party should consider revising the need to maintain the state of emergency (CCPR/CO/76/EGY, para. 6)

3. The right of a State to declare a state of emergency in order to deal with threats to its society or with exceptional circumstances is a principle recognized in every legal system. It is recognized in article 4 of the International Covenant on Civil and Political Rights, subject to the conditions stipulated therein and within the framework of the minimum standards from which no derogation is permissible whenever such circumstances arise.

4. The Egyptian legislature has adopted a system of pre-emergency legislation. Act No.162 of 1958 regulates the manner in which a state of emergency may be declared, proclaimed and extended, together with exceptional measures, their scope and the procedures for lodging complaints against them. There are no provisions in the Act that could invalidate the Constitution, undermine parliamentary life in the country or render other laws inoperative.

5. Following Egypt's accession to the International Covenant on Civil and Political Rights, the Emergency Act was amended by Act No. 50 of 1982, which reduced the period for filing periodic complaints against detention to 30 days and vested the courts with competence to hear such complaints, thereby bringing the provisions of the Emergency Act into line with article 4 of the Covenant.

6. In accordance with the principle that a state of emergency is an exceptional circumstance that is not expected to last, since its very existence is dependent on the circumstances that necessitated its proclamation, the Act stipulates that a state of emergency cannot be extended unless it has been approved by the People's Assembly after the circumstances and reasons for granting an extension have been verified. The duration of any such extension must also be defined.

7. In the circumstances that faced the country following the assassination of President Mohamed

Anwar al Sadat, Egypt was forced to declare a state of emergency, which was subsequently extended in order to deal with the phenomenon of terrorism and to protect the security and stability of society. Security efforts have largely succeeded in eradicating the phenomenon of terrorism, in spite of its spread throughout all other parts of the world.

8. It follows from the foregoing that, under Egyptian law, any revision of the need to maintain the state of emergency depends on the People's Assembly giving its approval for an extension, once it has been determined that the conditions for such an extension have been met, based on evidence resulting from discussions by the elected parliamentary assembly (the People's Assembly).

The death penalty (CCPR/CO/76/EGY, para. 12)

9. In Egypt, the death penalty is prescribed for serious crimes such as murder, high treason, the leadership and financing of terrorist organizations, abduction accompanied by rape, and drug trafficking. The death penalty is subject to numerous legal regulations and procedural conditions, beginning before its pronouncement and ending with regulation of the execution of the sentence. These conditions and regulations are explained in detail in Egypt's reports commenting on article 6 of the Covenant and in its oral replies. The statistical information requested for the period since 2000 has been submitted to the distinguished Committee in two tables. Table 1 shows the number of death sentences delivered and executed in the period from 1 January 2000 to 31 December 2002. Table 2 shows the types of crimes for which the death sentences referred to in Table 1 were delivered.

Table 1
Death sentences delivered by the criminal courts

Year	Death sentences delivered	Death sentences not executed	Period
2000	78	20	As of end 2002
2001	103	23	As of end 2002
2002	115	-	
Death sentences delivered in 2002 have not been executed owing to the non-completion of the judicial, legal and constitutional procedures required for the execution of death sentences			

Table 2
Charges for which (executed) death sentences in table 1 were delivered

Item	Year	2000	2001	2002
1	Drugs		1	
2	Kidnap and rape	3	1	
3	Premeditated murder	11	17	
4	Murder accompanied by other crimes	6	4	
Total		20	23	

10. These sentences are supplemented by legal procedures, such as referral to the Court of Cassation, the hearing of challenges submitted to the original court, or referral of the sentence to the President of the Republic for the purpose of exercising the right to a constitutional pardon.

11. The courts are not obliged to deliver a death sentence. In accordance with articles 17 and 88 bis, paragraph (c), of the Penal Code they have the option of imposing a lesser penalty. Moreover, the infliction of the penalty is subject to numerous conditions and legal and constitutional procedures, to which Egypt has already referred in its previous reports, namely:

(a) Criminal cases and cases involving crimes that are punishable by death are heard by the criminal courts, which are formed by appeal court judges and presided over by the president of the court of appeal. They are the highest courts of appeal in the judicial system (art. 366, para. (a));

(b) Since the crimes that carry the death penalty are serious crimes that are designated as capital offences under Egyptian law, the law requires that the accused person be represented by defence counsel. If the accused person fails to engage counsel, the court must appoint a lawyer to perform this function, at the State's expense (Code of Criminal Procedures, arts. 381);

(c) A death sentence can be pronounced only by a unanimous decision and after consultation with the Mufti of the Republic. The sentence can be appealed by means of a legal challenge and a request for a retrial (Code of Criminal Procedures, art. 381);

(d) The Department of Public Prosecutions must refer death sentences delivered in the presence of the parties to the Court of Cassation in order to ensure the proper application of the law, even if the condemned person has not lodged an appeal with the Court (article 46 of Act No. 57 of 1959, concerning the circumstances and procedures for lodging an appeal with the Court of Cassation);

(e) The file pertaining to a case in which a final sentence of death has been delivered must be transmitted to the President of the Republic through the Minister of Justice so that the person may exercise his right to a pardon or to commutation of the sentence (Code of Criminal Procedures, art. 470);

(f) The penalty may not be executed on official holidays or days that the faith of the condemned person regards as special feast days (Code of Criminal Procedures, art. 475);

(g) The execution of a penalty of death imposed on a pregnant woman shall be suspended until she has been delivered of her child (Code of Criminal Procedures, art. 476);

(h) The death penalty shall not be imposed on persons under the age of 18 (The Children's Act No. 12 of 1998, art. 112);

(i) The relatives of a condemned person may meet with him on the day appointed for execution of the sentence and shall be provided with facilities to perform the religious rites required by the faith of the condemned person (The Criminal Code, art. 472).

