

PETITION TO:

UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION

Chairman/Rapporteur: Mr. Louis Joinet (France)
Mr. Tamás Ban (Hungary)
Ms. Soledad Villagra de Biedermann (Paraguay)
Mr. Seyed Mohammad Hachemi (Islamic Republic of Iran)
Ms. Leïla Zerrougui (Algeria)

COMMISSION ON HUMAN RIGHTS
ECONOMIC AND SOCIAL COUNCIL

In the Matter of
Dr. Saad Eddin Ibrahim,
Citizen of Egypt and the United States, and Others

v.

Government of Egypt

URGENT ACTION
REQUESTED

And Petition for Relief Pursuant to Resolution 1997/50 and 2000/36

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Request for Treatment Under “Urgent Action” Procedures

Dr. Saad Eddin Ibrahim, a 64-year-old Professor of Sociology at the American University in Cairo and Director of the Ibn Khaldun Center for Development Studies, and 27 associates were initially arrested by Egyptian State Security investigators on 30 June 2000, after which they were detained and interrogated for up to 45 days without any charges formally filed against them. On 21 May 2001, following a trial held before the Supreme State Security Court, Dr. Ibrahim, who suffers from a degenerative neurological condition which limits blood flow to his brain and spinal cord areas, as well as sleep apnea, was sentenced to seven years in prison for alleged fraud, defamation of Egypt abroad, and acceptance of foreign funds without official permission. Dr. Ibrahim immediately appealed the decision of the Supreme State Security Court to the Court of Cassation. During the intermittent period, Dr. Ibrahim served more than 200 days in prison.

On 6 February 2002, the Court of Cassation ruled that the first trial in the Supreme State Security Court was improperly conducted and ordered Dr. Ibrahim’s release. A retrial began on 27 April 2002, during which Dr. Ibrahim and his associates were often forced to stand in a steel cage for many hours. Some court sessions were conducted late into the night, ending after midnight. On 29 July 2002, after less than one half hour of deliberation, the second trial at the Supreme State Security Court was abruptly concluded, and Dr. Ibrahim was again sentenced to seven years.

Dr. Ibrahim was immediately transferred to a downtown Cairo detention center and was held there for 48 hours. During this period, temperatures inside the facility were reported to be well over 100 degrees Fahrenheit and Dr. Ibrahim was denied access to medical equipment necessary for his medical condition. After the three days in temporary detention, Dr. Ibrahim was transferred to Tora Mazra Prison, near Cairo. Dr. Ibrahim’s family members were informed that visits would not be allowed for two weeks.

Immediately thereafter, Dr. Ibrahim’s family petitioned the prison authority to allow a neurology specialist to examine Dr. Ibrahim’s physical and mental health. This request was finally granted on 6 August 2002, when Dr. Ayman K A. Magd, Professor of Cardiology at Azhar University in Cairo, was permitted to examine Dr. Ibrahim. Dr. Magd’s report indicates that Dr. Ibrahim’s neurological condition has deteriorated, and that he is not receiving adequate care in prison.¹ Dr. Ibrahim has previously experienced several small strokes due to his vascular disease and, according to Dr. Magd, treatment of his condition requires advanced medical care not available anywhere in Egypt at this time. Dr. Magd also reported that on 25 September 2002, Dr. Ibrahim fell while walking in prison, breaking the bones in one of his ankles and preventing physiotherapy necessary for the treatment of his neurological condition. He was kept in a plaster cast for weeks, during which time the family was not allowed access to medical reports or x-rays of the affected ankle. MRI and MRI scans conducted in October (at the insistence of and paid

¹ A copy of Dr. Magd’s report is attached as Appendix B.

for by the family) on Dr. Ibrahim's brain and spine reveal further strokes while in prison and deterioration of blood flow to the brain, requiring urgent attention.²

Dr. Ibrahim's case is currently being appealed to the Egyptian Court of Cassation. Dr. Ibrahim's family and attorneys have requested that he be released pending the results of the appeal. These requests have not be granted.

As set forth in the attached Petition, Dr. Ibrahim is being arbitrarily deprived of his liberty and, due to his deteriorating health, continued denial of medical care constitutes a serious threat to his health.³ Accordingly, it is hereby requested that the Working Group consider this petition pursuant to the "Urgent Action" procedure.⁴ In addition, it is also requested that the attached Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights as reconfirmed by Resolution 2000/36.

² A copy of the 28 October 2002 MRI report is attached as Appendix C.

³ International and domestic human rights organizations such as Human Rights Watch, the Egyptian Organization for Human Rights, the Arab Program for Human Rights Activists and the Lawyer's Committee for Human Rights have called for the release of Dr. Ibrahim on medical grounds. *See, e.g.*, "Saad Eddin Ibrahim's Deteriorating Health Requires his Immediate Release from Prison,"

www.lchr.org/defenders/hrd_middle_east/hrd_egypt/hrd_ibrahim/alert_1016.htm (last viewed 01/11/02).

⁴ Report of the Working Group on Arbitrary Detention, E/CN.4/1998/44, 19 December 1997, Annex 1 at ¶ 22-24.

PETITION TO THE UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

I. IDENTITY

1. Family name: Ibrahim⁵
2. First name: Saad Eddin
3. Sex: Male
4. Age: 64
5. Nationality/Nationalities:
Egypt, United States (Joint Citizenship)
6. (a) Identity document (if any): Not available – Currently Held by Government of Egypt; Dr. Ibrahim is a citizen of the United States of America and of Egypt.
7. Profession and/or activity (if believed to be relevant to the arrest/detention):
Professor of Sociology, American University in Cairo;
Chairman of the Board, Ibn Khaldun Center for Development Studies
Treasurer, Hoda, the Egyptian Women Voters Association
8. Address of usual residence:
1 Nasr Square, Maadi Degla, Cairo Egypt

II. ARREST

1. Date of arrest:
30 June 2000
2. Place of arrest:
Home - see item I.8. above

⁵ This Petition is also being submitted on behalf of six associates also named by the Government of Egypt as defendants in this matter and currently in detention. Twenty-one others were convicted, but were given suspended sentences. Dr. Ibrahim was the primary defendant. See Appendix A for a consent form from Dr. Ibrahim's wife, Barbara Lethem Ibrahim, with respect to this filing on behalf of her husband. See Appendix D for a full list of concerned parties.

3. Forces who carried out the arrest or are believed to have carried it out:
Egyptian State Security investigators

4. Did they show a warrant or other decision by a public authority?
Yes

5. Authority who issued the warrant or decision:
State Security Prosecutor for Greater Cairo

6. Relevant legislation applied:
Law No. 162 of 1958 Concerning the State of Emergency (as amended). This law grants the State Security authorities in Egypt extensive powers under the state of emergency to arrest individuals at will if they are suspected of being a threat to national security and public order. Such persons can be held in detention for prolonged periods without formal charge.

