



HUMAN
RIGHTS
WATCH

THE ROAD AHEAD

A Human Rights Agenda for Egypt's New Parliament

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Introduction

Egypt's newly elected parliament will bear a heavy responsibility for reform. The break from Mubarak's abusive rule that Egyptian protesters called for last year has not taken place, and Egypt has yet to see a transition from the military regime, which was the backbone of Mubarak's rule. Over the past year, Egyptians have experienced many of the same human rights abuses that characterized Mubarak's police state. Under the leadership of the Supreme Council of the Armed Forces (SCAF), excessive use of force, torture, attacks on peaceful protests, and arbitrary arrests of peaceful protesters, bloggers, and journalists have become commonplace and illustrate how little has changed. Ending these abuses will only occur when there is political will to break with the past and truly reform the country's oppressive machinery.

With a new parliament, Egypt will, for the first time in many decades, have a fairly and freely elected civilian body.

But a genuine transition in Egypt from authoritarian government to a more open system with democratic institutions not only requires reforms of democratic institutions and electoral procedures, but of laws and policies that govern the civil and political rights and freedoms of people in Egypt.

First and foremost, this must include the abolition of the Emergency Law and revision of the police law that allows Egyptian police wide latitude to shoot Egyptians, including those who assemble in public and on the country's borders. Second, this must include amendments to the Code of Military Justice to restrict its jurisdiction to military offenses perpetrated by military officers, and an end to civilian trials before military courts. Third, this must include reforms of the legislative framework that governs freedom of expression, association, and assembly that are essential to creating the political space for Egyptian political parties, civil society, activist groups, and media to receive and share information and views, including controversial and political ones, and participating in a meaningful democratic process, including in the upcoming elections. Fourth, it must include amending the Penal Code's definition of torture so that it accords with international law and covers all forms of physical and psychological abuse. Finally, it must include strengthening penalties for police abuse so that they serve as effective deterrents.

This report focuses on laws that are incompatible with the enjoyment of the basic rights affirmed in the International Covenant on Civil and Political Rights (ICCPR), which Egypt ratified in 1982, and the African Charter on Human and People’s Rights, which it ratified two years later. Egypt’s parliament should prioritize a full review and reform of these laws.

Legislative Authority in Egypt Today

On February 11, 2011, Omar Suleiman, Egypt's then-vice president, announced that Hosni Mubarak had resigned as president of Egypt and that the SCAF would take over. On February 13 the SCAF issued the first Constitutional Declaration, stating that "the SCAF will take over running the affairs of the country temporarily for six months or until the end of parliamentary and presidential elections."¹ It further stipulated that it had suspended the 1971 constitution and that "the SCAF will issue laws during the transitional period." Article 57 of the Constitutional Declaration states that the cabinet shall prepare draft laws that the SCAF must ratify. As a result, since Mubarak's ouster the SCAF has been the sole authority with the power to amend or approve amendments to existing laws, and issue or approve new ones. But with the elections for the country's new parliament now complete, a new body also will be able to pass laws. There is, however, a lack of clarity about what the power and mandate of the new parliament will be vis-à-vis the SCAF.

On March 19 the SCAF oversaw Egypt's first democratic referendum in over 50 years, in which the country approved amending seven provisions to the 1971 constitution to limit the term of the president and facilitate new elections. Seventy-seven percent of the 18 million people who voted in the referendum voted in favor of the amendments to the 1971 Constitution, and so automatically in favor of a return to that constitution. Yet on March 30, the SCAF suspended the 1971 constitution again and issued a Constitutional Declaration which stated that the rights and provisions of the suspended 1971 constitution include a section on rights that is identical to those in the 1971 constitution. It also defined the role of the SCAF, cabinet, and electoral bodies for the duration of the transition, and established a timeframe for parliamentary elections to be held within six months, followed by presidential elections.

The Constitutional Declaration stipulates in article 60 that the elected parliamentary assembly will select a provisional assembly, composed of 100 members, who will be tasked with drafting a new constitution. Parliament will have six months to finalize selection of these members. The Provisional Assembly will then have six months to draft the constitution, which it will present to the people for referendum. Following this, the

¹ Constitutional Declaration, Egyptian Official Gazette, February 13, 2011.

country will hold presidential elections, which the SCAF has promised will be completed by July 2012.

As a result, although the country now has an elected parliament, the SCAF has thus far insisted that it will retain ultimate legislative authority, including the right to ratify or veto all legislation, and the power to appoint and maintain the interim caretaker cabinet until such time as a presidential election takes place.

Over the past year, the SCAF has used its legislative authority to make some amendments in response to popular demands, such as electoral laws, but has also made other amendments without consultation or transparency, such as those to the Penal Code. In March, the SCAF amended the 1977 Political Parties Law No. 40 to allow for establishing new political parties, and the 1956 Political Rights Law No. 73, which determines voter eligibility. It has also issued and subsequently amended the People's Assembly Law and the Shura Council Law, the electoral laws mandating a 30-percent individual candidate and 70-percent party list voting system. The SCAF has also drafted and passed amendments to the Penal Code, adding the crime of "thuggery" and amending provisions on rape and sexual assault that increase the penalties from life imprisonment to the death penalty in one provision and to a longer prison term in another. Finally, the SCAF has approved draft laws prepared by the caretaker cabinet, such as Law No. 34 of 2011 "On Criminalizing Attacks on the Right to Work and Public Facilities," which criminalizes demonstrations and strikes that impede public works (discussed below). On November 21, the SCAF passed the "Law on the Corruption of Political Life," amending Law 344 of 1952, which sets out penalties, including imprisonment and the deprivation of political rights, for all those convicted of ill-defined "political corruption."

The Need to Prioritize Legislative Reform to Ensure Basic Rights

In June 2011 Human Rights Watch met with representatives of the caretaker Egyptian government and the SCAF and called for a review of Egyptian legislation restricting freedom of expression, assembly, and speech in the run-up to the elections.

On June 6, 2011, then-Prime Minister Essam Sharaf assured Human Rights Watch that human rights were a priority for his government, which “wants to open a new page on human rights.”² The Minister of Justice at the time, Abdelaziz al-Guindy, agreed that there needed to be a review of existing legislation regarding political freedoms, but said it would only take place “insofar as it does not contradict our culture”—but did not elaborate on what that meant. He also said that such legislative amendments were not among his pre-election legislative priorities.³

The minimum starting point for any new Egyptian government must be commitment to the human rights reforms made by Mubarak’s government in 2010 at the Human Rights Council. In February 2010 the Human Rights Council reviewed Egypt’s human rights record in the country’s first Universal Periodic Review (UPR). The Mubarak government accepted a number of recommendations regarding legal reforms, although failed to implement any of them. These included:

- Continue Egypt’s ongoing review of national laws to ensure that they are in line with its international human rights law obligations;
- Lift the state of emergency that has been in effect since 1981 and replace the Emergency Law with a counterterrorism law that guarantees civil liberties;
- Expedite the reform of the Criminal Code in order to include a definition of torture in accordance with the Convention Against Torture;
- Repeal articles in the penal code that allow the imprisonment of journalists for their writing and amend the press provisions of the penal code so that they explicitly state

² Human Rights Watch meeting with Prime Minister Essam Sharaf, Cairo, June 6, 2011.

³ Human Rights Watch meeting with Justice Minister Abdelaziz al-Guindy, Cairo, June 7, 2011.

that journalists not be imprisoned or otherwise punished for the sole exercise of their right to free expression.⁴

The caretaker government should immediately prioritize implementing these recommendations, and reinstate the inter-ministerial UPR committee that the Nazif government established in 2009.

Freedom of assembly and freedom of expression are also prerequisites for free and fair elections. In its interpretation of article 25 of the ICCPR, the United Nations Human Rights Committee, the body of experts that reviews states' compliance with the covenant, wrote:

In order to ensure the full enjoyment of rights protected by Article 25, the free communication of information and ideas about public and political issues between citizens, candidates, and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election, and to advertise political ideas.⁵

1. Repeal the Emergency Law and End the State of Emergency

Egyptians have lived under the Emergency Law (Law No. 162 of 1958) almost continuously since 1967 and without interruption since Mubarak became president in October 1981 after the assassination of Anwar Sadat.

The law allows authorities to prohibit public gatherings and detain individuals indefinitely without charge (subject to pro forma judicial review). It also allows authorities to try

⁴ Report of the Working Group on the Universal Periodic Review, Human Rights Council, Seventh Session, February 19, 2010, A/HRC/WG.6/7/L.16.

⁵ UN Human Rights Committee, General Comment No. 25, The right to participate in public affairs, voting rights and the right of equal access to public service, (Fifty-seventh session, July 12, 1996), UN Doc. CCPR/C/21/Rev.1/Add.7, para. 26, <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/dob7f023e8d6d9898025651e004bcoeb?Opendocument>.

individuals before special security courts that do not meet international fair trial standards, provide no appeal, and are notorious for relying on confessions obtained under torture. It also allows the president to refer civilians to trial before military courts that are fundamentally not independent and do not meet fair trial standards.⁶

Under Hosni Mubarak's rule the state of emergency came to symbolize disregard for the rule of law, power of detention decisions resting with the Ministry of Interior at the expense of the judiciary, and a culture of impunity where officers acted as if they were above the law, routinely torturing detainees without suffering any consequences. The Mubarak government relied on the Emergency Law over several decades to detain what Egyptian human rights organizations estimate to be tens of thousands of Egyptians without charge, in some cases for decades, and often for political reasons.⁷

The Mubarak government also used the Emergency Law to arrest political activists who peacefully exercised their rights to free expression, association, and assembly, and to try them before military courts that did not meet minimum fair trial standards.

Under the Mubarak government, election periods in Egypt typically included widespread arrests of members of the banned Muslim Brotherhood under the Emergency Law. Leading up to the elections of November 2000, Muslim Brotherhood lawyers said that security forces had arrested around 1,600 members of the organization over several months.⁸ In 2005 Egyptian security officers arrested at least 800 members of the organization in the months preceding the November parliamentary elections.⁹ In the month prior to municipal

⁶ "Egypt: Military Justice Usurp Justice System," Human Rights Watch news release, April 29, 2011, <http://www.hrw.org/news/2011/04/29/egypt-military-trials-usurp-justice-system>.

