Human Development Report 2000

Egypt Human Rights Report*

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I -Introduction

Egypt is a developing country and is classified by the World Bank as the 51st among the poorest countries. The poverty level is 35.88% in urban areas and 34.1% in rural areas, i.e. one third of the population can not secure their basic needs*.
Does this have any bearing on human rights?

The traditional answer is that poverty prevents the enjoyment of human rights. It in itself is a denial of the basic material conditions of life, and of the host of economic and social rights that include healthy food, safe environment, adequate housing, etc. Besides, the everyday burdens of the poor prevent them from paying attention to the fundamental human rights issues (such as the rights to the freedom of opinion, expression, conscience, association, assembly, participation, etc.) that play a crucial role in determining the shares of the haves and the have-nots in the wealth of the nation.

Does the denial of human rights lead to poverty, or to more poverty?
What is the relationship between efforts to combat or ameliorate poverty and human rights?
Or in general terms what is the relationship between development and human rights?
Is it a unidirectional relationship, i.e. successful development provides the preconditions of the enjoyment of human rights, or it also goes the other way round?

The most articulate expression of the link between development and human rights in Egypt is the "Toshky" project. It is a mega-project that aims at changing the economic geography of Egypt by creating a new Nile delta. This delta is planned to add 2.4 million feddans of agricultural land (doubling the national income) and 24 new cities thus increasing the inhabited area from 3% to 12%. In this sense "Toshky" is a colossal developmental project that could provide much to the common good of the Egyptians, and could also be a drain of limited resources or a catastrophe inhibiting growth for decades. The final word on this is to scientific feasibility studies.

* Comprehensive Development in Egypt Report, Center for the Study of the study of Developing Countries, Cairo University, 1998.

Such project could have been an occasion for involving scientists, experts, intellectuals, political forces, civil society institutions (such as the trade unions and NGOs) in discussing Egypt's development prospects for the next century. It could have been an occasion for mobilizing society to participate in development and for specifying the project's conditions of success and the dangers to be heeded.

Yet, what happened was the exact opposite. The decision to implement the project was taken from above without revealing its feasibility studies. There was a media blackout on all scientific opinions in opposition to the project, except in the opposition press. The project was not discussed in the parliament (although the ruling party has a majority of over 90% in it), nor was it discussed in the parliament's specialized committees concerned. The public opinion was kept in the dark on the project's funding sources though the government has already spent one billion and 125 million Egyptian pounds on the almost-finished first stage. Lately, three years after work began in the project, the former Prime Minister confessed that it was brought before the parliament as part of the public budget under a "code number"[*] which even the speaker of the parliament (one of the leaders of the ruling party) did not know!![**]

Is "Toshky" a military secret that should be shrouded in secrecy and concealment so that its budget would not be leaked to the enemies of the government in the ranks of the opposition? Does the state budget allow for the four billion pounds needed for this project? Are the returns of the project comparable to such massive sum? Does the Egyptian economy, just out of "intensive care", contain such huge liquid assets?[***]

We will notice here that these questions and their probable answers can not be related to "military secrets," religion, gender, or even terrorist groups – the interdictions used as pretext for denying the freedom of opinion and the right of participation. Their only frame of reference is economics. Yet, these questions remain unanswered. When another editor of *Al-Wafd* (Abbas Tarabily) asked them two years ago the then Prime Minister charged him with treason!

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[*] See the editorial of *Al-Wafd*, December 30th, 1999, based on a telephone interview with the former Prime Minister. (To this moment neither the former or the existing prime ministers, or the speaker of the parliament have retracted any of this.)

[**] See interview with Dr. Fathi Sorour, the speaker of the parliament in *Al-Wafd*, November 18th, 1999.

[***] Saiid Abdel-Khalek, editor-in-chief of *Al-Wafd.* See the above-mentioned editorial.

We believe that such a connection between economics and treason is the other side of denying the right to participate in the planning, administration, supervision, and distributing the returns of development.

This is a necessary introduction before moving to survey the principal features of the human rights condition in Egypt and determine whether there exist the institutional and legislative arrangement necessary for advancement, development and progress.

II- Characteristics of the Political, Legal and Constitutional Systems

The successive Egyptian constitutions, from that of 1952 to the current adopted in 1971, have always concentrated powers in the hands of the executive, and particularly in the hands of the head of state. The constitution merged all privileges and powers enjoyed by the head of state in both the parliamentary and presidential systems, to establish a unique system based on the political unaccountability of the head of state while enjoying powers that surpass those of the head of state in presidential regimes. Hence, the Egyptian constitution has practically appended both the executive and the legislative powers to the presidential institution. The legislative authority has become so weak as to be unable to oversee the government on the one hand, and to be ready to accept whatever decisions or legislation the executive sees fit.