III. DETENTION

1. Date of detention:
30 June 2000

2. Duration of detention:
Interrogation Period: 30 June 2000 – 10 August 2000
First Detention Period (following first conviction): 21 May 2001 – 6 February 2002
Current Detention Period (following second conviction): 29 July 2002 - present

3. Forces holding the detainee under custody:
Government of Egypt

4. Places of detention:
Interrogation Period: Tora Istikbal Prison, South Cairo
First Detention Period (following first conviction): Tora Mazra Prison, South Cairo
Current Detention Period (following second conviction): Tora Mazra Prison, South Cairo

5. Authorities that ordered the detention:
Supreme State Security Court

6. Reasons for the detention imputed by the authorities:
As Chairman of the Ibn Khaldun Center and Treasurer of the Egyptian Women Voters Association, Dr. Ibrahim allegedly:

- a) Received donations without permission from the appropriate authority, without prior permission or subsequent notification of the appropriate authority;

- b) As an Egyptian national, deliberately propagated false information and vicious rumors abroad dealing with internal conditions which would weaken the State's prestige and integrity; and
- c) Committed fraud in obtaining finances from the European Union, by fabricating false checks and invoices related to a faked project.

7. Relevant legislation applied (if known):

- a) Article 1, Item 6, Martial Order No. 4/1992 (Emergency Law)
- b) Article 80(d), Egyptian Penal Code
- c) Article 336(1), Egyptian Penal Code

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE THE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

The statement of facts set forth in Part A of this subsection provides factual details regarding the arrest, detention, and trials held with respect to Dr. Saad Eddin Ibrahim and his associates (hereinafter collectively referred to as the "Petitioners"). The analysis set forth in Part B of this subsection sets forth the specific basis upon which the Petitioners assert that their detention is an arbitrary deprivation of liberty.

A. Statement of Facts

1. Background

Dr. Saad Eddin Ibrahim, a 64 year-old professor at the American University in Cairo, is an internationally renowned sociologist and one of the leading advocates of democracy and political reform in Egypt. In 1988, Dr. Ibrahim established the Ibn Khaldun Center for Development Studies, an organization dedicated to promoting religious and racial tolerance, civic participation and democracy (hereinafter referred to as the "Center"), and shortly thereafter the Hoda Association, an organization dedicated to promoting the voting rights of Egyptian women. Dr. Ibrahim served as Director of the Center and Chairman of its Board of Trustees, and as treasurer of the Hoda Association.

Dr. Ibrahim served as Secretary General of Egypt's non-governmental Independent Commission for Electoral Review during the 1990 and 1995 parliamentary elections. The Commission's findings, while he was secretary general, revealed that both elections had been marred by irregularities and electoral fraud. The published reports of this monitoring exercise, in which the Center played a role, led Egyptian administrative courts to find in favor of 80 candidates who lost elections in 1995. Subsequently, the Supreme Constitutional Court of Egypt declared that the 1995 elections failed to meet constitutional requirements for judicial oversight, replacing security forces with judicial representatives as voting supervisors in all polling places.

Both the Center and the Hoda Association were partially funded in their democracy-building activities by the European Union under its MEDA Democracy Programme.⁶ At the time of the Petitioners' arrests, Dr. Ibrahim, the Center, and the Hoda Association were actively working on a voter education and registration project, aimed at encouraging eligible voters to register to vote and exercise their political rights. An additional project focused on preparations to monitor the Egyptian National Assembly (parliamentary) elections to be held in October and November of 2000. At the time of the arrest of Dr. Ibrahim, the Center and the Hoda Association were closed, all equipment was seized and all documents, books, and records were either damaged or destroyed by the Egyptian authorities. Work on these projects was forced to cease.

2. Initial Arrest and Detention

On the evening of 30 June 2000, Dr. Ibrahim was arrested at his home in Cairo by the State Security Investigations Sector (hereafter referred to as "SSI") of the Ministry of Interior. Approximately 30 to 40 armed SSI officers raided Dr. Ibrahim's home, cordoned it off from the street, and seized documents, computers and other belongings, including the family safe. The officers alleged that a search warrant had been issued, but the officers refused to produce such warrant when asked.

That same night, Nadia Abdel Nour, chief accountant at the Center, and her assistant, Usama Hammad Ali, were arrested on the street by plainclothes SSI officers, just after leaving the Center, where they had been working late. The officers showed no arrest warrants. The SSI officers blindfolded and forced them into a waiting vehicle without telling them where they were being taken or why.

Subsequently, Abdel Nour, Ali and Dr. Ibrahim were taken to the Center, where the offices were searched and documents, computers and other items were seized. At approximately 2:00 a.m., they were taken to the SSI headquarters, where they spent the night without being allowed to contact family or lawyers.

Officials from the SSI Prosecution division began interrogating Dr. Ibrahim, Abdel Nour and Ali the following morning. Dr. Ibrahim refused to answer any questions in the absence of an attorney, but Abdel Nour and Ali were questioned for several hours despite the lack of an attorney. Abdel Nour was promised that if she cooperated with authorities she would be immediately released, causing her to forego requesting a lawyer to be present. A total of 27 individuals associated with Dr. Ibrahim and the Ibn Khaldun Center or Hoda Association were rounded up by SSI officers over the following few days and placed in detention.

⁶ The European Union's MEDA Democracy Programme supports Non-Governmental Organizations in the Mediterranean region in the field of civil and democratic rights by providing grants. Both the Ibn Khaldun Center and the Hoda Association received grants through this program, beginning in 1997 and to be implemented over the following three years.

Dr. Ibrahim, Abdel Nour and their associates were held without charge for up to 45 consecutive days, during which time they were interrogated by SSI prosecutors, sometimes late in the night, often for lengthy sessions of ten hours or more. Usama Hammad Ali was initially released after being interrogated, but he was rearrested a few days later and returned to detention.

Dr. Ibrahim and Nadia Abdel Nour were released on bail on 10 August 2000, and their associates were released periodically during the following week. None were charged at the time, but they were told that an unspecified case against them was "pending."

3. Indictment

Not until a month and a half after their release on bail were the "pending" charges finally specified to Dr. Ibrahim and his associates. On 24 September 2000, immediately following an announcement by Dr. Ibrahim that he would proceed with plans to monitor and report on the parliamentary elections, Dr. Ibrahim was formally charged with the following: (1) conspiring to bribe public television officials to secure media coverage of the activities of the Center, (2) accepting foreign funds for two voter education projects without official authorization,⁷ (3) disseminating false and harmful information about Egypt,⁸ and (4) defrauding the European Union.⁹ An indictment was not formally served on any defendant, nor were they informed in person. Rather, they learned from newspaper accounts of the charges and all subsequent information about court proceedings against them.