⁷ See Human Rights Watch, Egypt: Anatomy of a State Security Case, December 10, 2007, <http://www.hrw.org/en/reports/2007/12/10/anatomy-state-security-case>; Human Rights Watch, Egypt: Mass Arrests and Torture in Sinai, February 2005, <http://www.hrw.org/en/reports/2005/02/21/egypt-mass-arrests-and-torture-sinai-o>.

⁸ Amira Howeidy, "Capitalizing on the Clampdown," Al Ahrām Weekly, 16 – 22, November 2000, Issue No.508, <http://weekly.ahram.org.eg/2000/508/eg10.htm> (accessed April 24, 2010). See also "Egypt: Muslim Brotherhood Trials," Human Rights Watch news release, February 15, 2007, <http://hrw.org/english/docs/2007/02/15/egypt15329.htm> and Alkarama for Human Rights, "Submission under the UPR Process," August 31, 2009, http://en.alkarama.org/index.php?option=com_docman&task=doc_download&gid=134&Itemid=104.

⁹ "Egypt: Government Uses National Security to Stifle Dissent," Human Rights Watch news release, June 20, 2005, <http://www.hrw.org/en/news/2005/06/20/egypt-government-uses-national-security-stifle-dissent>.

elections on April 8, 2008, security officers arrested at least 831 members, and over 1,000 members before the November 2010 parliamentary elections.¹⁰

The government also used the Emergency Law to persecute leftist political activists. In April 2003, SSI officers arrested Ashraf Ibrahim Marzuq and held him for three-and-a-half months without charge or trial. They eventually brought him before the Emergency Higher State Security Court and charged him with unlawful membership in a "revolutionary socialist group," "holding and possessing publications disseminating advocacy and propaganda for the group's purposes," and "sending false information to foreign bodies—foreign human rights organizations—which include, contrary to the truth, violations of human rights within the country, the content of which weakened the position of the state."¹¹ Ibrahim was eventually acquitted on March 11, 2004.

As recently as 2010 the government used the Emergency Law to detain dissidents, such as the blogger Hany Nazeer, who linked a controversial book to his blog that some in his village considered insulting to Islam. The government told Human Rights Watch in February 2010 that it imprisoned Nazeer under the Emergency Law "to protect [his] life in light of the anger and the strong uprising of the Muslims in Abu Tesht in Qena caused by his blog." The Ministry of Interior detained him under successive Emergency Law orders for 18 months until it eventually released him without charge. State Security Investigations also detained Mus'ad Abul Fagr, a novelist and rights defender who had been an outspoken critic of rights violations of Sinai Bedouin. He was held under successive Emergency Law orders from February 15, 2008, until his release on July 14, 2010.¹²

The Supreme Council of the Armed Forces (SCAF) had promised to lift the state of emergency when it first assumed rule over Egypt on February 11, but on September 10 reneged on this promise and said that it would stay in place until the end of its current period in May 2012. In a meeting with Human Rights Watch on June 6, a SCAF general said the council planned to lift the state of emergency "as soon as the 'security situation'" allows, but did not cite a specific need for retaining the Emergency Law and said that

¹⁰ "Egypt: Jailing 800 Activists Casts Doubt on Elections: Mass Arrests Include Would-Be Candidates; Military Court Delays Verdict," Human Rights Watch news release, March 29, 2008, <http://www.hrw.org/en/news/2008/03/29/egypt-jailing-800-activists-casts-doubt-elections>.

¹¹ Human Rights Watch, Egypt: *Security Forces Abuses of Anti-War Demonstrators*, p. 11.

¹² "Egypt: Free Blogger Held Under Emergency Law," Human Rights Watch news release, April 23, 2010, <http://www.hrw.org/news/2010/04/23/egypt-free-blogger-held-under-emergency-law>.

detention under the law is not one of the SCAF's policies. He also did not elaborate on a time frame.¹³ On September 10, however, Minister of Information Osama Heikal announced that the SCAF was expanding the scope of application of the Emergency Law to cover strikes and demonstrations that disrupt traffic as well as "the spreading of false information harmful to national security."¹⁴

Egyptian human rights organizations are not aware of any detainees who continue to be detained under the Emergency Law. However, on June 4 the public prosecutor referred chief suspect Adel Labib and 47 others arrested after violence at a church in Imbaba, Cairo, which led to the deaths of 12 people, to trial before an emergency state security court, in the first outright use of the Emergency Law since the uprising. State security prosecutors referred a second case of sectarian violence in Minya to an Emergency State Security Court in July, and in September started investigating the violence surrounding the September 9 break-in of the Israeli embassy in Cairo.

The government has also used the state of emergency to justify further restrictions on freedom of assembly and the right to strike. On April 12, 2011, the SCAF approved Law No. 34 of 2011 "On Criminalizing Attacks on the Right to Work and Public Facilities," which criminalizes participation in and calls for strikes and demonstrations that "impede public works" (see discussion below in section 4).

In his 2010 report on Egypt, Special Rapporteur Martin Scheinin stated that:

[E]xceptional measures can be used only as a temporary tool, with the primary objective of restoring a state of normalcy where full compliance with international standards of human rights can be secured again. A state of emergency almost continuously in force for more than 50 years in Egypt is not a state of exceptionality; it has become the norm, which must never be the purpose of a state of emergency.

¹³ Human Rights Watch meeting with a general of the Supreme Council of the Armed Forces, Ministry of Defense, Cairo, June 6, 2011.

¹⁴ Nada Rashwan, "Egypt's Minister of Information: Emergency Law Revived After Yesterday's Clashes," *Ahram Online*, <http://english.ahram.org.eg/NewsContent/1/64/20868/Egypt/Politics-/Egypts-minister-of-information-Emergency-law-reviv.aspx>, (accessed September 12, 2011).

Human Rights Watch's assessment of the current security situation in Egypt based on ground observation and research conducted over the past nine months is that it does not meet the standard in article 1 of the ICCPR of a "public emergency that threatens the life of the nation." There has been a rise in crime and in the first few weeks of February there were significantly less police deployed on the streets, but from March onwards the overall security situation had re-stabilized and violence was limited to specific incidents of confrontation between the police and demonstrators, or specific incidents of sectarian violence.¹⁵

The continued existence of the Emergency Law means that Egyptians still live under a law that allows authorities to detain them for any reason, at any time, for indefinite periods. It also means that there is no meaningful judicial scrutiny or right to appeal any such detentions, in light of the reliance on government-affiliated security courts. In such an environment, and in light of past use of the Emergency Law to detain critics of the government, Egyptians have no reassurance that they will be free to express critical views without government prosecution. It is particularly essential during an election period that the government revoke any such powers allowing for arbitrary detention and prosecution.

The Egyptian parliament should:

- Repeal the Emergency Law and lift the state of emergency, since the situation on the ground is not one of public emergency that threatens the life of the nation, as required by article 4(1) of the ICCPR to justify imposition of a state of emergency;
- If the situation ever amounted to an emergency threatening the life of the nation, ensure any new declaration of a state of emergency is temporary, and that the measures derogating from human rights protections are clearly and narrowly identified, strictly necessary and proportionate, and limited in time and geographical scope to the extent strictly required by the exigencies of the situation. Both the state of emergency and any measures adopted under it should be subject to judicial review, with judges having power to strike down measures that are disproportionate or no longer necessary to meet an emergency that threatens the life of the nation. Include these conditions for declaring a state of emergency in the new constitution.

¹⁵ "Egypt: Human Rights Reform an Urgent Priority," Human Rights Watch news release, June 7, 2011, <http://www.hrw.org/news/2011/06/07/egypt-human-rights-reform-urgent-priority>.

2. Amend the Code of Military Justice to End Military Trials of Civilians

Under the Mubarak government, trials of civilians before military courts were limited to very high-profile political cases. Since January 2011, however, the SCAF has expanded the use of military trials, using them to prosecute more than 12,000 civilians, for both ordinary criminal charges and political arrests of protesters or critics of the military. In addition, the SCAF has continued to detain some protesters. Military officers arbitrarily arrested protester Amr al-Beheiry, along with at least eight others, on February 26 after forcibly evicting protesters from Tahrir Square, and a military tribunal sentenced him to five years imprisonment. He remains in prison but on January 10, 2012 a military court of appeal ordered a retrial.¹⁶

The Code of Military Justice (CMJ) allows the president to refer civilians to military tribunals under the exceptional powers granted to him by the Emergency Law. However, articles 5 and 6 of the CMJ also provide a much broader basis for referral, stating that military tribunals will have jurisdiction in cases where the crime takes place in an area controlled by the military, or if one of the parties involved is a military officer.¹⁷ This broad wording has allowed military authorities to refer individuals arrested anywhere in Egypt to military courts, since the military argues that it currently controls the entire country. Previously, only an individual arrested in a military zone, for example the Sinai, would come under the jurisdiction of military courts. In its 2008 report *Sinai Perils*, Human Rights Watch documented how this practice included thousands of sub-Saharan migrants who were arrested in Sinai in recent years and tried before military courts without due process.¹⁸

Military courts in Egypt do not meet the requirements of independence since judges are subject to the orders of their superior military officers. Human rights lawyers representing defendants before military courts have on several occasions been able to informally obtain information about what ruling the military judge plans to issue before the trial has even started, especially in the case of the arrest of political activists. In the case of youth leader Asmaa Mahfouz, who was subpoenaed by the military prosecutor on charges of “insulting the military,” General Adel Morsy, head of the military justice system, issued a press

¹⁶ “Egypt: Retry or Free 12,000 After Unfair Military Trials,” Human Rights Watch news release, September 10, 2011, <http://www.hrw.org/news/2011/09/10/egypt-retry-or-free-12000-after-unfair-military-trials>.

¹⁷ Code of Military Justice, arts. 5, 6.

¹⁸ Human Rights Watch, Egypt: Sinai Perils, November 12, 2008.

release in which he stated that her comments had been inappropriate before her interrogation by the prosecutor had taken place.¹⁹

Judges must be free from constraints, pressures, or orders imposed by other branches of government. According to the UN Basic Principles on the Independence of the Judiciary (UN Basic Principles), “[i]t is the duty of all governmental and other institutions to respect and observe the independence of the judiciary,” and the judiciary “shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”²⁰ Judicial decisions cannot be subject to change by authorities other than superior courts. The UN Basic Principles state that “[t]here shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision.”²¹

In a democratic government, the penal military jurisdiction should have a restrictive and exceptional scope and limit their jurisdiction to the functions that laws assign to military forces. Consequently, civilians must be excluded from military jurisdiction, and only military personnel should be judged by military courts, but only for alleged crimes relating to their military function.

