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EGYPT

Justice subverted: trials of civilians before military courts

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Forty members of the Muslim Brothers, a leading opposition organization in Egypt, are facing trial before a military court, although they are all civilians.

President Hosni Mubarak took the decision to send them for trial before the Supreme Military Court in Heikstep, Cairo, where they face charges that could incur the death penalty, using powers given to him under a 1966 law. In effect, this allows the President to bypass the ordinary criminal justice system, where the defendants' fair trial rights would be better protected. Egypt's military courts have a history of grossly unfair trials, including those where people have been condemned to death and executed.

The Egyptian government's use of military courts to try civilians contravenes international law. The African Commission on Human and Peoples' Rights, for example, states: "The only purpose of military courts shall be to determine offences of a purely military nature committed by military personnel... Military courts should not, in any circumstances whatsoever, have jurisdiction over civilians." The Commission is the body created to monitor implementation of the African Charter on Human and Peoples' Rights, to which Egypt is a state party.

Every individual has a right to a fair trial; this is a key principle of international law. Defendants tried before Egypt's military courts, however, have their rights routinely violated (see next page), even when charged with offences that could result in their being sentenced to death.

Military courts have sentenced at least 94 people to death (including 13 who were convicted in their absence) on terrorism-related charges since 1992. Of these, at least 67 are known to have been subsequently executed.

The 40 Muslim Brothers currently on trial face charges of terrorism and money laundering. International observers who tried to attend the first sessions of the trial on 3 June and 15 July 2007 were not permitted entry to the court. Seventeen of the defendants were previously acquitted of the same charges by an ordinary criminal court.

Military courts

Military courts were established in Egypt under the Code of Military Justice (Law No. 25 of 1966). The Law was amended in April 2007, but the changes did not address the fundamental flaws inherent in trying civilians before military courts.

Under the Code of Military Justice the President of Egypt can refer civilians to military courts for certain offences in the Penal Code and he has been doing so since 1992. These offences include:

- acts harmful to the security of the government, whether inside or outside the country, such as co-operating with a foreign state in acts that harm Egypt;
- deliberate destruction of property for the purpose of harming the national economy;
- establishing an organization that uses terrorism to achieve its aims; “terrorism” is defined in the Anti-Terrorism Law (Law No. 97 of 1992) amending the Penal Code in such a broad and vague way that it is open to abuse and can restrict rights such as freedom of expression, association and assembly.

In addition, the Code of Military Justice empowers the President, whenever there is a state of emergency (as has been the case for the last 26 years), to refer cases that would normally be covered by the Penal Code or other laws to military courts.

This emergency provision has now been entrenched in permanent law following the amendments to 34 articles of the Constitution proposed by President Mubarak and adopted in parliament in March 2007. In particular, amended Article 179 allows the President to bypass ordinary courts and refer people suspected of terrorism-related offences to any judicial authority he chooses, including military courts. It states: “The President may refer any terror crime to any judiciary body stipulated in the Constitution or the law.”

Violating fair trial guarantees

The procedures of military trials prescribed by Egyptian law, as well as those used in practice, violate international law and standards that Egypt is obliged to respect.

The International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples’ Rights, both of which Egypt has ratified, guarantee certain rights.

Among the fair trial guarantees that are being routinely violated when civilians are brought before military courts are:

- **The right to a public trial before an independent and impartial court.** The military is part of the executive branch of government. Cases before military courts are investigated by military prosecutors and trials are heard by a single military judge or, in the case of Supreme Military Courts, by three judges. Military court judges are appointed by the deputy head of the armed forces. Therefore, they cannot be seen to be independent and impartial. The fact that the President has the power to refer people to military courts violates the right of an individual to equality before the law. Further, public access to sessions is often restricted, especially as military court trials are held in a military compound. In the trial of the 40 members of the Muslim Brothers mentioned

above, trial observers from Amnesty International and other organizations, have been denied access.

Article 14 of the ICCPR states that everyone is entitled to a public hearing by a competent, independent, and impartial tribunal established by law.

Principle 5 of the UN Basic Principles on the Independence of the Judiciary requires that the judiciary should decide matters without influence from the other branches of government. The Basic Principles also state that everyone has the right “to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.”

The African Charter on Human and Peoples’ Rights provides in Article 26 that states must guarantee the independence of the courts.