All of the above charges were brought against Dr. Ibrahim. In addition, Nadia Abdel Nour, Usama Hammad Ali, and two employees of the Center, Khaled al-Fayyad and Marwa Ibrahim Zaki, were charged with participating and assisting in the conspiracy to commit bribery and in committing fraud. Twenty one other associates were charged with participating in and assisting the perpetration of fraud. Two other individuals, Muhammad Hassanein Amara (a local police officer) and Magda al-Bey (a former part-time field worker at the Center), were charged with unrelated offenses alleging bribery and forgery of official documents. At the time, the authorities also indicated that they were considering bringing a charge of industrial espionage and treason against Dr. Ibrahim, based on an allegation of espionage on behalf of the United States. However, such a charge has never been formally lodged.

⁷ This charge of receiving unauthorized donations was brought under Military Decree No. 4 of 1992, a measure enacted pursuant to emergency powers granted to the Military Governor (typically the Prime Minister) which had been used only once before.

⁸ This charge of disseminating false and harmful information was based on Article 80(d) of the Egyptian Penal Code. This provision has never been previously applied.

⁹ This charge was based on allegations that Dr. Ibrahim and his associates committed fraud in their handling of funds provided to the Center and the Hoda Association by the European Union (EU). The government pursued these charges despite a 13 December 2000 statement of the European Commission that it had conducted external audits of both projects and that those audits gave no concern, financial or otherwise. *See* European Commission press release IP/00/1495, 13 December 2000. The President of the European Union has also issued a Declaration, on behalf of the European Union, stating that there is "no evidence of the alleged falsification of documents" and reiterating the "full support" of the EU for the activities of the Center and the Hoda Association. *See* Declaration by the Presidency, on behalf of the European Union, on the trial in Egypt against Dr. Saad Eddin Ibrahim and the employees of the Ibn Khaldoun Centre and Hoda Association, P/02/100, 30 July 2002.

The Center was kept closed by the Government and its activities related to the monitoring of the election were forced to cease.¹⁰

The indictment against Dr. Ibrahim and his associates was brought under the auspices of the state of emergency that has been in force in Egypt, with limited interruption, since 1967.¹¹ Under emergency rule, security officials are authorized to arrest persons suspected of being a threat to national security and to try such persons, even if they are civilians, before military tribunals or state security courts.¹² The Supreme State Security Court, which affords fewer procedural guarantees than do courts in the primary Egyptian Judicial system, was selected for the trial of Dr. Ibrahim and his associates.

4. The First Trial Before The Supreme State Security Court

The trial before the Supreme State Security Court began on 18 November 2000. The trial was attended by numerous journalists, consular officials, and observers from Egyptian and international human rights groups, including Human Rights Watch, Amnesty International, the International Federation of Human Rights, and the Lawyer's Committee for Human Rights.

From the outset of the proceedings, the conduct of the trial was fraught with inequities. Specifically, the court, through its rulings and decisions on procedural points, compromised numerous due process rights and undermined the ability of the defendants and their lawyers to mount an effective defense. Some examples include:

- Defense counsel was denied access to the prosecution's memorandum detailing its case against the defendants until four months into the trial.
- Defense counsel was denied access to key documents, including materials seized from the Center and Dr. Ibrahim's home, until four months into the trial.
- When finally granted access to evidence in the case, defense counsel was given only several hours to review thousands of pages of documents and was denied the ability to photocopy, only being permitted to take handwritten notes.

¹⁰ Despite the arrest of Dr. Ibrahim and his associates, other local human rights groups conducted independent monitoring of the 2000 elections. However, the scope of this monitoring was limited in comparison with past monitoring operations. According to the monitors' findings, and as indicated by press reports at the time, the elections were again marked by violence and irregularities, though on a diminished scale from those in 1995.

¹¹ See Law No. 162 of 1958 Concerning the State of Emergency (as amended). The state of emergency was most recently extended by President Hosni Mubarak in May 2000, despite opposition from many sectors of Egyptian civil society. The emergency legislation, and the laws enacted pursuant to its authority, violate both Egypt's Constitution and its international human rights obligations under the International Covenant on Civil and Political Rights. See, e.g., Press Release, Human Rights Committee, 76th Session, 1 November 2002, "Adopts Final Conclusions and Recommendations on Reports of Egypt and Togo" ("The Committee was disturbed that the state of emergency proclaimed by Egypt in 1981 was still in effect, meaning that [Egypt] had been in a semi-permanent state of emergency, contrary to article 4 of the [ICCPR]."). A discussion regarding this legislation is presented in greater detail in Part IV.B., below.

¹² See Law No. 162 of 1958 Concerning the State of Emergency (as amended).

- Minutes of trial proceedings were incomplete, and defense counsel was denied access to official summaries of proceedings.
- The panel of justices consistently failed to respond to defense counsel's challenges to the constitutionality of relevant statutes.
- The panel of justices failed to consider all evidence and documentation submitted on behalf of the defendants prior to reaching their verdicts.

These and other concerns regarding the trial process are discussed extensively in Part IV.B.2., below.

The trial lasted seven months and included fifteen hearing sessions, concluding on 21 May 2001. After fewer than two hours of deliberations, the panel of justices announced its verdict: Dr. Ibrahim was convicted on three of the four charges brought against him -- receiving donations without prior official permission, disseminating false information designed to undermine Egypt's stature abroad, and defrauding the European Union -- and was sentenced to seven years in prison. His associates were also convicted on the related charges and were sentenced to terms ranging from one to five years. The authorities permanently shut down both the Ibn Khaldun Center and the Hoda Association. Dr. Ibrahim and five associates, who were to serve prison terms, were immediately detained.¹³

In a joint statement on 25 May 2001, two U.N. human rights experts, the Special Representative of the Secretary-General on Human Rights Defenders and the Special Rapporteur on the Independence of Judges and Lawyers, commented that the conviction of Ibrahim and his associates will have a chilling effect on the activities of other human rights defenders in Egypt.¹⁴

5. Appeal To The Court Of Cassation

The panel of the Supreme State Security Court which tried this case waited 27 days before issuing a written judicial ruling, although they gave press interviews regarding their verdict at an earlier date. Dr. Ibrahim and his associates immediately filed an appeal to the Court of Cassation, the sole avenue for appeal of a verdict of the Supreme State Security Court. The appeal date was first set for 24 October and then cancelled and reset for 19 December 2001. The prisoners applied to the court for a temporary suspension of their sentences until their appeal was heard, in accordance with Article 36 of Egypt's Law No. 57 of 1959. Their requests were denied without any explanation.