A clear doctrine has evolved in the jurisprudence of international human rights bodies over the last 15 years that the jurisdiction of military tribunals over civilians violates the due process guarantees protected in article 14 of the ICCPR. In its General Comment 32 interpreting article 14, the Human Rights Committee stated that:

Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with

¹⁹ “Egypt: Military Intensifies Clampdown on Freedom of Expression,” Human Rights Watch news release, August 17, 2011, <http://www.hrw.org/news/2011/08/17/egypt-military-intensifies-clampdown-free-expression>.

²⁰ UN Basic Principles on the Independence of the Judiciary, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, August 26 - September 6, 1985, <http://www2.ohchr.org/english/law/indjudiciary.htm> (accessed September 9, 2011).

²¹ *Ibid.*, art. 4.

regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.²²

During the 1990s the Human Rights Committee rejected the use of military tribunals to try civilians under any circumstances, or to try military personnel for infractions other than those committed in exercise of military functions. This jurisprudence includes the committee's "concluding observations" on the reports submitted by states party to the covenant, such as Algeria (1992), Colombia (1993), Russia (1994), Peru (1996), Poland (1999), and Cameroon (1999), as well as decisions on individual cases. In the case of Chile, the committee noted in its 1999 concluding observations:

[T]he Committee recommends that the law be amended so as to restrict the jurisdiction of the military courts to trials only of military personnel charged with offences of an exclusively military nature.

The wide jurisdiction of the military courts to deal with all the cases involving prosecution of military personnel also contributes to the impunity that such personnel enjoy from punishment for serious human rights violations.

Recommendations:

- The SCAF should stop referring civilians to military tribunals;
- The Egyptian parliament should amend the Code of Military Justice to restrict the jurisdiction of military courts to trials of only military personnel charged with offences of an exclusively military nature;
- The Code of Military Justice should be amended to explicitly state that the public prosecutor shall be competent to investigate complaints regarding military abuse and that members of the military can be tried before civilian courts in cases of abuse and ill-treatment.

²² Human Rights Committee, General Comment No. 32, art. 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007).

3. Reform the Police Law

One of the main catalysts of the January uprising in Egypt was popular outrage over decades of systemic police brutality. Egyptians experienced a particularly brutal dose of police abuse on January 28, 2011, when on a single day police killed a majority of the 846 protesters during the uprisings in Cairo, Alexandria, Suez and other cities around Egypt.²³ The primary division of the ministry of interior deployed on the streets that day was the Central Security Force (CSF), Egypt's riot police. Throughout 2011, the CSF continued to use excessive force to police and break up demonstrations, such as in its November 2011 attack on demonstrators, where the violence left 45 dead.²⁴

Egypt's riot police have been responsible for policing demonstrations and public gatherings in recent decades and have frequently used brutal force against unarmed civilians, such as the violent repression of anti-war demonstrators in 2003; the severe beating of peaceful demonstrators protesting Hosni Mubarak's decision to re-run for the presidency on 30 July 2005; the violence against a sit-in of Sudanese refugees and asylum seekers in Mostafa Mahmoud Square in 2005, which resulted in 27 deaths;²⁵ and the violence against, and intimidation of, voters during the parliamentary elections in late 2005, which left at least 12 voters dead.²⁶ Under Mubarak, prosecutors would always close—and at times fail even to open—investigations of excessive use of force by police so that those responsible for using excessive force were never prosecuted.²⁷

In addition, the CSF are also deployed as border guards along Egypt's Sinai border with Israel. Since mid-2007 Egypt's border guards have shot dead at least 93 unarmed migrants as they tried to cross the border into Israel, most recently on June 26, in a lethal shooting of four migrants. Human Rights Watch, the High Commissioner for Human Rights, and other organizations have repeatedly criticized this lethal and unjustified use of force.

²³ The number 846 is the official death toll determined by the National Fact-Finding Commission of the January 25 Revolution. The summary report of the commission is available at <http://www.ffnc-eg.org/main.html>.

²⁴ "Egypt: Protesters' Blood on the Military Leadership's Hands," Human Rights Watch news release, November 22, 2011, <http://www.hrw.org/news/2011/11/22/egypt-protesters-blood-military-leadership-s-hands>; "Egypt: Cairo Violence Highlights Need to Reform Riot Police," Human Rights Watch news release, July 8, 2011, <http://www.hrw.org/news/2011/07/08/egypt-cairo-violence-highlights-need-reform-riot-police>.

²⁵ "Egypt: Investigate Police for Sudanese Deaths," Human Rights Watch news release, December 29, 2005, <http://www.hrw.org/en/news/2005/12/29/egypt-investigate-police-sudanese-deaths>.

²⁶ Letter from Human Rights Watch to Secretary of State Condoleezza Rice regarding Department of State Comments on Egyptian Elections, December 1, 2005, <http://www.hrw.org/en/news/2005/12/01/letter-secretary-state-condoleezza-rice-about-department-state-comments-egyptian-elec>.

²⁷ Human Rights Watch, Egypt: Work on Him Until He Confesses.

Egyptian officials have stressed that the border police follow a common warning procedure before directly targeting people who are trying to cross the border. However, international standards on the intentional use of lethal force by law enforcement agents stress that such force should only be used when strictly necessary to protect life, regardless of whether there are warning shots.

In addition to the problem of the lack of political will to investigate this illegitimate use of force, Egypt's police law gives overly broad powers to ministry of interior officers. Article 102 of the 1971 Police Law No. 109 provides that:

Police officers may use necessary force to perform their duties if this is the only means available. The use of firearms is restricted to the following:

- First, the arrest of:
 - All those sentenced to imprisonment for more than three months if they resist or try to escape; and
 - All those accused of a crime or against whom an arrest warrant has been issued if they resist or try to escape.
- Secondly: for the protection of prisoners as stipulated in the prisons law.
- Thirdly: to disperse crowds or demonstrations of at least five people if this threatens public security after issuing a warning to demonstrators to disperse. The order to use firearms shall be issued by a commander who must be obeyed.

In all three circumstances, the use of the firearm must be the only means of achieving the stated aims. The policeman must start by warning that he is about to fire and may then resort to the use of the firearm. The minister of interior shall determine the regulations that shall be followed and how to issue the warning and use the firearm.

As it stands, this provision provides overly broad powers to police to use firearms that go beyond what international law permits. The UN Basic Principles on the Use of Force and Firearms provide that law enforcement officials "shall, as far as possible, apply non-violent means before resorting to the use of force" and may use force "only if other means remain

ineffective." When the use of force is unavoidable, law enforcement officials must "exercise restraint in such use and act in proportion to the seriousness of the offence." Principle Nine states clearly that:

Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.²⁸

In contrast, the Egyptian code allows the use of firearms beyond these narrow limits; for example, it permits the police to fire on "crowds" of more than five people if they "threaten [sic] public security," a much broader standard than is allowed under international law, which requires a "particularly serious crime involving grave threat to life."

The Egyptian parliament should:

- Amend Article 102 of the 1971 Police Law No. 109 to limit the use of lethal force to cases of self-defense or the defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. Order the Ministry of Interior to draft new codes of conduct for policing demonstrations and border crossings that are in line with both international guarantees for freedom of assembly and policing standards.

4. Protect and Decriminalize Free Expression

Egypt's Penal Code and press law contain articles that provide prison terms and fines for peaceful speech, notably speech deemed defamatory not only toward individuals but also

²⁸ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, <http://www2.ohchr.org/english/law/firearms.htm>.

to state institutions; and speech deemed liable to disturb the public order, or deemed harmful to Egypt's image. These content-based provisions allow a court to convict any person whose speech it deems to be "insulting" or "harmful." They also include provisions that criminalize speech that "spreads false information," "harms public morals," or advocates change to the existing political order. In contrast, it is a norm of international law that freedom of expression is best protected by decriminalizing all acts of speech except those that constitute incitement to imminent violence.

Vaguely defined limits on substantive speech invite abusive and discriminatory enforcement. Governments often use vague regulations such as "offending a public official" or "spreading harmful information" as a tool to prevent public criticism of government officials and policies, and indeed, the Egyptian government has historically used these provisions to arrest and detain critics, journalists, writers, and opposition politicians. Such enforcement prevents useful insights and information from dissemination into the public consciousness and is contrary to the right of citizens to question and challenge their government.

Accepted international standards allow only restrictions on content of speech in extremely narrow circumstances, such as cases of slander or libel against private individuals or speech that clearly threatens national security. Restrictions must be clearly defined, specific, necessary, and proportionate to the interest protected. Article 19 of the ICCPR sets out the very narrow conditions under which limitations on speech are permissible, namely that they be provided by law and necessary "(a) For the respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals." This test is also mirrored in article 27(2) of the African Charter on Human and Peoples' Rights.

The Human Rights Committee's authoritative interpretation requires that the restrictions specified in article 19(3) should be interpreted narrowly and that the restrictions "may not put in jeopardy the right itself."²⁹ The government may impose restrictions only if they are prescribed by existing legislation and meet the standard of being "necessary in a democratic society." This implies that the limitation must respond to a pressing public

²⁹ UN Human Rights Committee, General Comment No. 34 on article 19 Freedom of Opinion and Expression, July 21, 2011, CCPR/LCLGCL34.

need and be oriented along the basic democratic values of pluralism and tolerance. “Necessary” restrictions must also be proportionate, that is, balanced against the specific need for the restriction being put in place. The committee also states in General Comment 34 that “restrictions must not be overbroad” and that “the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.”³⁰

In applying a limitation, a government should use no more restrictive means than are absolutely required. The lawfulness of government restrictions on speech and the dissemination of information are thus subject to considerations of proportionality and necessity. So, for example, the government may prohibit media procurement and dissemination of military secrets, but restrictions on freedom of expression to protect national security “are permissible only in serious cases of political or military threat to the entire nation.” Since restrictions based on protection of national security have the potential to completely undermine freedom of expression, “particularly strict requirements must be placed on the necessity (proportionality) of a given statutory restriction.”³¹

Spreading “False” Information

Article 102(bis) allows for detaining anyone who “deliberately diffuses news, information/data, or false or tendentious rumors, or propagates exciting publicity, if this is liable to disturb public security, spread horror among the people, or cause harm or damage to the public interest.”