Unlimited Power:

The President of the Republic has the right to appoint and dismiss the Prime Minister and his deputies, the ministers and their deputies (Article 141 of the Constitution). However, this does not contradict with the members of the government being collectively responsible to the parliament!! (Article 127).

Furthermore, the President of the Republic preserves the right to dissolve the People's Assembly (the parliament) when necessary, after a relevant public referendum (Article 136). This Article does not place any restrictions by virtue of which the necessity to dissolve the Parliament is defined.

The President of the Republic also has the right to submit the conflict between the government and the parliament to a referendum (Article 127).

Moreover, the constitution has granted the President of the Republic, by virtue of article 74, the right to take whatever expeditious measures he deems appropriate to face any hazards that would threaten national unity or the integrity of the nation, or obstruct the state institutions from performing their constitutional role. The constitution, however, has not placed any restrictions on such measures or their limits, other than the

president having to address the nation and holding a referendum on these measures within 60 days from the date of their entry into force.

In addition, the President of the Republic has the right to issue decrees with the power of law in the absence of the parliament according to Article 147 of the Constitution, or under authorization by the parliament (Article 108).

On top of this, the President of the Republic possesses vast powers upon the declaration of a state of emergency, as it is the President who declares or terminates the state of emergency, although he may not extend the state of emergency without the consent of the Parliament.

It is known that Egypt will remain till May 2000 under the state of emergency that has gone uninterrupted for more than 48 years, save for five years. The last declaration of the state of emergency took place in October 1981, following the assassination of President Anwar Sadat. Since then, it has been routinely renewed.

Constitutional Guarantees:

One could say that the current Egyptian constitution provides the minimum standards for guaranteeing the enjoyment of human rights, as it includes clear references to a wide array of rights. These rights include: equality between citizens before the law; guaranteeing the freedom of opinion, expression, creation and scientific research; freedom of the press, printing and publishing; freedom of information; freedom of belief; freedom of practicing religious rites; and the right to form associations, trade unions and federations. The constitution has further provided that personal freedom is a natural and inalienable right. Except in cases of flagrante delicto or according to a writ by the competent judge or the Prosecution Office, no one may be arrested, searched, imprisoned, deprived of liberty or deprived of his right to liberty of movement. Although the constitution is void of any articles that explicitly prohibit torture, this prohibition is implicitly stated in Article 42, which stipulates that any citizen arrested, imprisoned, or deprived of liberty shall be treated in a manner that preserves his dignity as a human being, and shall not be harmed physically or morally. Article 42 also adds that any statement proven to be made by a citizen under duress of any of the aforementioned, or the threat thereof, shall be deemed invalid.

Article 57 of the constitution provides that any infringement on the personal freedom or the sanctity of private life or other public rights and freedoms guaranteed by the constitution, shall be considered a crime that

is not subject to statutory limitations. Moreover, the state shall guarantee fair compensation to the aggrieved.

The legal rights of the citizens appear in more than one article of the constitution: the “presumption of innocence” is guaranteed by Article 67, which states that the accused is innocent until proven guilty by a court of law where he is guaranteed the means to defend himself. The Article added that anyone accused of a felony should have an attorney to defend him. Article 69 provides that the accused can defend himself either in person or by proxy. For those who cannot financially afford it, the law provides the means to resort to court and defend their rights.

Also in relation to this, the constitution provides a number of guarantees for the right to a fair trial. Public hearing is warranted by Article 168; the independence of the judiciary and the independence and immunity of judges from removal are guaranteed by Articles 165, 166 and 168; and the right to judicial review and appeal is granted by Article 71. Article 68 of the constitution furthermore asserts that litigation is a right granted to all, and all citizens have the right to recourse to the respective competent judge.

The constitution protects as well the privacy of citizens and the freedom of private life, and warrants certain guarantees to the freedom of movement, residence and travel. It also provides the right of asylum to foreigners persecuted on the ground of their defense of the interests of the peoples, human rights, peace or justice. Article 53 of the constitution prohibits the extradition of political refugees.

As regards economic and social rights, the constitution grants the right to work (Article 13) and the enjoyment of social and health care, and pensions for the disabled and senior citizens. The constitution makes education compulsory in the primary education stage (article 180) and free in all stages in public educational institutions (Article 20). It also safeguards public and private property (Articles 33, 34, 35 and 36). However, the Egyptian constitution has left out any provision to provide for the right to peaceful strike.