On 19 December 2001, the Court of Cassation heard the appeal, presented by the same defense counsel as the first trial. Contrary to international standards for a fair trial, the defendants were denied the right to appeal against the original verdict on points of substance; the appeal was limited to only to procedural points.

¹³ Twenty-one of the persons convicted in the trial were sentenced to one year suspended sentences. These persons were released after some days in detention facilities.

¹⁴ "U.N. Human Rights Experts Express Concern Over Trial And Conviction Of Egyptian Academic And Co-Defendants", Press Release HR/01/45, 25 May 2001.

In November of 2001 the Court of Cassation's prosecution office, an independent body of the office of the General Prosecution that advises the court's judges on the merits of legal points raised on appeal, submitted an assessment of the Petitioners' appeal, agreeing with a number of points raised by the defense counsel and recommending that the appeal be upheld in favor of the Petitioners, and that a retrial be ordered. The Court repeatedly delayed issuing a ruling on the appeal. Finally, on 6 February 2002, the Court agreed with the prosecution office and ruled in favor of Dr. Ibrahim and his associates that a retrial was necessary.¹⁵

At the time of the first trial, Dr. Ibrahim had been diagnosed as suffering from a degenerative neurological condition requiring immediate specialist diagnosis and treatment. His health had deteriorated during his incarceration, and tests revealed multiple small strokes, and damage to the spinal cord and motor regions of the brain.¹⁶

6. Retrial At Supreme State Security Court

The retrial at the Supreme State Security Court began on 27 April 2002 and was attended by diplomats from European, Australian, and North American embassies as well as human rights organization representatives and foreign and local journalists. The proceedings were unusually intense, including many late evenings with hearings lasting until midnight or beyond. The prosecution presented its case in virtually the same fashion as it had previously and asked the court to sentence the defendants to the maximum sentence allowed by law.

The defense put forth seven witnesses from among Egypt's leading public figures, diplomats, and academics, each speaking to one of the legal points raised against Dr. Ibrahim and his associates. The testimony focused on establishing that the case was based on selective persecution of one man for expressing his opinion, and that, in fact, many Egyptians are far more critical of their country without suffering any penalty. The witnesses also refuted claims that the Center conducted "fake" projects by presenting evidence of the respected output of the Center. One witness was a Parliament member who described how the Center's reports were routinely used and trusted by legislative committees on education reform and social policy. The defense also again raised challenges to the constitutionality of Military Decree No. 4, issued under the authority of the State of Emergency, and Article 80(d) of the Egyptian Penal Code, which criminalizes the "tarnishing of Egypt's image abroad," this time offering testimony from the former Chief Justice of the Egyptian Constitutional Court, Awad el Morr.

On 29 July 2002, after only a 15 minute period of deliberation, the trial ended with neither side being granted the usual opportunities for summary or rebuttal. The court again sentenced Dr. Ibrahim to a seven year prison term. Judge Adel Abdel Salaam Gomaa, himself a former State Security Prosecutor, announced that Dr. Ibrahim had been found guilty on the same three charges -- accepting foreign funds without authorization, fraud, and tarnishing Egypt's

¹⁵ Pursuant to standard practice, the retrial was ordered to be held before a different division of the Supreme State Security Court.

¹⁶ See 28 October 2002 MRI Report, attached as Appendix C.

image abroad. Despite an earlier statement by the Judge regarding its inadmissibility, the evidence used to convict Dr. Ibrahim on the charge of tarnishing Egypt's image abroad was a single fax, never seen by defense counsel nor included in any official submission of evidence by the prosecution. Nadia Abdel Nour was sentenced to two years imprisonment on a fraud charge. Khaled al-Fayyad and Usama Hammad Ali received one-year suspended sentences, down from two years in the previous trial. Magda Ibrahim el-Bey and Muhammad Hassanein Amara were sentenced on retrial to three years of imprisonment, instead of the five year sentences they received at the first trial. The original one year suspended sentences against the twenty-one other associates remained unchanged, as did a two-year prison sentence for Marwa Ibrahim Zaki.

Dr. Ibrahim and some other defendants were quickly removed to a detention facility in Cairo. They were held in this location for more than 48 hours, during which time no access was allowed by their families or attorneys. Temperatures were reported to be over 100 degrees Fahrenheit, and Dr. Ibrahim was denied access to the medical equipment he needed to assist his breathing at night. On 31 July 2002, they were moved to the outskirts of Cairo to begin serving their sentences. Family was informed that visits would not be allowed for two weeks.

Human Rights Watch and other such groups called for the immediate and unconditional release of all the Petitioners, and for Dr. Ibrahim to be allowed to travel abroad for urgent medical treatment. Dr. Ibrahim's wife petitioned the prison authority to allow a neurology specialist to examine him. On 6 August 2002, Dr. Ayman K.A. Magd was granted access to examine Dr. Ibrahim. His report indicates that Dr. Ibrahim is in urgent need of medical treatment not available in Egypt.¹⁷

The retrial, much like the original trial, suffered from serious inequities. Defense counsel was denied adequate time to prepare its case and again was denied access to certain key documents. The justices, as in the original trial, failed to respond to challenges by defense counsel to the constitutionality of the legislation under which two of the charges against Ibrahim were brought. Additionally, the presiding judge failed to respond to repeated pleas for proceedings to be suspended to enable Dr. Ibrahim to travel abroad for urgent medical treatment.

Dr. Ibrahim and his associates have again appealed the verdict to the Court of Cassation. According to press reporting, this appeal is scheduled to be heard beginning in early December of 2002.¹⁸ According to Egyptian law, Dr. Ibrahim and his associates will once again be limited to appeal on procedural grounds. If the appeal is accepted and another retrial ordered, then this final trial on merits would be held by the Court of Cassation itself.

A. Analysis

As discussed further below, the Petitioners' arrest, conviction, and detention constitutes an arbitrary deprivation of liberty that falls within Categories II and III as established by the U.N. Working Group on Arbitrary Detention ("Working Group"). Specifically, their case meets the

¹⁷ Dr. Magd's report is located at Appendix B.

¹⁸ Reported by Agence France Presse on 16 October 2002.