Article 80 (d) provides a punishment of six months to five years for “deliberately diffusing abroad news, information/data, or false rumors about the internal situation in the country in order to weaken financial confidence in the country or in its dignity, or [for taking] part in any activity with the goal of harming national interests of the country.”

Article 188 provides for imprisoning for a maximum one year any person who “makes public—with malicious intent—false news, statements or rumors that [are] likely to disturb public order.”

³⁰ Ibid.

³¹ Nowak, CCPR Commentary, p. 355.

Expressing false information is not a permissible restriction on freedom of expression under article 19 (3) of the ICCPR. The Human Rights Committee states very clearly that “the Covenant does not permit general prohibition of expression of an erroneous opinion or an incorrect interpretation of past events.”³²

The Mubarak government relied on these Panel Code provisions on numerous occasions to arrest and sentence activists for legitimate peaceful expression:

On January 8, 2007, security officers at Cairo airport stopped Huwaida Taha Mitwalli, a journalist for London’s Al-Quds al-Arabi who was making a documentary about torture in Egypt for the Al-Jazeera news network. They prevented Mitwalli from leaving Egypt and confiscated her videotapes and computer as she tried to board a flight to Qatar earlier in the year on January 8.³³ Prosecutors charged her with “practicing activities that harm the national interest of the country” and “possessing and giving false pictures about the internal situation in Egypt that could undermine the dignity of the country,” but released her on bail. On January 12 she received a summons to appear at the Supreme State Security Court the next day for “seeking the help of some youths to film fabricated scenes as incidents of torture.” The arrest followed public outcry over a series of videos apparently depicting prisoner abuse in Egyptian detention facilities, including one tape showing a Cairo microbus driver being raped in police custody.

On May 2, 2007, a criminal court sentenced her to six months imprisonment for harming “the dignity of the country.” In March 2008, an appeals court dropped the sentence of imprisonment, retaining only the fine. ³⁴

In 2007 a Cairo misdemeanor court sentenced four editors of independent and opposition newspapers to a one year in prison and a LE 20,000 (\$3,500) fine for violating article 188 of the Penal Code, which punishes any person who “makes public—with malicious intent—false news, statements or rumors that [are] likely to disturb public order.”

³² UN Human Rights Committee, General Comment No. 34 on Article 19 Freedom of Opinion and Expression, July 21, 2011, CCPR/LC/GCL/34; para 49.

³³ “Egypt: Government Detains Al-Jazeera Journalist,” Human Rights Watch news release, January 17, 2007, <http://www.hrw.org/news/2007/01/16/egypt-government-detains-al-jazeera-journalist>.

³⁴ “Egypt: Prison for Al-Jazeera Journalist Who Exposed Torture,” Human Rights Watch news release, May 2, 2007, <http://www.hrw.org/news/2007/05/02/egypt-prison-al-jazeera-journalist-who-exposed-torture>.

The SCAF has relied on these same provisions to interrogate and sentence journalists for writing critically about it. Most recently, a military court sentenced Maikel Nabil to three years in prison on April 11, 2011, for "insulting the military establishment" because he had been critical of the military on his blog and Facebook page. The military prosecutor charged him with "insulting the military establishment" under article 184 of the Penal Code, and with "spreading false information," a violation of article 102 bis, solely on the basis of his criticism of the military for involvement in human rights abuses and corruption on his blog and Facebook page. The military judge convicted him on both counts and sentenced Nabil to three years imprisonment. Neither Nabil nor any of his lawyers were present, in violation of the code of criminal procedure. He remains in prison.

On other occasions since the overthrow of Mubarak, the military has summoned journalists and activists to question them about what it believes were unsubstantiated accusations. On May 31 the military prosecutor summoned blogger and activist Hossam al-Hamalawy, TV presenter Reem Maged, and journalist Nabil Sharaf to question them about their criticism of the military on TV during the previous week. On June 19 the military prosecutor summoned Egyptian daily El Fagr journalist Rasha Azab and her editor Adel Hamouda to question them in connection with an article written by Azab accusing the military of conducting virginity tests on female protesters and torturing protesters in March. The military prosecutor did not charge any of the journalists and released them after a couple of hours. In early June a SCAF member told Human Rights Watch that the military did not summon all those who criticized the SCAF, but only those who "make accusations against the SCAF; we summon them and ask them to present evidence to substantiate their claims."³⁵

Calls for Political Change:

- Article 98B, added by Law No. 117 of 1946 and amended by Law 311 of 1953, of the Penal Code provides for a maximum five-year sentence and five-hundred Egyptian Pound fine (\$84) for anyone who "calls for changing the basic principles of the Constitution or the basic systems of the social community, or the domination of one class over the other classes, or for ending a social class, overthrowing the basic social or economic systems of the State, or pulling down any of the basic systems of the social community, through the use of force or terrorism, or any other illegal method."

³⁵ Human Rights Watch meeting with a general of the SCAF, Ministry of Defense, Cairo, June 6, 2011.

- Article 98B(bis) further extends these penalties to "whoever obtains, personally or by an intermediary, or possesses written documents or printed matter comprising advocacy or propagation of anything of what is prescribed in articles 98B and 174, if they are prepared for distribution or for access by third parties, and whoever possesses any means of printing, recording or publicity which is appropriated, even temporarily, for printing, recording, or diffusing calls, songs, or publicity concerning a doctrine, association, corporation, or organization having in view any of the purposes prescribed in the said two articles."
- Article 174 provides for imprisonment of not less than five years for whoever "incites to the overthrow of the system of government in Egypt."
- Article 176 allows for the imprisonment of anyone who "instigates discrimination against a sect because of gender, origin, language, religion, or belief, if such instigation is liable to disturb public order."

Such broad and sweeping criminalization of political speech that does not directly incite violence does not comply with the strict conditions for limits on speech provided for in the ICCPR.³⁶ It also leads to outdated and unclear provisions, such as those that prohibit calls to "end a social class" or the "basic systems of the social community," which allow a government to determine subjectively whether or not the speech in question is lawful.

The Mubarak government relied on these provisions to silence critics who sought any change in government. Article 98 of the Penal Code provides criminal penalties for speech that go far beyond what is legitimate under international law, criminalizing political expression if it is critical of, or seeks to change, the current political, economic, and social order because it considers speech illegal in a number of cases listed above and has therefore been applied in cases that go far beyond the use or incitement to violence.

The heart of efforts to uphold freedom of speech is based on the belief that people should be free to challenge their government and society and seek to change it, through peaceful expression of views. Public discussion of changes to the political, social, or economic system is a normal part of political life in any country that respects freedom of expression.

³⁶ See paras. 21-36 of UN Human Rights Committee, General Comment No. 34 on Article 19 Freedom of Opinion and Expression, July 21, 2011, CCPR/LGCL/34.

On February 21, 2007, in the first ever sentence against a blogger, an Egyptian court sentenced Abd al-Karim Nabil Sulaiman, better known by his pen name Karim Amer, to four years in prison for the political and social commentary on his blog, which was protected by freedom of expression since it did not incite violence in any way. It sentenced him on charges of insulting Islam, defaming the president, and “spreading information disruptive of the public order.” Article 176 of the Penal Code, the apparent basis of the “insulting Islam” charge against Sulaiman, allows for imprisoning “whoever instigates ... discrimination against one of the people’s sects because of race, origin, language, or belief, if such instigation is liable to disturb public order.” Amer served the four years in prison and was released in November 2010.³⁷

Harming Public Morals

- Article 178 of the Egyptian Penal Code reads, “Whoever makes or holds, for the purpose of trade, distribution, leasing, pasting, or displaying printed matter [or] manuscripts ... if they are against public morals, shall be punished with detention for a period not exceeding two years and a fine of not less than 5,000 pounds (\$839) and not exceeding 10,000 pounds (\$1,678) or either penalty.”

Although article 19(3) of the ICCPR lists public morals as one justification for restricting expression, the Human Rights Committee clarified in General Comment No. 22 that “the concept of morals derives from many social, philosophical, and religious traditions; consequently, limitations ... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.”³⁸ The restriction must also meet stringent conditions of necessity and proportionality. The government may impose restrictions only if they are prescribed by existing legislation and meet the standard of being “necessary in a democratic society.” This implies that the limitation must respond to a pressing public need and be oriented along the basic democratic values of pluralism and tolerance. “Necessary” restrictions must also be proportionate, that is, balanced against the specific need for the restriction being imposed.

³⁷ “Egypt: Drop Charges Against Blogger,” Human Rights Watch news release, January 26, 2007, <http://www.hrw.org/news/2007/01/26/egypt-drop-charges-against-blogger>.

³⁸ UN Human Rights Committee, General Comment No. 22 on Article 19 Freedom of Opinion and Expression, July 21, 2011, CCPR/LCLGCL34.

In June 2002 the Sayyida Zainab court in Cairo sentenced Shohdy Naguib Sorour to a year in prison for possessing and distributing "Kuss Ummiyat," a political satire written by his father, the late Egyptian avant-garde poet Naguib Sorour, between 1969 and 1974. The court found that Shohdy had posted the poem on the Web site <http://www.wadada.net> and that the poem—which blasted those Sorour held responsible for Egypt's defeat in the 1967 Middle East War—transgressed public morality, based on article 178, due to its lewd play on words in the title and shock-poetry content. Sorour's lawyers argued that the prosecution could not prove that Sorour had posted the poem on the Internet. The court convicted Sorour even though the only piece of evidence the prosecution could produce was that Sorour, like thousands of his father's admirers, possessed a hard copy of the poem. On October 14, 2002, the South Cairo Bab al-Khalq appeals court confirmed the Sayyida Zainab court's one-year sentence.

5. Defamation and “Insulting” Officials

- Article 179 calls for the imprisonment of “whoever affronts the president of the republic.”
- Article 184 states that “whoever insults or libels the People’s Assembly, the Shura Council, any other state institution, the army, the courts or the authorities shall be punished with imprisonment and a fine of not less than 5000 Egyptian pounds (\$841).”
- Article 185 further stipulates that insulting a public official regarding his/her duty or service can be punished with a maximum of one year in prison.
- Article 180 provides for imprisonment for “whoever insults a foreign king or head of state.”
- Article 182 provides a fine for “insulting the accredited representative of a foreign country in Egypt in relation to the performance of their duties.”
- Article 308 imposes a minimum prison sentence of six months on journalists whose articles attack “the dignity and honor of individuals, or an outrage of the reputation of families.”