12. It is clear from the above that Egyptian law fully complies with all the provisions of article 6 of the Covenant, provisions that had already entered into force in Egypt prior to the promulgation of the Covenant. The existence of a public emergency is not regarded as a justification for any breach of this right.

13. Egypt acceded to the Convention on the Prevention and Punishment of Genocide by Act No. 121 of 1951. Accordingly, its provisions have the same force in Egypt as any other law of the country.

Torture and the Egyptian legal system (CCPR/CO/76/EGY, para. 13)

14. In its periodic reports submitted to the distinguished Committee and to the Committee against Torture in its capacity as a State party to the relevant treaties, Egypt has given detailed explanations of the legal and constitutional status of the crime of torture in the Egyptian legal system and has described the judicial authorities with competence for, and the legal procedures which must be applied with respect to, this type of crime. Egypt has supplied the distinguished Committee with statistics on the sanctions and penalties imposed on members of the police force, whether by the administrative authorities or in court sentences providing for the infliction of criminal penalties. Egypt has also submitted statistics on court judgements awarding compensation to the victims.

15. These measures taken against persons charged with committing crimes involving torture demonstrate Egypt's concern to punish the perpetrators of such offences and to take all legal, penal and administrative proceedings against them. This should also be seen in the context of Egypt's commitment to implementing the provisions of the Covenant and the Convention against Torture, to which Egypt acceded without reservations and which are regarded as part of Egyptian law in accordance with the provisions of the Constitution.

16. We should like to refer briefly to the legal status of the crime of torture and of the Convention against Torture in Egypt. We shall then refer to some examples of how this has been applied by the courts and conclude by providing some statistics on the action taken against persons found guilty of the crimes of torture and with respect to the compensation of victims.

The legal status of the crime of torture in Egypt

17. The legal status of the crime of torture in Egypt is based on the two essential foundations of Egypt's legal system, namely the provisions of the Constitution and of the laws. The Egyptian Constitution provides guarantees to safeguard the rights and freedoms of individuals and protect them against subjection to physical or moral harm. We shall first describe the constitutional precepts that deal with this matter and then the legal provisions concerned with torture in Egypt.

Torture and the Egyptian Constitution

18. The Egyptian Constitution, the basic law by which the national legislature is bound, deals with this subject in the following terms:

19. Any person who is arrested or imprisoned or whose freedom is in any way restricted must be

treated in a manner conducive to the preservation of his human dignity and no physical or mental harm must be inflicted on him (art. 42).

20. Any statement which is proved to have been made under torture is deemed null and void (art. 42).

21. Criminal or civil proceedings in connection with offences of encroachment on the rights and freedoms guaranteed by the Constitution, including the offence of torture, are not subject to any statute of limitations (art. 57).

22. The State guarantees fair compensation to any person who is a victim of such an offence (art. 57).

23. These constitutional principles and precepts enjoy judicial protection in that the constitutionality of laws is subject to judicial control. Under the Constitution, the Supreme Constitutional Court is vested with that task, thus ensuring that the national legislator abides by those principles and precepts, which may not be breached. Any promulgated law which gives rise to a breach of that nature is unconstitutional and therefore defective.

Torture and the Egyptian Penal Code

24. Torture has been an offence under the provisions of the Egyptian Penal Code since the end of the last century. In volume II of the current Penal Code No. 57 of 1937, a special chapter is devoted to coercion and ill-treatment of individuals by public officials, while acts relating to torture are designated as offences under articles 126 and 282 of the Code, as follows.

Article 126 of the Penal Code

25. 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 labour or a term of 3 to 10 years in prison. If the victim dies, the penalty shall be that prescribed for premeditated murder.

Article 282, paragraph 2, of the Penal Code

26. In all cases, anyone who unlawfully arrests a person and threatens to kill him or subjects him to physical torture shall be sentenced to imprisonment at hard labour.

27. These crimes are covered in the general provisions of the Penal Code relating to the attempt to commit a crime, which is punishable under articles 45 and 46 of the Code. The same provisions apply to the forms of participation specified in article 40 of the Penal Code, namely incitement, collusion or aiding and abetting. According to article 41 of the Code, an accomplice to a crime is liable to the same penalty as the actual perpetrator of the crime. Acquiescence in torture attracts the same penalty as the giving of an order to carry out torture.

28. In the same way, an order given by a superior officer cannot be used as an excuse to legitimize torture. According to article 63 of the Penal Code, an order cannot be invoked as a justification of torture, since the act to which the order gave rise, namely torture, is a criminal offence.

29. The judicial application of the aforementioned penal provisions has produced a number of legal principles, which have become established practice in accordance with the jurisprudence of the Supreme Court.