Category II criteria because the Petitioners' detention is the result of the exercise of their right to freedom of opinion as guaranteed by Article 19 of the Universal Declaration of Human Rights (“UDHR”)¹⁹ and freedom of expression as guaranteed by Article 19 of the International Covenant on Civil and Political Rights (“ICCPR”)²⁰, to which Egypt is a signatory.²¹ Their case meets Category III criteria because the Petitioners' have been denied the right to a fair trial in accordance with international norms as set forth in the UDHR, the ICCPR, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“Body of Principles”).²²

1. The Petitioners' Detention Is Arbitrary Because It Results From Their Exercise Of Their Right To Freedom Of Opinion and Freedom of Expression As Guaranteed By Article 19 Of The UDHR And Article 19 Of The ICCPR

The prosecution of Dr. Ibrahim and his associates is a thinly veiled effort by the Government of Egypt to prevent Dr. Ibrahim, his associates, the Center, and the Hoda Association from continuing their work educating the Egyptian people regarding their civil and political rights. Through selective enforcement of laws such as Military Decree No. 4 and Article 80(d) of the Egyptian Penal Code, the Government has arbitrarily restricted the Petitioners' activities. These laws are specifically designed to curb the exercise of free expression and thus violate the Egyptian Constitution and Egypt's commitments under the UDHR and ICCPR. Moreover, even assuming *arguendo* the validity of these laws, they are not narrowly tailored to protect Egypt's national security, public order, public health or morals in Egypt, as required by the ICCPR for laws restricting the exercise of the fundamental right to free expression. In addition, even if these laws are not facially invalid, they are invalid as applied to Petitioners, because their overbreadth and vagueness make them particularly susceptible to selective enforcement by the Egyptian Government. Accordingly, as discussed further below, the arrest, conviction, and detention of Dr. Ibrahim and his associates were arbitrary and violate international law because they were designed to restrain the peaceful exercise of the Petitioners' right to freedom of opinion, as guaranteed by Article 19 of the UDHR, and right to free expression, as guaranteed by Article 19 of the ICCPR.

a. The Right Of Free Expression Includes The Right To Impart Opinions

Article 19 of the UDHR states that “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” The freedom of opinion and expression is also embodied in Article 19(2) of the ICCPR which states, in pertinent part, that “[e]veryone shall have the right to freedom of expression; this right shall

¹⁹ G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948) (“UDHR”).

²⁰ G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976 (“ICCPR”).

²¹ Egypt signed the ICCPR on 4 August 1967. The treaty was ratified on 14 January 1982 and entered into force 14 April 1982.

²² G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) (“Body of Principles”).

include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, whether orally, in writing or in print, in the form of art, or through any other media of his choice.” Numerous cases interpreting Article 19(2) of the ICCPR have confirmed that political expression is protected by this right.²³ As set forth in the UDHR and ICCPR, the right to freedom of opinion and expression extends to the right to impart opinions to others and to receive opinions imparted by others.

The protection of the right to freedom of opinion and expression is essential to the development and maintenance of a transparent and pluralistic civil society. Although there are certain justifications for State-imposed restrictions on the right to free expression embodied in the ICCPR, such restrictions must not place the right to free expression in jeopardy. Any restrictions must be imposed by a valid domestic law and must be necessary either to “respect the rights or reputations of others” or to protect national security, public order, public health or morals. Any law that restricts the exercise of free expression must be appropriate and particularly adapted to achieving one of these specifically enumerated ends, in a manner proportional to the rights sought to be protected.²⁴

b. The Statutes Used To Prosecute Dr. Ibrahim And His Associates Violate The Right To Freedom Of Expression Enshrined In Article 19 Of The ICCPR

As described above, Dr. Ibrahim and his associates, through the Center and the Hoda Association, have actively worked in Egypt to educate and register potential voters, to advocate and provide a voice for minority groups and views, and to support the democratic process through various other activities. Organizations such as the Center operate on the basis of the freedoms enshrined in the UDHR and ICCPR, which provide such organizations with the assurance they need to undertake such important programs without fear of unjustified Government suppression. Here the Government of Egypt’s suppression of the work of Dr. Ibrahim, his associates, the Center, and the Hoda Association sharply curtails the democratic process and threatens civil and political rights for all of Egypt.

As noted above, pursuant to Article 19 of the ICCPR, restrictions on the exercise of the right to free expression, if any, must be imposed by valid domestic law. The indictment against Dr. Ibrahim and his associates was brought under the auspices of the state of emergency that has been in force in Egypt, with limited interruption, since 1967. It was on this basis that the Supreme State Security Court was selected for the trial of Dr. Ibrahim and his associates, rather than the primary Egyptian Judicial system. Specifically, the Petitioners were charged with violating Military Decree No. 4 of 1992, a measure enacted pursuant to emergency powers of the Military Governor (typically the Prime Minister). Military Decree No. 4 was never incorporated into legislation. Moreover, in July 2001, the Egyptian Court of Cassation ruled that, in issuing the decree, the Military Governor had exceeded his authority by increasing an already established legal penalty and usurping powers granted only to the judiciary and legislature.

²³ See, e.g., Human Rights Committee, *Mpandanjila et. al v. Zaire* (138/83).

²⁴ Human Rights Committee, *Faurisson v. France* (550/93).

Petitioners were also charged with disseminating false and harmful information under Article 80(d), a vaguely-worded provision of the Egyptian Penal Code. Dr. Ibrahim allegedly violated this provision when he stated that there was an increase in discrimination against the country's Coptic Christian minority and characterized previous Egyptian elections as having widespread and serious irregularities, including fraud and intimidation of candidates and voters. Dr. Ibrahim is not alone, however, in making these claims. This election information has been widely reported in Egypt and abroad, by media, human rights groups and other international observers, and, in July 2000, the Egyptian Supreme Constitutional Court declared the 1990 and 1995 national legislative elections invalid for exactly the reasons cited by Dr. Ibrahim.

Military Decree No. 4 and Article 80(d) of the Egyptian Penal Code violate the Egyptian Constitution and international law because they enable the state to stifle the exercise of free expression. Moreover, during the second trial before the Supreme State Security Court, although Awad el Morr, former Chief Justice of the Egyptian Constitutional Court, testified that these provisions raise serious constitutional concerns, the Supreme State Security Court repeatedly refused to rule on their suitability for referral to the Constitutional Court, describing Mr. el Morr's testimony in the written judgement as "merely an attempt to delay the court proceedings."²⁵

Military Decree No. 4 and Article 80(d) violate the right to freedom of expression and opinion enshrined in ICCPR Article 19 and UDHR Article 19. Throughout the proceedings in this case, the Government of Egypt never demonstrated that application of such laws are necessary to protect the national security, public order, public health or morals in Egypt. Similarly, the Government has offered no serious rationale for its continued renewal of the State of Emergency under which Military Decree No. 4 operates. This State of Emergency, and legislation such as Military Decree No. 4 enacted under its guise, have created an environment in Egypt where "the authorities abuse fundamental human rights on a wide scale and with impunity, and where they adopt arbitrary measures to silence their critics in the name of safeguarding national security."²⁶

c. The Government Of Egypt Violated Article 19 Of The UDHR And Article 19 Of The ICCPR By Selectively Enforcing Certain Domestic Laws Against The Petitioners For Political Reasons

In addition to the concerns identified above regarding the purpose and content of Military Decree No. 4 and Article 80(d), these laws are also invalid as applied to Dr. Ibrahim and his associates, because the Government of Egypt selectively enforces these measures and uses them as a political tool to suppress certain groups deemed to be a threat to the regime. The overbreadth and vagueness of these laws provides the Government with far too much room for

²⁵ Permission from the trial court is required by Egyptian law in order to raise a challenge to the Constitutional Court.