Each of these provisions in effect shields government officials from public criticism by allowing courts to jail those who are deemed to have “insulted” or “affronted” them, or “attacked” their “dignity,” “honor” or “reputation.” The Mubarak government used these Penal Code provisions to crack down on legitimate criticism of the government’s human rights record or criticism of the political situation.

In 2006, a court in the village of Al-Warrak, near Cairo, sentenced Ibrahim Issa, editor of the opposition weekly Al-Dustur, and Sahar Zaki, a journalist at the paper, to one year in prison for “insulting the president” and “spreading false or tendentious rumors,” in connection with an al-Dustur article reporting a lawsuit against President Mubarak and senior officials in the ruling National Democratic Party. “The Egyptian Penal Code is a minefield for journalists,” Issa told Human Rights Watch. “If these provisions were evenly enforced, most of the journalists in the country would be in jail.”

Also in 2006, a military court in Cairo sentenced Talaat al-Sadat, a member of parliament for the opposition al-Ahrar party and nephew of late President Anwar al-Sadat, to one year in prison for “insulting the military and the Republican Guard.” In the days before the 25th anniversary of his uncle’s October 6, 1981 assassination, al-Sadat had given a series of press interviews in which he called for an investigation into the late president’s death and accused senior government officials of participating in an international conspiracy that led to the assassination of his uncle.

On October 5, Speaker of the People’s Assembly Fathi Surur, acting at the request of Egypt’s military prosecutor general, stripped Talaat al-Sadat of his parliamentary immunity to face charges of “spreading false rumors” and “insulting the armed forces and the Republican Guard” before a military court. The court sentenced him to one year’s imprisonment.

Such insulation of public officials from criticism violates the fundamental principle in international human rights law that press freedoms should be wider, not narrower, with respect to speech about politicians and government officials. Politicians and other public figures relinquish part of their rights to reputation and privacy by accepting their positions and must therefore tolerate wider and more intense scrutiny of their conduct. In General Comment 34, the Human Rights Committee clearly states that because of the particularly high value of political speech “the mere fact that forms of expression are considered to be

insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant.”³⁹

Defamation should be dealt with as a civil rather than as a criminal offense, redress for which should consist of damages, such as reasonable monetary compensation, rather than deprivation of liberty. In a joint declaration adopted in 2002, the UN special mandate holders on freedom of expression stated, “Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws” (adopted December 10, 2002).⁴⁰ Defamation laws should be carefully designed to protect the right to expression, include the defense of truth, and should only apply to expression which is subject to verification.

Furthermore, public officials should be required to tolerate a greater degree of criticism than ordinary citizens. This distinction serves the public interest by allowing debate about issues of governance and common concern to be more robust by reducing the likelihood of successful defamation suits against persons who speak critically of public officials and political figures—thereby reducing the risk of both actual and self-censorship. In no circumstances should someone be jailed merely because their writing is deemed insulting or an affront, least of all to a public official or institution.

The Human Rights Committee’s General Comment 34 states very clearly that “states parties should not prohibit criticism of institutions, such as the army or the administration.”⁴¹ Almost any criticism of a public official for his or her job performance might be deemed to harm his or her reputation, dignity, or honor.

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (1995), which are based on international human rights law and standards, provide that, “No one may be punished for criticizing or insulting the nation, the state or

³⁹ UN Human Rights Committee, General Comment No. 34 on Article 19 Freedom of Opinion and Expression, July 21, 2011, CCPR/LCLGCL34, para. 38 citing *Bodrozic v. Serbia and Montenegro*, No. 1180/2003.

⁴⁰ Joint Declaration of 10 December 2002, <http://www.cidh.oas.org/Relatoria/English/PressRel02/JointDeclaration.htm>.

⁴¹ UN Human Rights Committee, General Comment No. 34 on Article 19 Freedom of Opinion and Expression, July 21, 2011, CCPR/LCLGCL34, para. 38.

its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agency.”⁴²

The Egyptian parliament should:

- Revoke articles 184, 185, 179, 180, 308, which impose criminal penalties for insulting or affronting public officials or institutions;
- Revoke all defamation provisions, including articles 184, 185, 179, 180, and 308 from the Penal Code;
- Set out for civil cases of defamation that criticism of public figures, including public officials, in matters connected with their work, will not constitute defamation. Remove any right to sue from defamation from public institutions, including the presidency, parliament and armed forces, and limit this right to individuals;
- Eliminate criminal penalties for defamation in cases that do not involve direct incitement to acts of violence;
- Revise the Press Law to provide explicitly that journalists will not be imprisoned or otherwise criminally punished for exercising their rights to freedom of speech, as set out in relevant international law.

6. Amend Provisions that Criminalize Freedom of Religion

- Article 98(f) of the Penal Code criminalizes any use of religion “to promote or advocate extremist ideologies ... with a view toward stirring up sedition, disparaging or showing contempt for any divinely-revealed religion, or prejudicing national unity and social harmony.”⁴³

The Mubarak government used this provision to criminalize expressions of unorthodox religious views, including conversion from Islam.

In its 2007 report *Prohibited Identities*, Human Rights Watch documented how officials interpreted this article to proscribe conversion from Islam on the grounds that such conversion disparages Islam and is thus incompatible with public order.⁴⁴

⁴² The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information, U.N. Doc. E/CN.4/1996/39 (1996).

⁴³ Article 98 (f) specifies penalties of up to five years in prison and a fine of up to LE 1,000 (\$165).

⁴⁴ Human Rights Watch, Egypt: Prohibited Identities.

Under Mubarak, Egyptian authorities at times arrested persons who converted to Christianity, particularly if those persons publicly announced their conversion or appeared to be proselytizing, and charged them under article 98(f). Authorities also on occasion arrested individuals for public adherence to a non-orthodox understanding of Islam or Christianity, such as with Ahmadis or Shi'a.

Security officers on several occasions have also, under the Emergency Law, detained members of religious groups with beliefs differing from official Sunni Islam. This has occurred with members of the Ahmadi, Quranist, and Shi'ite minorities.

In 2009 SSI detained eight men who identified themselves as Shi'ite Muslims. In mid-2009, the men appeared before the state security prosecutor, who questioned them about their Shi'ite faith, accusing them of spreading Shi'ite thought and "contempt of religions," an offense under the Egyptian Penal Code. In October 2009 the prosecutor ordered their release but the Interior Ministry continued to renew—most recently in June 2010—their detention orders under the Emergency Law. That month, the emergency court ordered the release of the eight men, but they remained detained in Damanhour prison until early 2011, when the Ministry of Interior started releasing Emergency Law detainees.

Mustafa al-Sharqawi grew up Muslim in Port Sa'id and converted to Christianity in the 1980s. He left Egypt in 1998, 10 years after he was baptized, and now lives abroad. He told Human Rights Watch that State Security Investigation (SSI) officers detained him and two other converts for almost ten months, from September 1990 until July 1991, for possible violation of Penal Code article 98(f). "My story had started to be well known," he said. "By converting, I was denying Islam, insulting Islam. I was promoting corrupt ideas. I lived many years thinking I was the only convert. When I discovered there were others, we got together as a group."⁴⁵ Al-Sharqawi said that security agents subjected him to torture and ill-treatment during the first several weeks of his detention at SSI headquarters in Lazoghli in 1990. The state never charged al-Sharqawi with a crime.

The Human Rights Committee states clearly in General Comment No. 34 that "prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy

⁴⁵ Human Rights Watch interview with Mustafa Sharqawi, London, November 3, 2005. See also Human Rights Watch World Report 1992, p. 642. The others detained with al-Sharqawi were Muhammad Sallam and Hassan Muhammad.

laws, are incompatible with the Covenant,”⁴⁶ with the exception of speech that amounts to incitement to violence and discrimination as set out in article 20(2) of the ICCPR. The committee further stated that the convention did not allow states to prohibit or punish “criticism of religious leaders or commentary on religious doctrine and tenets of faith.”⁴⁷

In General Comment No. 22 on the right to freedom of thought, conscience and religion, the Human Rights Committee states that “Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.”⁴⁸

The Egyptian parliament should:

- Repeal Article 98 (f) of the Penal Code.

7. Amend the Law on Associations to Let Independent NGOs Operate Lawfully, and Decriminalize Exercise of Freedom of Association

The Mubarak government severely restricted freedom of association using a complex set of interlocking laws, decrees, and emergency powers to stifle the exercise of that right. This included restricting the right to form new political parties, trade unions, and nongovernmental organizations and associations.

On March 28, 2011, the SCAF issued Law Number 12 amending the Political Parties Law 40 of 1977 and finally allowing the establishment of independent political parties by simply notifying the Political Parties Committee once they meet the requirements stipulated in the Political Parties Law, after decades in which Mubarak’s government prevented the establishment of new independent parties. Under pressure from, and in consultation with, independent trade unions and labor rights groups, Minister of Labor and Manpower Dr. Ahmad Hassan al-Bor’i formally presented a new draft law on trade unions to the cabinet

⁴⁶ UN Human Rights Committee, General Comment No. 34 on Article 19 Freedom of Opinion and Expression, July 21, 2011, CCPR/LGCL34, para. 48.

⁴⁷ Ibid.

⁴⁸ UN Human Rights Committee, General Comment No 22 the right to freedom of thought, conscience and religion (Art. 18), 07/30/1993. CCPR/C/21/Rev.1/Add.4

for approval.⁴⁹ The draft law allows for the formation of independent trade unions and removes the requirement for membership in the state Trade Union Federation.