30. According to article 2, paragraphs (2) and (3), of the Convention against Torture, exceptional circumstances and other public emergencies cannot be invoked as a justification of torture, nor can an order from a superior officer or a public authority. Moreover, according to article 15 of the Convention, any statement which is established to have been made as a result of torture shall not be invoked as evidence. We shall now discuss these three subjects and the position taken by the Egyptian legislature thereon.

Torture, exceptional circumstances and public emergencies

31. The question of exceptional circumstances and public emergencies is covered in article 148 of Egypt's Permanent Constitution, which was promulgated in 1971. The Egyptian legislature adopted a theory of pre-emergency legislation to deal with public emergencies, since the Constitution requires that the declaration of a state of emergency be made by a decree of the President of the Republic.

32. The Emergency Act No. 162 of 1958 regulates the conditions and procedures pertaining to public emergencies. There is nothing in the Act that could serve to nullify the provisions of the Penal Code relating to the offences of torture, wrongful imprisonment or the use of cruelty, to grant any party the right to derogate from the provisions of the Penal Code or to authorize acts designated as criminal offences under the Code. Hence, the crime of torture and other crimes continue to obtain, even when a public emergency has been declared in the country. Thus, a state of emergency cannot be invoked as a pretext for committing acts of torture.

33. Anyone arrested in accordance with the provisions of the Emergency Act must be detained in a legally approved prison. Arrested persons are accorded the same treatment as persons being held in preventive custody and enjoy all the rights granted to detainees in prison. They may not be harmed by any party and their detention is subject to regular review every 30 days by means of the submission of a complaint to the courts from the person concerned. It follows that the law regards acts involving the torture of, infliction of harm on, or detention of persons in places other than legally approved prisons as crimes that are punishable by law.

34. It is worth mentioning in this connection that the provisions of the Convention which refer to these matters have acquired the force of law in Egypt, since, according to article 151 of the Constitution, the entire Convention became law after it had been promulgated. Anyone can invoke the provisions of the Convention before any type of court, while the failure of a court ruling to apply the provisions of the law can be invoked as a justification to challenge the ruling on the grounds that it is in breach of the law and has failed to apply the provisions thereof.

Invocation of orders from a superior as justification of torture

35. According to article 2, paragraph (3), of the Convention, orders from a superior cannot be invoked as a justification of torture. Article 63 of the Code of Criminal Procedures stipulates that a crime shall not have been committed, if the act was carried out by a public official executing an order issued by a superior officer whom he was duty-bound to obey or if, acting in good faith, he committed an act in execution of an order directed by laws or in the belief that the act was within his competence. Pursuant to that article, a public official is required in all cases to prove that he committed the act only after scrutiny and questioning, that he believed it to be legitimate and that such belief was based on reasonable grounds.

36. In accordance with the foregoing, since torture is a punishable offence under Egyptian law, and since ignorance of the law is no excuse, an order from a superior officer cannot be invoked under any circumstances as a justification for committing acts of torture, using cruelty or perpetrating other acts designated as criminal offences.

37. In article 126 of the Penal Code, the Egyptian legislator deals specifically with the offence of torture, which is designated as a criminal offence whether it is committed on the orders of, or directly by, a public official. Acquiescence in torture is regarded as the same as committing torture. Thus, according to Egyptian law, both a person who orders torture and a person who carries it out acting on orders shall be regarded as having committed the crime of torture under the terms of the Penal Code and shall be liable to the same penalties as were referred to here above.

38. In this matter, the Court of Cassation has ruled as follows:

(a) It is an established principle that a subordinate should not obey an order given by his superior officer to commit an act which he knows to be punishable by law. Under no circumstances should obedience to a superior officer extend to the perpetration of offences (Appeal No. 936 of judicial year 16, hearing of 13 May 1946; Appeal No. 1913 of judicial year 38, hearing of 6 January 1969, record 20, section 6, page 24; and Appeal No. 869 of judicial year 44, hearing of 4 November 1974, record 25, section 163, page 756);

(b) A person who does not have the capacity of a public official is not served by the provisions contained in article 63 of the Penal Code concerning public officials, even if the relationship between him and the person giving the order requires his obedience to the latter (Appeal No. 13 of judicial year 32, hearing of 21 January 1973, record 24, section 18, page 78 and Appeal No. 742 of judicial year 49, hearing of 22 November 1979, record 30, section 176, page 821).

Inadmissibility of statements made under torture

39. The principle of the inadmissibility of statements made under torture is enunciated in article 15 of the Convention and in article 42 of the Egyptian Constitution. Likewise, the Supreme Court has established that confessions obtained under torture or duress must be regarded as null and void, even if they were genuine.

40. Following the important discussions held with the Committee against Torture on Egypt's

periodic reports submitted to that Committee and after we had explained the legal status of torture in Egypt and the extent to which the provisions of Egyptian law are consistent with those of the Convention, the Committee praised Egypt for the legal and judicial stance the country has taken on this matter.

Some rulings and principles established by the Court of Cassation in connection with the crime of torture

41. In this section we shall refer to a number of principles established by the Court of Cassation in connection with the crime of torture and which the courts at various levels are bound to apply when adjudicating offences of torture.