²⁶ "Egypt, The State of Egypt vs. Free Expression: The Ibn Khaldun Trial," Human Rights Watch, January 2002 Vol. 14, No. 1(E), p. 8 (hereinafter "Human Rights Watch Report").

manipulative and politically-motivated prosecution. Indeed, Military Decree No. 4 has been applied only once previously, also in the case of a human rights activist,²⁷ and Article 80(d) has never been previously applied.

The Human Rights Commission has held that any law restricting the right to free expression must be proportional – appropriate and adapted to specifically achieve one of the enumerated permissible ends.²⁸ Neither Military Decree No. 4 nor Article 80(d) meets this standard. The use of these laws to suppress the exercise of the right to free expression by persons such as Dr. Ibrahim is antithetical to the very core of the body of international human rights law to which Egypt has bound itself. The actions of both the Egyptian SSI officers and the prosecution in this case, as well as statements made by the Justices of the Supreme State Security Court in issuing their rulings, illuminate the political motivation behind the trial of the Petitioners.²⁹

Organizations such as the Center and Hoda Association and leaders such as Dr. Ibrahim and his associates do not threaten the national security of Egypt. Rather, they seek to improve the quality of life for all citizens of Egypt by continuing to build a society grounded in principles of equality and freedom.

2. The Petitioners' Detention Is Arbitrary Because The Petitioners Were Denied The Right To A Fair Trial In Accordance With International Norms As Set Forth In The UDHR, The ICCPR, And The Body Of Principles

Under Article 9 of the UDHR, “[n]o one shall be subjected to arbitrary arrest, detention, or exile.” The UDHR also provides that, “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”³⁰ Article 9 of the ICCPR echoes this fundamental freedom, providing that, “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

²⁷ In 1998, Hafez Au Sa’ada, Secretary-General of the Egyptian Organization for Human Rights, was arrested following publication of a report on torture and other abuses related to the government’s handling of Muslim-Coptic disturbances in the Northern Egyptian town of al-Kusheh. This case never went to trial.

²⁸ Human Rights Commission, Faurisson v. France (550/93).

²⁹ As an example of the Court’s lack of objectivity in this matter, the written decision issued by the Supreme State Security Court after the second verdict includes the following language: “In the name of human rights, the court confronts those defendants and uncovers their tricks. It will make them drink from the same cup they wanted their country to drink from...Egypt’s stability will not be a toy in the hands of those who manipulate its reputation and the rights of its people. Egypt’s prestige will never be compromised by spiteful persons. Egypt does not need sycophants to draw up a modernized social structure for her as much as it needs models that enhance its personality and preserve its identity. If the defendants have another country as a homeland, Egyptians have only Egypt as their own, and Egyptians will accept no less than veneration and respect for their homeland.” A complete (unofficial) English translation of this decision is attached as Appendix E.

³⁰ UDHR, Article 10.

The arrest and trial of the Petitioners violated these articles, as a result of the Egyptian Government's failure to provide the following fundamental freedoms and rights:

a. The Government Violated The Petitioners' Right To Be Informed Of Charges And Accompanying Rights

It is a universal right of every individual to be informed of the charges against him/her, and to be advised of all rights of which the accused may avail him/herself. Under the Body of Principles, "[a]ny person shall, at the moment of his arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided . . . with information on and an explanation of his rights and how to avail himself of such rights."³¹ Also under this Body of Principles, "(1) There shall be duly recorded: (a) the reasons for the arrest; (b) the time of the arrest . . . (c) the identity of the law enforcement officials concerned . . . (2) Such records shall be communicated to the detained person . . . in the form prescribed by law."³² The ICCPR requires that when charged with a crime, everyone has a fundamental right "to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him[.]"³³

Dr. Ibrahim was never informed of the charges against him, nor of his rights. Upon his arrest, he did not receive written documentation regarding the charges, indictments and evidence against him. As noted above, Dr. Ibrahim was arbitrarily detained pre-trial for forty-five days without being formally charged, as were more than twenty of his associates. The Egyptian Code of Criminal Procedure requires that suspects must be brought before the public prosecution within twenty-four hours of arrest, questioned by prosecution officials within the next twenty-four hours, and either ordered detained or released.³⁴ Yet, in flagrant violation of the Code, the authorities failed to clarify the legal basis of the accusations against them and simply renewed their detention orders "pending investigation."

Though there was a written Bill of Indictment dated 24 September 2000, it was never presented to the Petitioners. In fact, the Petitioners only first learned about the charges against them in the newspapers. Moreover, the government never provided the Petitioners with confirmation of court dates. Therefore, the Government of Egypt violated these fundamental principles and the detention, conviction, and arrest of Dr. Ibrahim and his associates were arbitrary.

b. The Delay Prior to Trial Violated the Petitioners' Right Not to Be Arbitrarily Detained

Dr. Ibrahim was arrested on 30 June 2000. However, he was not sentenced in the first trial until 21 May 2001. Although all Petitioners were released by the end of August, 2000, the

³¹ Body of Principles, Principle 13.

³² Body of Principles, Principle 12.

³³ ICCPR Article 14(3)(a).

³⁴ Egyptian Code of Criminal Procedure, Article 36.

authorities failed to clarify whether, on the basis of investigations conducted while the Petitioners were detained, the case would go to trial. Instead, it remained “pending” a further decision by the public prosecution.³⁵

Under the ICCPR, “[a]nyone arrested or detained on a criminal charge shall . . . be entitled to trial within a reasonable time or to release”³⁶ In its General Comment on this Article, the U.N. Human Rights Committee has stated “[p]re-trial detention should be an exception and as short as possible”³⁷ Here, detaining Petitioners for six weeks, and then releasing them only “pending” a further decision, and without adequately investigating the charges against them, violated their right not to be arbitrarily detained as required by the UDHR.³⁸

c. The Trial Violated The Petitioners’ Right To A Trial Conducted In A Fair And Impartial Manner, By An Independent Judiciary

The right to be judged by an independent and impartial tribunal is a fundamental right enshrined in the UDHR.³⁹ Article 14 of the ICCPR requires: “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” Here, there are serious questions about the independence and impartiality of the courts that have dealt with Dr. Ibrahim’s case.

i. Petitioners Were Denied Access To Information Necessary To A Defense

The UDHR provides that “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”⁴⁰ The ICCPR provides, that any individual accused of a crime must “have adequate time and facilities for the preparation of his defense”⁴¹

³⁵ The practice of keeping official investigations pending (in some cases for years) is widely used in Egypt against targeted activists and others whom the authorities wish to intimidate or deter from peaceful opposition activity. For example, this tactic was used in the case of Hafez Abu Sa’ada, who was detained for fifteen days in December 1998 after the government charged him with accepting funds from a foreign donor with the intent of harming Egypt’s national interests. See Note 27, above. His case remained “pending” following his release, without clarification as to whether the case would go to trial. To date, the authorities have not informed Abu Sa’ada officially that his case is closed.