Despite these moves to address freedom of association for political parties and trade unions, the government has yet to remove the restrictions on NGOs in the Law on Associations and has instead initiated a broad-based criminal investigation targeting human rights organizations that the Mubarak government excluded from registration under the law.⁵⁰

Penal Code Provisions on Membership in an Illegal Organization:

- Article 98, added by Law No. 635 of 1954, provides for a maximum 10-year sentence for anyone who “establishes an organization or association whose goal is to overthrow the political or social system of the country, or for the dominance of one social class over another or for an end to the economic system ... or for the incitement to any of the aforementioned or the use of force or terrorism or any other illegitimate method in order to achieve this” and a sentence of five years for all those who “join one of these organizations mentioned in the previous paragraphs” and a sentence of one year to all those who “communicate directly or indirectly with such organizations.”
- Article 98(a) bis, added by Law 34 of 1970, provides for a sentence of imprisonment and a fine of 100-1000 EGP (\$84-840) for anyone who “creates or manages an organization or an association or a group whose goal is to call, using whatever means, for changing the basic principles of the Socialist System in the country or for the incitement to its hatred ... or inciting resistance to public authorities.” It further stipulates that a maximum five years of imprisonment shall apply to “anyone who joins one of these organizations in the knowledge of their stated aims or anyone who participates in any way [in their activities].”

In practice, the Mubarak regime used these provisions to imprison peaceful political opposition, arresting thousands of members of the officially banned but tolerated Muslim

⁴⁹ Yasen Gaber and Marwa Hussein, “Egypt’s rising labour movement wins significant government concessions,” *Ahram Online*, August 19, 2011, <http://english.ahram.org.eg/NewsContent/1/64/19106/Egypt/Politics-/Egypys-rising-labour-movement-wins-significant-gov.aspx>.

⁵⁰ “Egypt: Government Moves to Restrict Rights and Democracy Groups,” September 26, 2011, <http://www.hrw.org/news/2011/09/26/egypt-government-moves-restrict-rights-and-democracy-groups>.

Brotherhood, which renounced the use of violence in the 1950s, for “membership in an illegal organization” under article 86 simply on the basis of expressing views sympathetic to the Brotherhood. Under international law, membership in an unrecognized association cannot in and of itself amount to a crime. The one limitation is if the association openly calls for violence. The wording of article 98 is particularly broad and includes language that criminalizes legitimate non-violent political activity and organizing.

The ICCPR prohibits broadly worded bans on non-violent political activity. In article 25 it guarantees citizens the right to participate in the conduct of public affairs, either directly or through freely chosen representatives, and the right to vote and to be elected in periodic and fair elections. These rights may not be denied on the basis of race, religion, or gender, among other distinctions. Egypt’s present law violates the rights of supporters of a party that claims a religious basis for its program to associate together and vote for representatives of their choice.

“Membership in an illegal organization,” the charge most frequently leveled against Muslim Brotherhood members, amounts to punishing persons solely for exercising their right to freedom of association. In its General Comment 25, which provides an authoritative interpretation of article 25 of the ICCPR, the Human Rights Committee stated: “the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25.”⁵¹

In 2007 security forces at the Cairo airport detained `Abd al-Monim Mahmud, at the time a journalist for the London-based satellite channel Al-Hiwar and a prominent blogger affiliated with the Muslim Brotherhood, as he attempted to travel to Sudan to report on human rights in the Arab world. The next day, a prosecutor charged Mahmud with “membership in a banned organization,” and with “being an administrator of a banned organization” under article 98 of the Penal Code. The State Security bureau’s preliminary investigation (*mahdar al-tahamiyyat*) cited Mahmud’s public criticisms of the government’s human rights record, and specifically its use of torture. On April 15, 2007, the

⁵¹ Human Rights Committee, General Comment 25 (57), General Comments under article 40, para. 4, of the International Covenant on Civil and Political Rights, adopted by the Committee at its 1510th meeting, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996); Para. 27.

prosecutor ordered Mahmud detained for 15 days, but ordered his release on May 30 after domestic and international media criticism.⁵²

Law No. 84 on Associations of 2002

Under the Mubarak government, the Ministry of Interior had the power to review and reject NGO registrations although this was not set out in the law itself, and the government could interfere with the independence of NGOs pursuant to the restrictive terms of the 2002 Law on Associations (No. 84).

The SSI routinely reviewed and rejected such applications for registration even though they had no formal role in the registration process, and subjected NGO leaders, activities, and funding to excessive scrutiny without any legal authority. Human Rights Watch documented the extensive restrictions on NGOs, and the inability of several NGOs to register under the law, in its report *Margins of Repression*.⁵³ The report found that one of the main problems was the role of State Security Investigations officers in blocking the registration or receipt of funding for independent human rights organizations, even though the law did not provide a role for their involvement.

Even the actual law, the Law on Associations, enables the government to interfere with the registration, governance, and operation of NGOs and impedes the right of Egyptians to form and operate independent associations. Article 42 gives the minister of social solidarity unacceptably wide grounds to dissolve groups and to order the imprisonment of NGO members for otherwise legitimate activities, including for receiving foreign funds or affiliating with foreign organizations without permission, conducting political or trade union activities, and violating “public order or morals.”

Under the terms of the Associations Law, all non-profit groups of 10 members or more working in social development activities must register with the Ministry of Social Solidarity or face criminal penalties, including up to one year's imprisonment (article 76). A group of less than 10 persons can neither apply for association status nor carry out volunteer

⁵² “Release Journalist Who Criticized Torture,” Human Rights Watch news release, April 18, 2007, <http://www.hrw.org/news/2007/04/18/egypt-release-journalist-who-criticized-torture>.

⁵³ Human Rights Watch, Egypt: Margins of Repression, July 3, 2005, <http://www.hrw.org/reports/2005/07/03/egypt-margins-repression-o>.

activities. Non-profit groups working in other fields are answerable to other ministries; for example, the Ministry of Health regulates non-profit medical clinics.

In theory, the Law on Associations allows NGOs to work in more than one field of activity, though in practice they must seek permission from the Ministry of Social Solidarity before doing so and the scope of permissible NGO activities remains severely limited. Article 11 of Law 84/2002 forbids groups from any goals that will be deemed as "threatening national unity" or "violating public order or morals," vague terminology that lays it open to abuse.

In 2007, Cairo Governor `Abd al-`Azzem Wazeer issued a decree shutting down the Association for Human Rights Legal Aid (AHRLA), which reports on human rights violations and provides legal assistance to victims. The decree cited article 17 of the Law on Associations (84/2002), which bans NGOs from receiving foreign funding without prior government permission. The governor's decree appointed an official receiver (*mosafi qada'*) to take control of the association's assets. The official receiver went to AHRLA's offices on September 16, accompanied by about 10 plainclothes State Security Intelligence officers and over 100 central security forces. In 2008, a Cairo Administrative Court overturned the decision to dissolve the organization and reinstated it.⁵⁴

In 2007 the government also ordered the closure of the Center for Trade Union and Workers Services (CTUWS), which offers legal aid to Egyptian factory workers and reports on labor rights issues in the country, for inciting labor unrest and violating Egypt's law on associations, though the order did not specify how.⁵⁵ The CTUWS reported widespread irregularities in the 2006 union elections across Egypt. The CTUWS took this case to court and on March 30, 2008, the Giza Administrative Court ruled in favor of the CTUWS, stating the government was "without cause" in denying the group's petition for NGO status and ordering the organization to be re-opened.⁵⁶

In the rare instances where the security forces under Mubarak cited reasons for their rejection of an NGO's registration or board candidates, they invoked article 11. They did not

⁵⁴ "Reverse Decree Closing Human Rights Organization," Human Rights Watch news release, September 17, 2007, <http://www.hrw.org/news/2007/09/17/egypt-reverse-decree-closing-human-rights-organization>.

⁵⁵ "End Harassment of Labor Rights Group," Human Rights Watch news release, April 26, 2007, <http://www.hrw.org/news/2007/04/26/egypt-end-harassment-labor-rights-group>.

⁵⁶ "Egypt: Obey Court, Recognize Labor Rights Group," Human Rights Watch news release, June 5, 2008, <http://www.hrw.org/news/2008/06/05/egypt-obey-court-recognize-labor-group>.

apply the restrictions outlined in article 11 in a narrow and proportionate way. Instead, they used the article as a tool to block the registration of groups whose behavior or goals do not fit within the narrow margins the state favored. The Ministry of Interior's SSI division blocked the registration of a number of independent human rights organizations because of "security concerns," including: the Egyptian Center for Housing Rights, the Egyptian Initiative for Personal Rights, the Egyptian Association against Torture, the Civil Observatory for Human Rights, and the World Center for Human Rights. In every case, the organization petitioned the administrative court to reverse the ministry's rulings, but the security services and the ministry did not respond to the court's request to give reasons for their vetting decisions.⁵⁷

In the case of the Egyptian Association against Torture (EAAT), the Ministry of Social Solidarity rejected their application, claiming that the organization's by-laws "violate Law 84."⁵⁸ No further information was given, although the files that the ministry returned contained numerous penciled alterations to the submitted by-laws. It later explained that the group's objectives breached Law 84/2002 "in practice and in spirit," and violated the public order. The ministry specifically objected to the EAAT's goals of working to bring Egyptian legislation into compliance with international human rights standards; lobbying decision makers and campaigning against torture; and participating in local, Arab, and international anti-torture networks.⁵⁹

The restrictive terms of the Law on Associations violates the guarantees provided under international law for free association. Under international law, the government may restrict the right to freedom of association, but only on certain narrowly prescribed grounds and only when particular circumstances apply. According to article 22 of the ICCPR:

- (1) Everyone shall have the right to freedom of association with others.
- (2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order

⁵⁷ See Human Rights Watch, Egypt: Margins of Repression.

⁵⁸ Dr. Aida `Ismat Seif al Dawla Abbas and `Imad Mubarak Hassan v. Her Excellency the Minister of Insurance and Social Affairs, State Council case number 19585 Q87, May 5, 2004. On file at Human Rights Watch.