The crime of torture under article 126 of the Penal Code

42. The law does not define the meaning of physical torture and lays down no specific degree of gravity as a prerequisite; that is a matter left for the trial court to infer at its discretion from the circumstances of the case (Appeal No. 1314 of judicial year 96, hearing of 28 January 1966, record 17, page 1161).

43. Under the provisions of article 126, paragraph 1, of the Penal Code, an accused person is anyone who is charged with committing a specific offence, even if he is charged while the investigation officers are still conducting inquiries into offences and those responsible for them and are gathering the evidence essential to the investigation and proceedings pursuant to articles 21 and 19 of the Code of Criminal Procedures, provided that he is suspected of having played a part in perpetrating the offence in connection with which the officers are gathering evidence. There is nothing to prevent any such officer from being prosecuted under article 126 of the Penal Code for torturing the accused person with a view to extracting a confession from him, regardless of the motive for doing so. There is no reason to differentiate between the statements of the accused person as contained in the report of the investigation conducted by the investigating authority and his statements as contained in the evidence report, since the criminal judge is in no way bound by a specific type of evidence and is perfectly at liberty to draw evidence from any source in the proceedings, if he believes it to be authoritative. It is also inadmissible to state that the legislator intended to protect a certain type of confession, since nothing is singled out and it would be inconsistent with the provision (Appeal No. 1314 of judicial year 96, hearing of 28 January 1996, record 17, page 1161).

44. If torture has actually occurred, the statements made by the witnesses and interviewees subjected to such torture must be dismissed. No reliance can properly be placed in such statements, even if true and consistent with the facts, if they were obtained by torture or coercion, however slight in degree. If torture did not occur, reliance may rightly be placed in such statements (Appeal No. 1275 of judicial year 39, hearing of 13 October 1969, record 20, page 1056).

45. It is established that under no circumstances does obedience to a superior officer extend to the perpetration of offences and that a subordinate must not obey an order from his superior officer to commit an act which he knows to be punishable by law. Accordingly, if the appellant's defence is based on force of circumstances, in that he perpetrated the act on the order of his superior officer, the

appealed judgement cannot be regarded as defective in its application of the law (Appeal No. 6533, judicial year 25, hearing of 24 March 1983, record 34, page 432).

46. Since, in order for any confession to be taken into account, it must have been made freely and voluntarily, no reliance can be placed in a confession, even if genuine, when it is the result of any degree of coercion or threat. A promise or inducement is comparable to coercion and a threat inasmuch as it affects the freedom of the suspect to choose between making a denial or a confession and leads him to believe that, by confessing, he will reap some benefit or avoid harm. Accordingly, when the plea was made in court that the confessions of the first and fifth guilty defendants were the result of physical coercion to which the fifth guilty defendant had been subjected in the form of torture and of the moral coercion to which they had both been subjected in the form of threats, promises and inducements, the court should have undertaken an investigation into that defence, exploring the link between the coercion, the reasons for it and its bearing on the statements made by the two persons. However, the court failed to do this, limiting itself to stating that, since the prosecution attorney had seen no marks of torture on either defendant, they could not have been subjected to coercion. However, the fact that the prosecutor failed to see any marks on the two defendants does not in itself rule out the possibility that the fifth guilty defendant did bear marks of having been subjected to torture, beating or physical coercion. Nevertheless, no definitive link was made between the threat, promise and inducement and their confessions in which the court placed reliance. The court's judgement was therefore defective because of the flaws in the evidence as well as negligence (Appeal No. 951 of judicial year 35, hearing of 2 June 1983, record 34, page 730).

47. In order for the offence of torture to have been committed, Egyptian law does not stipulate that a specific degree of serious pain or suffering should result from the torture or that the torture should leave marks. Consequently, the offence of torture obtains however negligible the pain and regardless of whether or not it leaves marks (ruling of the Court of Cassation, hearing of 5 November 1986).

48. Similarly, a confession is not required in order for the provisions of article 126 of the Penal Code to apply. On the contrary, it is enough that the accused person should have engaged in torture with a view to inducing a confession (ruling of the Court of Cassation, hearing of 28 November 1966).

49. The offence of torture referred to in article 126 of the Penal Code does not imply that the person carrying out the torture must be competent to seek evidence or to conduct an investigation in connection with the offence perpetrated by the accused person. Instead, it is sufficient that the public official should, by virtue of his office, have the authority that places him in a position to torture the accused person with a view to extracting a confession from him (ruling of the Court of Cassation, hearing of 8 March 1995).

50. In torture offences, criminal intent is present whenever a public official deliberately tortures a suspect in order to induce him to make a confession, regardless of his motive for doing so (ruling of the Court of Cassation, hearing of 8 March 1995).

The crime of the use of cruelty under article 129 of the Penal Code

51. The crime of the use of cruelty referred to in article 129 of the Penal Code shall have been committed when a public official or servant uses his position to inflict cruelty in a manner which is detrimental to an individual's dignity or causes him bodily pain. It is not a prerequisite that the accused person should be performing his job at the time of committing the assault or that the assault should attain a specific degree of severity, if it is established in the ruling that the accused person was a member of the police who used his position to assault and wound the victim. The fact that the judgement fails to mention whether the accused person was performing his functions at the time of the assault, omits the name of the victim or provides no details about the assault is insufficient to justify reversal of the judgement (hearing of 20 March 1944, Appeal No. 374, judicial year 14).