³⁶ ICCPR, Article 9(3).

³⁷ U.N. Human Rights Committee, CCPR General Comment 8, Session 16, Adopted 27 July 1982.

³⁸ UDHR, Article 9.

³⁹ UDHR, Article 10.

⁴⁰ UDHR, Article 11.1.

⁴¹ ICCPR, Article 14(3)(b).

Such “guarantees necessary” for the Petitioners’ defense would necessarily include the government providing an opportunity for defendants to inspect documents and files stored at the Center and documents that the State Security Intelligence seized and removed from the Center. Since the Petitioners’ imprisonment, the government has closed and sealed the Center, and the Petitioners have been repeatedly denied access to the documents located within and seized from it. The denial of access is in contrast to the repeated access to the Center offices and documents that the Court granted to state security police.

The Petitioners also were not granted adequate time and facilities to prepare their case. The Petitioners were denied access to key documents,⁴² and to the prosecution memorandum detailing its case,⁴³ until four months into the trial.⁴⁴ When the Court finally granted defense counsel access to thousands of pages of documents, this access was limited to a single several-hour-long session, and defense counsel was denied permission to photocopy any documents. Petitioners’ defense counsel also were denied access to translations of documents written in English, transcripts of the lengthy Court proceedings, or minutes of the trial sessions.⁴⁵

ii. Petitioners Were Harmed By Significant Irregularities In The Trial Proceedings

Petitioners have yet to receive a free and fair trial. In fact, Egypt’s highest appeals court in the Security Court system, the Court of Cassation, ruled that the Petitioners’ first trial in the Supreme State Security Court was improperly conducted, and ordered a retrial. The retrial, however, was also marked by irregularities, Court bias and misstatements by the Judge.⁴⁶

In addition to the Court’s denials of permission for Petitioners to inspect evidence, the Court also failed consistently and throughout the second trial to respond to the Petitioners’ formal requests, including requests for travel permission for medical treatment of Dr. Ibrahim, even when such permission was sought during court recesses that would not delay the trial. As

⁴² Perhaps most critical, the Court’s decision with respect to the charge of defaming the state largely turned on a single document (a facsimile allegedly sent on 30 September 1997, from the Center to Bonn, Germany). The government never produced this document for the Petitioners, never authenticated it at trial, and the Petitioners never had the opportunity to inspect this document or to disprove its authenticity.

⁴³ Access to this document was all the more crucial since at trial, the prosecution called no witnesses to give evidence on its behalf, opting instead for a written submission.

⁴⁴ The trial began on 18 November 2000, but defense lawyers did not obtain access to any of the prosecution documents pertaining to the case until at least 19 March 2001.

⁴⁵ Defense counsel received copies of only some trial minutes, and then only through a “friendly arrangement” with a court clerk, but did not receive the bulk of the minutes. These minutes were written in summary form, with the clerk noting down certain points in response to a nod from the presiding judge. Defense counsel noted the discrepancy upon comparing the official court proceeding records with transcripts made from tape recordings of the proceedings (which the presiding judge had allowed some of the defense team to make). When defense counsel raised this discrepancy with the Court, the Court barred tape recorders from subsequent court proceedings.

⁴⁶ See “Ibn Khaldun Verdict Meant to Silence Criticism, Egypt: Ibrahim Should Receive Urgent Medical Treatment Abroad,” Human Rights Watch (New York, 31 July 2002) (hereinafter “HRW Release”) (quoting Hanny Megally, executive director of Human Rights Watch’s Middle East and North Africa division, as stating that, “The retrial of Ibrahim and his co-defendants was as manifestly unfair as the original trial.”)

noted above, applications by defense lawyers for leave to challenge the constitutionality of the legislation under which two of the charges against Dr. Ibrahim were brought were denied.⁴⁷

During the trial proceedings, the Petitioners were forced to stay for hours in barred cages before the Court. After the first few sessions, during which the Petitioners were forced to stand, benches were provided, most likely due to the presence of foreign journalists. The final trial sessions were similarly irregular. The Court advised that it would allow both parties a chance for rebuttal and summation. Neither was granted. The Court stated that it would not allow Dr. Ibrahim to address the Court, but that it would accept his written testimony at the conclusion of the trial.⁴⁸ The Court issued its decision the following day, without allowing Dr. Ibrahim to present this testimony.⁴⁹ On 28 July 2002, the Court misleadingly and falsely stated that the volume of materials submitted during the trial would require “weeks” to review before a final verdict. In fact, the Court did not postpone the verdict at all, and the decision was rendered on the next day after this misstatement.⁵⁰ The Court did not open the final trial session on 29 July 2002 (a session in which Petitioners’ oral arguments were still being presented) by stating that this would be the session in which a judgment was rendered. This unexpected decision not only prevented some of the Petitioners their right to have legal counsel present for the judgment, but also precluded the defense from closing arguments and summary.

iii. The State Security Court Is Neither Independent Nor Impartial

There is good reason to question the independence and impartiality of the Supreme State Security Court in Petitioners’ case.

Law No. 162 of 1958 (as amended) allows the country’s executive authorities to declare a State of Emergency to confront national “emergencies,” and allocates them extraordinary powers to do so. A State of Emergency in Egypt is not an unusual occurrence; on the contrary, such a state has been in nearly continuous effect since World War II. It was most recently renewed in May 2000 for another three years, despite widespread opposition. Not only opposition parties, but lawyers, judges, and political activists of all persuasions have publicly criticized the regime's continual renewal of the state of emergency.⁵¹

⁴⁷ Petitioners had challenged the constitutionality of Article 48 of the Penal Code, the statutory basis of the charge of conspiracy to commit bribery; and Military Decree No. 4 of 1992, on which the charge of accepting donations without obtaining prior authorization from the competent authorities was based. The Court neither commented on these challenges nor granted leave to refer the matters to Egypt’s Supreme Constitutional Court (even though the constitutionality of Article 48 had already been challenged in other cases and the matter was before the Supreme Constitutional Court at the time of Petitioners’ trial). The Court did not comment on either of these challenges before issuing its verdict.