International standards, including Article 14 of the ICCPR, also require that the right to public hearing should be guaranteed generally, and restricted only in exceptional circumstances. The principle of equality before the courts and tribunals is a fundamental principle in international law to guarantee fair trial.

- **The right to prompt access to a lawyer.** Following arrest, suspects in terrorism and other security-related cases are routinely held for periods of weeks or months in pre-trial detention during which they are denied access to legal counsel or direct contact with their families, and are interrogated by security officials.
- **The right to prepare an adequate defence.** Military courts have frequently failed to ensure that defendants have access to the relevant case papers before the opening of their trial. In some cases, including that of the 40 Muslim Brothers members currently standing trial, the authorities did not provide defence lawyers with details of the charges until the trial began.

Article 14 of the ICCPR states: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality... (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.”

- **The right to appeal.** Until recently, civilians and military personnel tried by military courts were denied a right of appeal. Decisions by the courts were subject to ratification by the President or his nominee from the armed forces and review by the non-judicial body, the Military Appeals Bureau (also headed by the President). In April 2007, amendments to the Code of Military Justice introduced a right of appeal by way of cassation before the Supreme Court for Military Appeals. This is not satisfactory, however, as the court will only examine the law, its interpretation, and procedural issues and not the evidence itself or the factual basis of the charges. Added to which, an appeal can only be made to a court composed exclusively of military officers. The reform, therefore, fails to address the numerous deficiencies. The decisions of

the Supreme Court for Military Appeals are still subject to ratification by the President or his nominee, who can reduce, alter or suspend the sentence. All death sentences are referred to the President who can grant amnesty or commute the sentence.

Article 14 of the ICCPR states: “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.”

A climate of violation

Defendants standing trial across the Egyptian justice system risk having their right to a fair trial violated, particularly when the charges are politically motivated or security related. This climate of rights violations compounds the injustice of the military system. Key violations include:

- **The prohibition on the use of torture and other forms of ill-treatment.** Many people who have appeared before the courts on security-related charges say that they were tortured or otherwise ill-treated to make them “confess” to crimes or name others. Despite this pattern, courts often fail to investigate defendants’ allegations of torture and other ill-treatment fully and to ensure that “confessions” or other incriminating statements were freely given. Courts have repeatedly sentenced defendants to death or lengthy prison terms on the basis of “confessions” and other statements that defendants alleged were extracted from them using torture or other ill-treatment, while they were held incommunicado in pre-trial detention.

The prohibition on the use of torture and other forms of ill-treatment is absolute. No exceptional circumstances whatsoever, including a state emergency, may be invoked as a justification of torture and other ill-treatment. Egypt is a state party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which prohibits torture and other ill-treatment as well as the use of any statement extracted by torture. The Convention against Torture also places an obligation on the state to ensure that a prompt and impartial investigation is initiated wherever there are reasonable grounds to believe that torture or other ill-treatment has been committed.

- **The prohibition on prolonged incommunicado detention.** Many people arrested on security-related charges have been held for long periods without access to lawyers, or relatives, increasing the risk of torture and other ill-treatment and undermining their ability to prepare their defence.

The UN Commission on Human Rights has stated 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.”

- **The right to be freed on acquittal.** Some defendants who have been tried but acquitted by military courts have continued to be detained by the authorities

on the basis of detention orders issued against them by the Interior Minister using his powers under state of emergency legislation. Such administrative detainees may be held effectively indefinitely; some have been held for more than 10 years.

The use of the death penalty

Amnesty International considers the death penalty to be a violation of the right to life and the ultimate cruel, inhuman and degrading punishment.

As the deficiencies described above show, trials before Egypt's military courts are unfair. Compounding this injustice, more than 90 people have been sentenced to death by these courts, at least 67 of whom have been executed.

The UN Safeguards guaranteeing protection of the rights of those facing the death penalty state that capital punishment "may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights."

TAKE ACTION

Write to the Egyptian authorities urging them to:

- stop referring civilians to military courts;
- halt all pending trials of civilians in military courts immediately, and transfer the cases to civilian courts for a new trial;
- order retrials, in proceedings that meet international fair trial standards, for all those convicted by military courts or on the basis of evidence obtained or suspected to have been obtained by means of torture or other ill-treatment;
- investigate all allegations of torture promptly and thoroughly and end the use of incommunicado detention;
- commute all death sentences and announce a moratorium on the death penalty with a view to abolishing it.

Write to:

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AI Index: MDE 12/022/2007
August 2007