52. It is an offence punishable under article 129 of the Penal Code for public officials to use their position to inflict cruelty on others. If battery is involved, it is also an offence under article 242 of the Penal Code and the other articles which prohibit battery or deliberate injury. According to article 32, paragraph 1, of the Penal Code, if both offences are committed in a single criminal act only one penalty may be imposed on the accused person, namely that prescribed for the more serious offence. The penalty prescribed in article 241 of the Penal Code for battery which renders a person incapable of leading a normal life for a period of more than 20 days is more severe than that prescribed in article 129 of the Penal Code. It is therefore not wrong to punish the accused (who is a village headman) under article 242, if it is established that his battery of the victim attained that degree of severity (hearing of 12 November 1945, Appeal No. 1466, judicial year 15).

53. The chief element of cruelty in the offence referred to in article 129 of the Penal Code is derived from any material act that is likely to cause the victim bodily pain, however slight, even if the act causes no apparent injuries. It therefore includes battery and minor trauma (hearing of 14 April 1952, Appeal No. 264, judicial year 22).

54. The chief elements of the use of cruelty referred to in article 129 of the Penal Code are present where it is shown that the accused person assaulted the victim relying on the authority of his position. It is not necessary to mention the injuries incurred by the victim as a result of the assault (hearing of 16 November 1954, Appeal No. 1022, judicial year 24).

55. The Court of Cassation has ruled that the provisions of article 129 of the Penal Code refer only to those methods of violence which do not involve arresting individuals and placing them in confinement. This article is grouped together with those that deal with the offences of coercion and ill-treatment of individuals by public officials under volume II, chapter VI, of the Code concerning felonies and misdemeanours prejudicial to the public interest. Articles 280 and 282 of the Penal Code are grouped together with articles dealing with the offences of the unlawful arrest and detention of individuals under volume III, chapter V, of the Code, concerning felonies and misdemeanours affecting individuals. This distinction between the headings under which these articles appear reflects the thinking of the Egyptian legislature, insofar as encroachment on individual freedom by means of arrest, imprisonment or detention is an offence that is committed by a public official or other public servant (Appeal No. 1286 of judicial year 34, hearing of 8 December 1964, record 15, page 805).

56. The offence of torture referred to in article 126 of the Penal Code does not imply that the person

carrying out the torture should be competent to seek evidence or to conduct an investigation in connection with the offence committed by the accused person. It is sufficient that the public official has the power, by virtue of his public duties, to torture the accused person with a view to extracting a confession from him. With regard to the crime of torture referred to in article 126 of the Penal Code, criminal intent is present if the public official or public servant deliberately tortures the accused person in order to induce him to make a confession, regardless of his motive for doing so.

57. If it is proven that there was collusion between the accused persons, in light of the connection between them, the fact that the crime was perpetrated for the same motive, the fact that they agreed on the manner of its commission and that each of them intended that the other should carry it out and the right of the victim that was violated was the same specific right, they shall both be regarded as the actual perpetrators of the crime of torturing the victim with a view to extracting a confession from him and shall bear equal responsibility for it, regardless of whether or not it has been determined which of them delivered the blows that led to the death (Appeal No. 5732, judicial year 63).

58. From our description of the Egyptian legal system and the application of the law on the crime of torture, it should be clear to the distinguished Committee that Egypt is committed to the effective implementation of the treaties to which it is a party and that it makes ceaseless endeavours to honour its obligations under those treaties, pursuing constructive dialogue with the mechanisms overseeing treaties concerned with human rights and fundamental freedoms.

Statistics on sanctions and penalties imposed on members of the police found guilty of crimes of torture and on rulings awarding compensation to victims

59. The statistics below show the legal proceedings that have been taken and the cases that have been proved against persons charged with torture and the use of cruelty. Table A shows the cases in which investigations led to the imposition of administrative sanctions, the issuance of court judgements or the taking of disciplinary action. Table B shows the cases referred to the Department of Public Prosecutions and those in which no final court ruling has been delivered. Table C shows the final court rulings in which victims of torture were awarded civil compensation.

Table A
Torture and ill-treatment, 1998-2002

Year	No. of officers referred for criminal prosecution	No. of officers referred to disciplinary tribunal	No. of officers given administrative sanction	Total No. of officers
1998	2 exonerations	2 demotions	12 demotions	16
1999	3 prison sentences 5 suspended prison sentences 2 exonerations	3 demotions 1 dismissal	6 demotions 6 cautions	26

2000	2 prison sentences 1 suspended prison sentence 4 exonerations 2 trials in progress	6 demotions 6 dismissals 6 trials in progress	19 demotions 7 cautions	53
2001	1 prison sentence 1 exoneration 5 trials in progress 1 suspended prison sentence	20 demotions 1 dismissal 20 trials in progress 15 exonerations	89 demotions 27 cautions	180
2002	4 prison sentences 1 exoneration 4 trials in progress	43 trials in progress	59 demotions 15 cautions	126

Table B

Officers referred to the Department of Public Prosecutions for criminal prosecution in cases involving torture, cruelty or ill-treatment, 1 September 1999 to 31 January 2003