⁴⁸ The full text of the written testimony Dr. Ibrahim sought to provide to the Court is attached at Appendix F.

⁴⁹ According to the Cairo Times, Nadia Abdel Nour had also requested an opportunity to address the Court, stating: “The bulk of the case is financial and I am the only accountant here. I want to review the specific monetary issues.” Cairo Times, Vol. 6, Issue 22, 1-7 August 2002. Abdel Nour ultimately was not permitted to address the court.

⁵⁰ The three-member bench deliberated for fewer than one hour. Defense counsel had submitted additional documentation to the court during that morning’s session. It is apparent that the bench could not have adequately taken this document into account.

⁵¹ See note 11, above.

Under the emergency legislation, a military governor can issue military decrees⁵² covering a wide variety of subjects under a loose "security" justification. State security authorities can take measures in the name of "national security" or "public order," such as holding people in detention without formal charges for prolonged periods, censoring or shutting down the press, and prohibiting public meetings and election rallies without written permission from the Interior Ministry.

The State Security Court system⁵³ was established in 1980 under such a State of Emergency⁵⁴ in order to try grave offenses⁵⁵ to the nation's security. Its existence has created a parallel legal system with far fewer safeguards and less well defined procedures, that allows the government to avoid many of the safeguards of the regular judiciary. While Egypt's regular judiciary has well defined and identifiable procedures, the existence of this "parallel judiciary" makes it difficult for individuals to obtain precise information about the appeal process. The Courts are controlled in varying degrees by the executive branch of the Egyptian government, thereby undermining the independence of the judiciary.

Since 1992, President Hosni Mubarak has issued decrees referring hundreds of people to these Security Courts. These courts are rampant with violations of fundamental human rights. Some prisoners have never been charged after years of incarceration, some (like Petitioners) received unfair trials, and others are being held illegally in prison after serving out their complete sentences. Family members often cannot learn the location of those imprisoned in this way.

The Court of Cassation is currently backlogged with appeals stemming from questionable sentences in the lower security courts. Accordingly, the sole appeal process available to the Petitioners may take many months or even years, because if the Court accepts the procedural appeal and grants a mistrial (a process that for these Petitioners previously took nine months), the case will then be scheduled to be heard for a *third* time, in a circuit of the Court of Cassation itself. Additionally, the prosecutors have several times intimated that they may now bring new charges of espionage against the Petitioners in a new legal action.

iv. The Structure Of The State Security Court Violated The Petitioners' Right To An Appeal On The Substance Of The Case

⁵² The government relied upon one such decree, Military Decree No. 4 of 1992, to prosecute Dr. Ibrahim for accepting foreign funds. However, this was not the intended applicability of this decree; it was originally issued in the aftermath of an earthquake, in order to allow the government to block the flow of funds to Islamist groups helping in the relief efforts. Thus, it allows the government to ignore the already scanty safeguards granted to NGOs under Egypt's NGO law. It has rarely been used in recent times. In June 2002, the Egyptian parliament passed a new "law of associations," giving the authorities draconian powers to dissolve NGOs by administrative order and without recourse to a court of law, as well as to interfere extensively in their internal affairs.

⁵³ This system includes state security courts, emergency sections of state security courts, and military courts.

⁵⁴ Law No. 105 of 1980.

⁵⁵ "Grave offenses" is defined in the Penal Code.

Under Egyptian law, defendants are entitled to appeal a court decision on both substance and procedure. However, the Petitioners were not permitted to appeal the substance of their case. The right of appeal in the Supreme State Security Courts is sharply limited. The Court permits no appeal of the lower court's verdict, but only accepts appeals in cases where the defendants can demonstrate misapplication of law and procedural irregularities. Then, when the Court of Cassation hears a successful appeal on these restricted grounds, it is only permitted to declare a mistrial and remand the case to a new district in the Supreme State Security Courts.⁵⁶ Because of these limited protections of due process rights, France and other countries have refused to extradite Egyptians wanted to stand trial in Supreme State Security Courts.

Additionally, the Court failed entirely to consider the Petitioners' defense that Military Decree No. 4 is not applicable to the Center or Hoda Association, based on their registration not as Non-Governmental Organizations but instead as civil companies under Egyptian Law. The Center and Hoda Association are tax-paying entities, regulated by the Egyptian Civil Code. The decision did not address this argument at all.

d. The Trial Violated The Petitioners' Right To Be Presumed Innocent

The Government of Egypt conducted an investigation of the charges against Dr. Ibrahim that was politically motivated. The absence of evidence was confirmed when the Government was forced to resort to such rarely-used provisions as Military Decree No. 4 and Article 80(d) of the Penal Code to charge the Petitioners. In relying on such overtly political provisions, the burden was effectively shifted to the Petitioners to prove they had not committed the crimes alleged. Thus, the Petitioners were presumed guilty. The arrests, interrogations and trials were accompanied by a sustained misinformation campaign against the Petitioners in the state-controlled press and broadcast media. Sympathetic press coverage was suppressed. The actions of the Executive and the Court violated the UDHR and the Body of Principles, both of which enshrine the right to be presumed innocent.⁵⁷

V. Indicate Internal Steps, Including Domestic Remedies, Taken Especially With The Legal And Administrative Authorities, Particularly For The Purpose Of Establishing The Detention And, As Appropriate, Their Results Or The Reasons Why Such Steps Or Remedies Were Ineffective Or Why They Were Not Taken

As described in Part IV.A. above, the Petitioners have pursued all domestic remedies available to them in the context of the emergency proceedings that have been instituted against them. The Petitioners were initially convicted by the Supreme State Security Court on 21 May 2001. This verdict was overturned on appeal by the Court of Cassation on 6 February 2002, and a retrial was ordered before the Supreme State Security Court. The second trial in the Supreme State Security Court resulted in an identical verdict on 29 July 2002. This decision has again been appealed by the Petitioners to the Court of Cassation. Media has reported that a decision may be issued in December 2002.

⁵⁶ Such a remand indeed happened in Petitioners' case on 6 February 2002.

⁵⁷ See UDHR, Article 11(1), Body of Principles, Principle 36.

As noted herein, however, these remedies do not provide an adequate legal process for the protection of the fundamental rights and freedoms guaranteed to the Petitioners under the UDHR, ICCPR and the Body of Principles. The use of the Security Court system, a system susceptible to political manipulation, is inherently incapable of providing the Petitioners with a fair and impartial trial.

VI. Full Name And Address Of The Person(s) Submitting The Information (Telephone And Fax Number, If Possible).

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