⁵⁹ See Human Rights Watch, Egypt: Margins of Repression, July 3, 2005, page 4, <http://www.hrw.org/node/11675/section/7>

(*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

The restrictions specified in article 22 (2) should be interpreted narrowly. The government may impose restrictions only if they are prescribed by existing legislation and meet the standard of being "necessary in a democratic society." This implies that the limitation must respond to a pressing public need and be oriented along the basic democratic values of pluralism and tolerance. "Necessary" restrictions must also be proportionate: that is, carefully balanced to address an emergency situation in the least restrictive manner.⁶⁰ The UN Human Rights Committee has repeatedly highlighted the importance of proportionality. In applying a limitation, a government should use no more restrictive means than is absolutely required.⁶¹

A government may legitimately require the establishment to be notified of an association. If the government further requires individuals who wish to establish an organization to seek permission before operating, it must stipulate criteria that are clear, non-discriminatory, and appealable.⁶²

The Egyptian parliament should amend the Law on Associations to:

- Stipulate that the authorities may restrict the registration of an NGO only pursuant to the narrowly prescribed terms provided by international law;
- Abolish all penalties for conducting legitimate NGO activities in unregistered NGOs;
- Ensure that any involuntary dissolution of an NGO takes place only by judicial order, and only as a result of the most egregious violations, by amending article 42 to remove the administrative authority's power to dissolve an NGO;
- Amend article 58 to allow for the receipt of donations or transfers from foreign donors, as long as all foreign exchange and customs laws are satisfied, stating clearly any restrictions and making all criteria transparent; and making clear that the absence of a government response to a request for approval of foreign funding within 60 days means that approval has been given;

⁶⁰ Manfred Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary (Kehl am Rein: N.P. Engel, 1993), pp. 386-387.

⁶¹ Nowak, CCPR Commentary, p. 355.

⁶² Ibid.

- Allow NGOs to work in the thematic and geographical areas of their choosing. Abolish the requirement that NGOs seek permission from the Ministry of Social Solidarity for working in more than one field of activity or governorate;
- Ensure that the new National Security division will have no role in monitoring NGO activities, or approving their registration or receipt of foreign funding.

8. Amend the Assembly Law and the New Strike and Demonstration Ban Law

As one noted commentator, Professor Manfred Nowak, has said:

[T]he focus of freedom of assembly is clearly on its democratic function in the process of forming, expressing and implementing political opinions. The democratic function of freedom of assembly means that States are under a stronger duty to ensure the right with positive measures than with civil rights, which are exclusively exercised for private interests.⁶³

States should "make available public thoroughfares or other areas, possibly re-route traffic, and not discriminate or act arbitrarily in denying access to public buildings for the holding of assemblies."⁶⁴ The state must also act to prevent the provocation or use of force by the security forces or private actors that would encourage violence.⁶⁵

Egypt still has laws on the books that severely restrict freedom of assembly and provide criminal penalties for peaceful protest. In light of the Egyptian uprising in January 2011 and the fact that for thousands of Egyptians peaceful protest is seen as a legitimate and effective way of expressing political demands, reforming these laws should be a priority for Essam Sharaf's caretaker government.

The 1914 and 1923 Laws on Public Assembly

The Illegal Assembly Law of 1914, Law 10 of 1914, promulgated under British rule but retained ever since, states in its preamble that it was decreed "out of the necessity to

⁶³ Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary (Kehl am Rhein: N.P. Engel, 1993), p. 370-71 (emphasis in original).

⁶⁴ Nowak, pp. 375-76.

⁶⁵ Nowak, p. 379.

create harsher punishments for crimes committed through assembly, punishments that will be more effective than those currently in place."⁶⁶

Law 10 refers to assemblies of more than five persons "that threaten the public peace," and establishes penalties of a jail sentence not to exceed six months for failing to disperse upon the order of relevant authorities. It contains no provision for requesting permission to hold a public gathering. The 1914 Law states in article 1 that persons participating in any gathering of more than five people that threatens public order and who refuse to obey a police order for dispersal shall be imprisoned for a period of not more than six months."⁶⁷

Article 2 provides a criminal penalty of six months for those who participate in such a gathering "with the purpose of influencing the authorities in their work or to deprive anyone of the freedom to work whether this influencing was associated with the use of force or the threat of the use of force." Article 4 states that those who planned the gathering shall be subject to the same criminal penalties as those who participated in it.

In its periodic report submitted in November 2001 to the Human Rights Committee on its implementation of the ICCPR, the government did not mention Law 10 but stated that exercise of the right of assembly was regulated by Public Assembly Act No. 14 of 1923, Law 14 of 1923. Law 14 stipulates that "security authorities must be given three days' prior notice of public gatherings, demonstrations and processions," and that these can be banned if the local governor or police "feel that they will lead to disturbance of public order or public security due to their underlying purpose, their timing or location or any other significant reason."⁶⁸

Law 14 establishes penalties (a prison sentence and/or fine) for planning or participating in an unannounced or unapproved demonstration. The only reference in this statute to Law 10 is in article 11, which states that "this law does not prevent the application of a harsher punishment as indicated in the criminal code or Law 10 concerning gatherings or any other law that may be applicable." Such broad criteria invite abusive and arbitrary

⁶⁶ Law 10 "On Public Gatherings" of Year 1914, Egyptian Official Gazette, No. 57, June 4, 1923.

⁶⁷ Law 14 "Determining the Rules Related to Public Meetings and Demonstrations on Public Roads," of Year 1923, Egyptian Official Gazette, No. 57, June 4, 1923.

⁶⁸ U.N. International Covenant on Civil and Political Rights, "Consideration of Reports submitted by States Parties under Article 40 of the Covenant: Addendum: EGYPT," CCPR/C/EGY/2001/3, April 15, 2002, p. 94.

interpretations by authorities, and so run counter to the ICCPR's guarantees of freedom of assembly.

As recently as January 26 and 27, 2011, prosecutors charged several hundred peaceful protesters with "*tagamhur*" (gathering) for participating in the first day of peaceful protest in Tahrir square and in Alexandria and Suez. On those days, Ministry of Interior officers arrested over 1,200 protesters, and brought several hundred of them on charges of illegally demonstrating before prosecutors, who ordered their detention for 15 days. This was the tactic the Mubarak government regularly employed to crackdown on demonstrations and strikes such as the 2008 Mahalla strike and in recent years with demonstrations organized by the April 6 Youth Group.⁶⁹

The Mubarak government frequently relied on the 1914 and 1923 laws to charge peaceful demonstrators. In its 2003 report *Security Force Abuse of Anti-War Protesters*, Human Rights Watch documented the police crackdown on peaceful anti-war demonstrators, leading to the arrest of over 800 individuals.⁷⁰ Prosecutors charged the protesters with violating the Public Assembly Act No. 14 of 1923, which requires that persons wishing to hold a public demonstration must notify the authorities at least three days in advance and sets penalties for those who plan, organize, or participate in an unannounced or unapproved demonstration.

These assembly laws contravene the very narrow limits on freedom of peaceful assembly permitted under international law. Article 21 of the ICCPR sets out the only restrictions that may be placed on freedom of peaceful assembly as "those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security, or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."⁷¹

⁶⁹ "Egypt: Release Dozens of Prisoners Held Without Charge," Human Rights Watch news release, July 17, 2008, <http://www.hrw.org/en/news/2008/07/17/egypt-release-dozens-protestors-held-without-charge>; "Egypt: Brutal Treatment of Peaceful Protesters," Human Rights Watch news release, April 6, 2010, <http://www.hrw.org/news/2010/04/06/egypt-brutal-treatment-peaceful-protesters>.

⁷⁰ Human Rights Watch, *Egypt: Security Forces Abuse of Anti-War Protesters*, November 6, 2003, <http://www.hrw.org/reports/2003/11/06/security-forces-abuse-anti-war-demonstrators>.

⁷¹ ICCPR, art. 21.

Any restrictions must be limited to what is necessary and proportionate: the manner and intensity of state interference must be necessary to attain a legitimate purpose, and the prohibition or forceful breaking up of an assembly may only be considered when milder means have failed.⁷² Terms such as “national security” and “public safety” refer to situations involving an immediate and violent threat to the nation or to its territorial integrity or political independence. Nationwide limitations imposed on the basis of merely isolated or localized threats cannot be justified, therefore, and are impermissible.⁷³

New Law Criminalizing Strikes and Demonstrations

In a further regression of the right to free assembly, in March and April the Egyptian cabinet announced, and the SCAF ratified, a new law that criminalizes and imposes financial penalties for strikes and demonstrations that “obstruct public works.”

Law No. 34 of 2011 “On the Criminalization of Attacks on Freedom of Work and the Destruction of Facilities” provides for punishment “with imprisonment or a fine of not less than 20,000 Egyptian pounds (\$8,400), and not more than 50,000 Egyptian pounds (\$16,806) for those who during the state of emergency call for demonstrations, strikes, sit-ins, or gatherings, or participate in any of the above, leading to the impediment or the obstruction of any of the state institutions or public authorities from performing their role.” The law also penalizes incitement, calls, writings, or any other public advertisements for a protest or strike with the same penalties as in the last provision. It provides for imprisonment of not less than one year for using violence during a protest or strike, or if the protest or strike results in any destruction of property, “harm to national unity, societal peace or public order,” or “harm to public funds, buildings or public or private property.”⁷⁴

These overbroad and vague provisions, including banning protests that generally “obstruct” state institutions, or “harm societal peace,” do not meet the narrowly permitted grounds for limits on public assembly under article 21 of the ICCPR.⁷⁵

⁷² Nowak, p. 379.

⁷³ Manfred Nowak, UN Covenant on Civil and Political Rights. Kehl 1993 p.394-396.

⁷⁴ Law No. 34, “Criminalizing Attacks on Freedom to Work and the Destruction of Facilities,” Egyptian Official Gazette, No. 14 (a), April 12, 2011.

⁷⁵ See ICCPR, art. 21.

The Egyptian authorities should:

- Repeal Law 34 of 2011, Law 10 of 1914 and Law 14 of 1923.
- Draft a new law on public assembly that will:
 - Define as “public gathering” within the purview of this law only gatherings in publicly accessible places or those that are open to the public;
 - Replace the requirement for permission with a requirement that authorities be notified before holding a public gathering within a defined period of time to allow for reasonable security and public order measures to be taken to protect the right to assembly and the rights of others, and require the authorities to apply to prohibit any demonstration rather than the organizers apply for permission;
 - Require that reasons be given when the government refuses to allow a public meeting to take place and allow an expedited appeal of such a decision in court;
 - Require any restrictions placed on a public gathering to be strictly necessary for protecting public order, public morals, and the rights of others—in keeping with the jurisprudence of the UN Human Rights Committee on the interpretation of those terms.

9. Amend the Definition of Torture in Line with International Law and Strengthen Criminal Penalties for Police Abuse

Transition away from systematic police abuse requires that the government install a set of immediate measures as part of a broader strategy to eradicate torture and ensure a break from past abusive police and security force practices. In the first instance, the government should prioritize legal reforms to the Penal Code and Code of Criminal Procedure.