Item	Case No.	Incident	Decision
1	Qanatir al-Khayriya Centre Felony Case No. 26026/2001	Battery and unlawful detention	Officer given 3-year prison sentence and ordered to pay compensation (session 16/12/2002)
2	Tanta II Misdemeanours Case No. 8738/2003	Battery	Trial in progress
3	Khanika Misdemeanours Case No. 18767/2001	Use of force by a public official	Trial in progress
4	Dasuq Centre Administrative Case No. 18755/2001	Battery	Referred to criminal court
5	Tanta Section I Misdemeanours Case No. 10875/2002	Battery	Still under investigation
6	Awsim Misdemeanours Case No. 3991/2001	Battery	Under investigation
7	Minya Section Administrative Case No. 1021/2003	Battery	Under investigation
8	Quwainsa Misdemeanours Case No. 15343/2002	Battery	Under investigation
9	Sanwars Centre Administrative Case No. 5036/2002	Use of force	Still under investigation
10	Athmun Administrative Case No. 9749/2002	Use of force	Under investigation
11	Kafar al-Dawar Case No. 5054/2003	Battery and unlawful detention	Under investigation
12	Wasta Centre Administrative Case	Battery	Still under

13	No. 4346/2003 Fayum Centre Misdemeanours Case No. 9200/2002	Battery	investigation No decision
14	Bani Abid Police Station Case No. 340/2003	Battery	No decision
15	Abin Case No. 470/2003	Battery	No decision
16	Bab al-Sha`bah Administrative Case No. 1359/2001	Battery	Still under investigation
17	Isma`iliya III Administrative Case No. 1725/2002	Battery leading to permanent disability	No decision
18	Aduwah Centre Misdemeanours Case No. 4302/2001	Torture	Under investigation

Table C
Final judgements awarding compensation for victims 1998-2002

Year	No. of compensation awards handed down to citizens and enforced
1997	2
1998	4
1999	8
2000	3
2002	2
1/9/2002- 31/1/2003	
6 cases in 2001 yet to be decided	
3 cases in 2002 yet to be decided	

60. From the above, it will be clear to the distinguished Committee that, in the light of Egypt's constitutional and legal systems as regards the crime of torture, and within the framework of the judicial principles relating to this crime that have been established by Egypt's judicial system, the national legislature provides fundamental guarantees to protect individuals against the crime of torture. It is committed to guaranteeing victims the right to demand that the perpetrators of these crimes are punished and to claim compensation for the damage they have suffered. This is guaranteed by the State in accordance with the Constitution, regardless of how much time has elapsed since the crime was committed.

61. The above statistics confirm the sanctions and penalties that have been imposed against the perpetrators of this crime, together with the compensation awarded to victims under the terms of court judgements. These offences are merely individual excesses by particular members of the police, a phenomenon from which no society is exempt. It is not possible to characterize these violations by a minority of policemen as part of a systematic pattern of behaviour, given the existence of this comprehensive legal system, which offers fair and independent means for seeking redress, bringing guilty persons to justice and claiming compensation. Such a description cannot be reconciled with the wide range of legal and procedural safeguards that have been put in place and

that are applied by the judicial authority, which enjoys every constitutional and legal guarantee of its independence and impartiality in the exercise of its functions and whose decisions and rulings are binding on all authorities.

62. Egypt is furthermore cooperating with the United Nations Development Programme in a capacity-building programme aimed at providing human rights training to members of the judiciary, the Department of Public Prosecutions, the police, prison staff and members of the press and publishing sectors with a view to raising awareness of international human rights treaties, the country's obligations thereunder and the standards that must be applied at the practical level. This reflects the State's concern to provide human rights education to persons involved in the administration of criminal justice in order to ensure full conformity between actual practice and the provisions of the country's Constitution and laws and to prevent any potential abuses by individuals.

Definition of terrorism (CCPR/CO/76/EGY, para. 16)

Definition

63. In the light of the numerous acts of terrorism to which Egypt was subjected following the assassination of former President Anwar al-Sadat at the hands of terrorist groupings targeting State symbols and leaders, as well as civilians and foreign tourists, and faced with the spread of this phenomenon and the need to step up efforts to deal with it in a manner that respected the legitimacy of the Constitution and its laws, Egypt declared a state of public emergency. This was followed by the introduction of constitutional and legal measures designed to combat the phenomenon. For example, the national legislature adopted Act No. 97 of 1992, amending the Penal Code by introducing stiffer penalties for certain crimes, if committed for terrorist ends. This amendment was intended bring a halt to the perpetration of arbitrary criminal acts of this kind against innocent victims, including children, women and older persons. To that end, the legislature had to establish a definition of terrorism as a basis for defining the criminal scope of acts for which higher penalties would be applied. The above-mentioned Act inserted an additional article 86 into the Penal Code, which reads as follows:

“For the purposes of the application of the provisions of this Code, terrorism means any use of force, violence, threats or intimidation to which an offender resorts in order to put into effect an individual or collective criminal plan designed to disrupt public order or endanger public safety and security by harming or terrorizing persons, jeopardizing their lives, freedoms or security, damaging the environment, damaging or seizing control of public or private communications, transport, assets, buildings or property, preventing or obstructing the functioning of public authorities, places of worship or academic institutions or rendering the Constitution, the laws or regulations inoperative.”

64. The legislative texts concerned with definitions are written in a manner consistent with legal formulae, but they do not go into the subjective details which it is difficult for the legislature to enumerate fully when drafting legal texts. This is left to the discretion of those who take the requisite decisions during criminal proceedings and the subsequent stage of judicial application, if the matter is referred to a court which deals with the application and interpretation of these provisions in the context of the facts presented in each individual case.

65. The definition given above was adopted for the purpose of increasing the penalties prescribed in the Penal Code for a number of crimes. The legislature has raised the penalties for certain crimes, if they are committed for the purposes of terrorism or if terrorism is the means used to achieve the objectives of the crime.

66. In this regard, in article 86 bis of the Penal Code, the legislator prescribes the penalty of imprisonment for anyone who establishes, founds, organizes or manages an association, body, organization, group or band with a view to infringing the provisions of the Constitution or preventing the functioning of State institutions or public authorities or encroaching upon the personal freedom of citizens or other public rights and freedoms guaranteed in the Constitution or undermining national unity and social peace. The legislature increases the penalty for this offence in article 86 bis, if terrorism is one of the methods used to achieve or to realize the objectives of the group.

67. It is clear from the foregoing that the provisions of article 86 of the Penal Code do not pertain to a criminal act, but rather to the definition of terrorism as an aggravating factor in the infliction of a penalty. The penalties applied to terrorist organizations are reproduced in article 86 bis of the Penal Code.

68. The constitutionality of article 86 bis of the Penal Code was challenged before an administrative court in Case No. 10458 of judicial year 55. The court referred it to the Constitutional Court for a decision. The case file is registered as Constitutional Court Case No. 330, constitutional judicial year 24. The case has been deferred pending completion of the report of the panel of commissioners to the Court. No decision has yet been taken in this matter.

69. With a view to increasing the penalties for terrorist crimes, the legislature introduced the penalty of death or life imprisonment for the most serious terrorist crimes, such as leading and financing terrorist bands or groupings (article 86 bis, paragraph (a), of the Penal Code). The same penalty is prescribed for other terrorist crimes that cause the victim's death (article 86 bis, paragraph (b), of the Penal Code). In such cases, the penalty is the same as that prescribed in the Egyptian Penal Code for premeditated murder. Nothing new is added to the existing penalty.

70. This being so, and in view of the fact that the crimes punishable by death are doubtless the most serious and heinous crimes, which cause suffering to the whole world and inflict enormous and indiscriminate damage on society and to innocent victims, including women and children, the infliction of this penalty is not incompatible with the purposes of article 6 of the Covenant.

State security (emergency) courts

71. In view of the exceptional circumstances that made it necessary to declare a state of emergency and of the temporary nature of the emergency as recognized by the Constitution and the law, which require that special measures be taken to achieve the prompt resolution of the circumstances that gave rise to the state of emergency and to restore society to a state of normality, the Egyptian Emergency Act No. 126 of 1958 provides for the establishment of State security (emergency) courts to try particular crimes under the Penal Code, including terrorist crimes. These courts enjoy all the

basic guarantees provided with respect to the right to bring proceedings before the courts. The courts are comprised of ordinary judges and apply the terms of the Code of Criminal Procedures when conducting proceedings, delivering rulings and enforcing penalties.

72. The Egyptian legislature has made two exceptions to the general rules in force, taking into account the exceptional circumstances that made it necessary to establish these courts. Firstly, it has ruled that military judges may be included among the members of an emergency court, although ordinary magistrates must still be in the majority. Secondly, proceedings are held at one level of jurisdiction only. The appeals system has been replaced with a system of ratification of rulings, in which all the substantive and procedural aspects of rulings are reviewed by ordinary judges at the most senior rank in the judiciary, without the need for the accused person to file an appeal.

73. In its previous reports, Egypt has provided detailed explanations of the legal provisions relating to these courts, which, since the proclamation of the state of emergency to the present day, have never included military judges. The Supreme Constitutional Court has ruled that the Emergency Higher State Security Court is the natural court to hear complaints against detention orders issued under the terms of the Emergency Act and that the attribution to State security courts of the power to adjudicate such complaints does not breach the provisions of article 68 of the Constitution, concerning the right to have recourse to the courts (Supreme Constitutional Court ruling, Case No. 50, Constitutional Court judicial year 5, session of 2 March 1985).

74. Thus, in spite of the circumstances and the exceptional nature of these courts, all the necessary safeguards have been put in place to ensure their independence and provide an alternative to the system of appeal that substantially affords the same fundamental guarantees as are provided by courts at other levels. All of this confirms that Egypt does not breach the basic guarantees concerning the right to have recourse to the courts as recognized in articles 4, 9 and 14 of the International Covenant on Civil and Political Rights.

Violent articles against Jews (CCPR/CO/76/EGY, para. 18)

75. The Committee commented on the State's failure to take action in response to violent articles against Jews in the Egyptian press, which constitute advocacy of religious and racial hatred and incitement to discrimination, violence and hostility.

76. Egypt explained this matter in its oral reply to the distinguished Committee, in which it pointed out that Egyptian media policy is based on respect for creative freedom and freedom of expression, which are human rights recognized in the Egyptian Constitution and the international human rights treaties to which Egypt has acceded.