In its 2011 report *Work on Him Until he Confesses*, Human Rights Watch documented how the Mubarak government condoned police abuse by failing to investigate and prosecute law enforcement officials accused of torture, leaving victims without a remedy.⁷⁶ The vast majority of torture complaints never reached court because of police intimidation of victims and witnesses who filed complaints, the involvement of police from the same unit as the alleged torturer in gathering evidence and summoning witnesses, laws that do not fully criminalize torture and provide insufficient penalties, and delays referring victims for medical examination.

⁷⁶ Human Rights Watch, Egypt: *Work on Him Until he Confesses*.

Impunity for torture was especially acute with regards to State Security Investigations (SSI) officers; not a single SSI officer was ever convicted of torture despite consistent documentation of the systematic torture in which the SSI engaged Egyptian and international human rights organizations and UN special rapporteurs.

Despite consistent criticism from Egyptian and international human rights organizations over the years, the Mubarak government always defended this legal framework as adequate, saying that the “judicial application” of these penal provisions, “in accordance with the jurisprudence of the Supreme Court,” “punishes torture carried out by a member of a public authority or by an individual whether during the arrest, confinement or imprisonment of a person in the legally prescribed circumstances or otherwise.”⁷⁷ Yet even the National Council for Human Rights found that the Egyptian legal framework “is full of loopholes also enables culprits [to] escape punishment.”⁷⁸

The Penal Code has three main provisions that prosecutors can use to charge members of the police force in cases of alleged torture and ill-treatment: article 126, which criminalizes torture; article 129 on the use of force; and article 282, which specifies a sentence of hard labor “in all cases, [for] anyone who unlawfully arrests a person and threatens to kill him or subject him to physical torture.”⁷⁹

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

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

⁷⁷ U.N. Committee against Torture, Summary Record of the 385th meeting, May 14, 1999, U.N. doc. CAT/C/SR.385, Para. 11, para 47.

⁷⁸ National Council for Human Rights, Annual Report 2007/2008, p. 21 <http://nchregypt.org/ar/images/files/1stannualreportar.pdf> (accessed June 17, 2010).

⁷⁹ Penal Code, arts. 126, 129, 236, 241, 242, and 280.

This definition excludes elements covered in Article 1 of the Convention against Torture, which defines torture as:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Article 126 of the Egyptian Penal Code excludes situations when “pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity,” instead limiting it to the narrow circumstances of torture used to extract a confession. Article 126 limits torture to physical abuse, when the victim is “an accused,” and when torture is used to coerce a confession. While confessions are frequently the object of torture, Egyptian security forces also have used torture to punish and/or intimidate victims. In addition, this narrow definition improperly excludes cases of mental or psychological abuse, and cases where the torture is committed against someone other than “an accused”—for example, persons being questioned as potential witnesses.

The Penal Code also fails to treat seriously certain categories of abuses by officials, classifying them as misdemeanors instead of crimes. The code divides crimes into three categories: contraventions (*mukhalafa*), punishable by a fine of less than EGP 100 (\$17); misdemeanors (*junha*, pl. *junah*), punishable by a fine of more than 100 Egyptian pounds or jail term; and felonies (*jinaya*, pl. *jinayat*), punishable by either prison, prison with hard labor, or the death penalty.⁸⁰ The law classifies torture and “assault leading to death” as felonies, and other offenses, such as arrest without legal grounds (article 280) and the use

⁸⁰ 135 CCP, art. 9.

of force by officials (article 129), as well as some categories of assault, as misdemeanors.⁸¹ A criminal court (*mahkama al-jinayat*) composed of three judges hears all felony cases.⁸²

The Penal Code also fails to provide for the effective punishment of law enforcement officials found responsible for torture and ill-treatment. Article 129 of the Penal Code states that any official “who deliberately resorts, in the course of duty, to cruel treatment in order to humiliate or cause physical pain to another person shall be subject to a penalty of up to one year’s imprisonment or a fine of up to EGP 200 [\$34].” The Court of Cassation defined (in 1944 and 1952 rulings) cruelty as consisting of physiological and psychological ill-treatment in addition to physical ill-treatment and stated that it did not necessarily lead to visible injuries.⁸³

A charge of assault leading to death under article 236 of the Penal Code carries a maximum penalty of three to seven years in prison, possibly with hard labor. Like other provisions regulating assault, article 236 does not differentiate between offenders: the punishment is identical whether the offender is a citizen or a public official. Only offenders “implementing terrorist aims” are, following the 1992 counter-terror amendments to the penal code, singled out for considerably harsher punishment for assault, and punished by “a term of hard labor or prison ... and if this was done with premeditation, the punishment will be hard labor, either for life or temporary.”⁸⁴ Article 280 of the Penal Code also provides inadequate penalties regarding abuse during illegal detention, and article 282 punishes torture during illegal detention with temporary hard labor.

The Penal Code does not state that superior orders are defense, and Egyptian courts have recognized that torture is a manifestly illegal act. According to article 63 of the code:

No crime occurs where an act is carried out by a public official in execution of an order given by a superior which he is obliged to follow, or if he believed he was under an obligation to follow it or if he, in good faith, committed an act according to the law, to what he believed to be his sphere of authority.

⁸¹ Penal Code, arts. 126, 129, 236, 241, 242, 280.

⁸² CCP, art. 366.

⁸³ As quoted in CAT/C/34/Add.11, p. 32.

⁸⁴ While initially a separate law on terrorism, law 100/1992 has been integrated into the Penal Code.

The Court of Cassation interpreted this article in a 1931 ruling: “the acts of which the defendants stand accused would be manifestly illegal; and that the average man could not assume that this would be a legitimate command from their superiors because it crosses all bounds and harms human dignity.”⁸⁵ These provisions fall short of the requirements in the CAT which clearly states in article 2(3) that “an order from a superior officer or a public authority may not be invoked as a justification of torture.”

The faulty definition of torture was one concern that several Human Rights Council member states raised in their interventions during Egypt’s Universal Periodic Review (UPR) in February 2010. Significantly, Egypt had included a pledge in its November 2009 national report that it would “review the definition of torture in Egyptian law in order to ensure consistency with the Convention against Torture” and accepted a number of these recommendations in the February session.⁸⁶ Yet on February 15, 2010, a few days before the UPR session and three months after the government had submitted the national report, the Legislative Committee of the People’s Assembly, which is dominated by the ruling National Democratic Party, rejected Muslim Brotherhood MP Hassan Ibrahim’s proposal to amend articles 126 and 128 of the Penal Code. The proposal called for harsher sentences for torture and for revising the definition. Ibrahim told *Al-Masry al-Youm*, “I presented this proposal four years ago and the government kept saying that it was still studying the matter.”⁸⁷

Under the Convention against Torture, a state is “obligated to eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment.”⁸⁸ The Committee against Torture, the body of international experts that reviews state compliance with the convention, has found that “inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice.”⁸⁹

⁸⁵ As quoted in 1999 report to the CAT, para. 47.

⁸⁶ National report of the Egyptian government submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, 16 November 2009, A/HRC/WG.6/7/EGY/1, <http://www.ohchr.org/EN/HRBodies/UPR/CPAGES%5CEGSession7.aspx> (accessed July 15) [hereinafter Egypt National Report to UPR].

⁸⁷ Mohamed Abd al-Kader, “Shaab Legislative Committee refuses to increase the penalty for torture ... Altercation between MPs,” *Al-Masry al-Youm*, February 16, 2010, <http://www.almasry-alyoum.com/article2.aspx?ArticleID=244193&IssueID=1683> (accessed October 18, 2010).

⁸⁸ Committee against Torture, General Comment 2, Implementation of Article 2 by States Parties, U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4 (2007), para. 4.

⁸⁹ Committee against Torture Summary Account of the Results of the Proceedings Concerning the Inquiry on Turkey, Official Records of the General Assembly, Forty-eight Session, Supplement No. 44 (A/48/44/Add.1), para. 39, <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/A.48.44.Add.1.En?Opendocument> (accessed August 1, 2010).

The Egyptian parliament should:

- Amend the definition of torture in article 126 of the Penal Code in line with the definition in article 1 of the Convention Against Torture, to broaden the definition to include punishment as a purpose and psychological torture as a means of inflicting pain;
- Amend provisions prohibiting torture and ill-treatment by officials, in particular Penal Code article 129 on the use of cruelty by officials, and article 280 on illegal detention, to make the penalties commensurate with the seriousness of the offenses and reclassify these offences as felonies rather than misdemeanors;
- Amend the Code of Criminal Procedure to allow victims of police abuse to file private criminal suits against those responsible, as is the case when the perpetrator is a private figure;
- Amend the Police Law to require the Ministry of Interior to immediately suspend any security official under investigation for ordering, carrying out, or acquiescing to acts of torture or ill-treatment. Ensure their dismissal if convicted.

Conclusion

In a speech on February 12, Gen. Mohsen Fangary, a member of the SCAF, declared that Egypt would abide by its international obligations under the treaties it had signed. Those international treaties include the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and People's Rights and other international treaties cited in this document, yet the SCAF has failed to respect Egypt's obligations under international human rights law.

Egypt's new parliament can distance itself from Egypt's abusive past by upholding international law to ensure that Egypt is ensuring the best possible protection under human rights law. Failure to do so not only compromises international law, but negates the promise for change inherent in the fall of the Mubarak regime for which Egyptians have waited so long.

THE ROAD AHEAD

A Human Rights Agenda for Egypt's New Parliament

Egypt's deposed president Hosni Mubarak left in his wake an arsenal of laws used to restrict free expression and curb criticism of government, limiting association and assembly and shield the abusive police force from accountability. The transitional political leaders in Egypt have made no attempt to reform any of these laws, which, Egypt's ruling military has used to arrest protesters and journalists and to try over 12,000 civilians before military courts, adding to the heavy abusive legacy that Egypt's future civilian rulers will have to address.

A genuine transition from authoritarian government to a more open system with democratic institutions requires not only elections, but the reform of laws and policies that govern the civil and political rights and freedoms of people in Egypt. Egypt's stalled transition can be revived only if the new government dismantles the existing repressive legal framework. This report sets out nine areas of Egyptian law the newly elected parliament must urgently reform, so that the law can become an instrument that protects Egyptians' rights rather than represses them.



Egypt's People's Assembly, the lower house of parliament elected over three phases from November 2011 –January 2012.

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