77. The Egyptian Constitution regards the press as the fourth authority in Egypt. Its work is regulated by the Press Act No. 96 of 1996, which ensures the freedom and independence of the press so that it can play its role in the democratic system and in the comprehensive development plans of the State.

78. The articles in question were written for the purpose of analysing the complex political situation in the Middle East and were basically directed against government policies. They do not reflect a

stance taken against a religion or a creed. In Egypt, divinely revealed religions, including the Jewish faith, enjoy full legal protection on the same basis as other religions and in accordance with the Egyptian Penal Code. They cannot be denigrated, nor can their sacred monuments or symbols be defiled.

79. The articles in question were written in the context of freedom of the press as guaranteed under the Constitution. They were a response to laws, writings, statements and descriptions that had been made by public figures against Islam, the prophets and the Arabs and verified by United Nations committees, which called for those responsible for them to be punished, since they constitute encouragement of racial discrimination.

Conclusion

80. Egypt is submitting its supplementary report in accordance with the request from the distinguished Committee and as a token of Egypt's unwavering commitment to the sovereignty of the law and democracy, which underlies its concern to pursue constructive dialogue with United Nations mechanisms and the distinguished Committee in order to strengthen joint efforts to support the consolidation of human rights principles and fundamental freedoms.

81. In concluding this report, Egypt should like to refer in particular to the steps it has taken in this domain, in pursuit of its firm commitment to the principles of the sovereignty of the law and democracy. It has promulgated the following two Acts:

(a) Act No. 94 of 2003, abolishing High State Security courts and the penalties of perpetual and short-term hard labour, which will be replaced with the penalty of life in prison and imprisonment without parole.

(b) Act No. 95 of 2003, establishing the National Human Rights Council in accordance with the Paris Principles relating to the status and functioning of national human rights institutions.

CCPR CCPR/CO/76/EGY/Add.2 (2004)

Comments by the Government of Egypt on the concluding observations of the Human Rights Committee

ARAB REPUBLIC OF EGYPT

National Council for Human Rights

PRESS RELEASE

A delegation from the National Council for Human Rights headed by Mr. Ahmed Kamal Abu Magd and with the participation of Mr. Mohammed Fayek, Mr. Osama al-Ghazaly Harb and Mr. Hafez Abu Seeda, members of the Council, has paid a visit to Tura Prison, where it was received by Major General Mahmud Magdi, Assistant to the Minister for Internal Affairs for the Prisons Sector.

The members of the delegation made an extensive tour of the prison wards, of the various service areas set aside for prisoners, of the production workshops in which the prisoners work, and of the many dispensaries that dispense medical treatment.

They met in private with a number of prisoners and asked them if they had any complaints to make about their treatment. Prisoners on remand were also interviewed and various matters were discussed.

A large number noted that there had been a marked improvement in the treatment of prisoners.

There were some complaints about the remand system, the length of time prisoners are kept on remand, and other issues pertaining to criminal procedures which the Council and its committees will review.

The Council will continue to pay unannounced visits to prisons and will include the results of this and other visits in its annual report.

[Newspaper article]

Committee for the improvement of prison conditions and the safeguarding of prisoners' rights

The National Council for Human Rights, Major General Habib `Adali, the Minister for Internal Affairs, and Mr. Maher Abd al-Wahid, the Prosecutor General, have agreed to form a joint committee to review prison conditions and prison legislation with a view to improving the treatment which prisoners and detainees receive.

Under the agreement, two or three members of the Council were appointed to sit on the committee, which has come up with recommendations for reforms that will be announced by the Ministry, the Prosecutor General and the Council, in accordance with their respective areas of competence, and will be implemented in a timely manner.

In a memorandum to the Council on the guidelines to be followed by the Council in the near future, Mr. Kamal al-Magd, Vice-President of the Council, explained that the comments and recommendations which the Council will adopt on prison reform and improving prison conditions will form the basis of his annual report to be published at the end of this year and to be submitted to the People's Assembly and the Advisory Council. He added that work on improving prison conditions offers hope that the human rights situation of Egyptians will improve to the level required by the Constitution and the international covenants and conventions by which Egypt is bound.

He said that the Council would focus in its recommendations on prison reform on ways of improving prisoners' rights and making sure that the prison authorities uphold those rights, safeguard the dignity of prisoners and refrain from subjecting them to any form of mental or physical torture. The Council would also focus on producing practical recommendations that take account of the public interest, without influence from any quarter, in order to improve prison conditions and the treatment of prisoners.

CCPR CCPR/CO/76/EGY/Add.3 (2004)

Comments by the Government of Egypt on the Concluding Observations of the Human Rights Committee

[21 October 2004]

Permanent Mission of Egypt to the United Nations
Geneva

Subject: The treatment of Egyptians suspected of terrorism abroad and expelled to Egypt
(paragraph 16 (c) of the Committee's concluding observations)

The competent authorities have provided the following information:

1. The Egyptians expelled to Egypt were treated in accordance with the due process of law, having been presented to the prosecuting authorities directly upon their arrival in the country.
2. None of the persons concerned has filed a complaint about ill-treatment, even though Egyptian law allows such persons to lodge complaints with the prison authorities or the Department of Public Prosecutions.