Moreover, the constitution has introduced a system for the judicial supervision of the supremacy of such constitutional guarantees, by establishing the High Constitutional Court, which is considered an autonomous judicial body, entrusted with the judicial review of the constitutionality of laws.

Since the dissolution of political parties, pursuant to a resolution by the Revolutionary Command Council in 1953 until 1976 Egypt lived under a single political organization, that has taken many forms and names, starting with the Liberation Authority, to the National Union, to the Arab Socialist Union.

Since 1976, a new experience has started by adopting the restricted multiparty system. Three platforms were established from inside the Socialist Union, which turned, by presidential will, into political parties in 1977. Pursuant to this orientation, a constitutional amendment was made to consider pluralism the basis of the Egyptian political system. Yet, the constitution did not include any explicit provision to guarantee the freedom to form and join political parties. The Law on Political Parties no. 40 of 1977 came with many restrictions on the freedom to form political parties which have almost done away with the substance of this right. This is especially true given the conditions for licensing political parties. For example, its principles and goals shall not contradict with those of the July 23, 1952 revolution, or the May 15, 1971 revolution, or with the principles of the Islamic Law and the prerequisites for maintaining social peace, national unity, the democratic socialist system, and socialist gains. The law does not allow parties based on class, religious or provincial bases. At the same time, the law requires that the party's platforms, policies and methods should be clearly distinct from all existing parties – an impossible demand in the light of those other conditions. In accordance with this prohibitive condition, the overwhelming majority of the requests to found new parties has been rejected: The Committee on Political Parties' Affairs has since its inception turned down over 38 requests to form new parties.

The impartiality of this committee is questioned, as most of its members are members in the ruling National Democratic Party, the party of the regime. Surveying the map of the political parties in Egypt today, we find fourteen parties that have gained their legal legitimacy primarily either from an initiative from above under Sadat or by means of judicial rulings. The latter is the case of eight parties that the Committee on Political Parties' Affairs had refused to grant a legal license.

Although the Egyptian constitution recognizes the right of citizens to take part in the conduct of public affairs through voting and standing for election, it imposes strict limitations on nomination for presidency. It provides that the president is chosen by popular referendum on a single candidate, not the election of one from among several candidates. It stipulates that the nomination for the post shall take place through the

parliament and upon a motion by one third of its members. The candidate stands for the vote of the people only after receiving the approval of a two-thirds majority in the parliament. Under the sweeping majority of the government party (or the President's party) in parliament, these conditions for candidacy ensure the elimination of any independent candidate or a candidate from among the ranks of the opposition. This is especially true given the historical heritage of manipulating parliamentary elections (which are dominated by the Ministry of the Interior), and given the violations to the equality of opportunity between candidates of the ruling party and those of the opposition.

The provisions of the constitution do not provide any safeguards that would prevent the manipulation of the voters' will in the parliamentary elections. Article 93 of the constitution gives the parliament, which is dominated by the ruling party, an absolute power to decide on the soundness of its membership. This power allows it to discard the results of the investigations conducted by the highest judicial authorities in Egypt, namely the Court of Cassation, which is entrusted with reviewing objections against the results of the elections. Customarily, the parliament dismisses the results of the investigations that prove the invalidity of its members.

Acknowledging the safeguards granted by the Egyptian constitution to human rights and public freedoms does not mean that the major problems of human rights violations in Egypt are only related to the Egyptian constitution's position on the rotation of power through the ballot boxes, the freedom of forming political parties or the right to strike. These problems are more closely related to two concerns:

First: the legal frame organizing all rights and freedoms has largely restricted these rights and freedoms, to an extent that almost does away with these constitutionally acknowledged rights or makes their exercise impossible or difficult. As previously mentioned, this situation is promoted by the huge imbalance between authorities, and the tyrannizing of the executive over the legislative authority. The weakness of the latter makes it always ready to pass all bills referred to it by the executive, regardless of its conformity with the provisions of the constitution. This is besides the wide-ranging authority of the President to issue decrees having the force of law, whether in the absence of the parliament, or according to authorization by the parliament.

Second: the state of emergency that has been uninterrupted since 1981, by virtue of which the Emergency Law remains in force. This law was

rightly described by the United Nations Human Rights Committee as a second constitution. The Emergency Law implies the suspension of a number of constitutional safeguards through the broad prerogatives granted to the executive authority and the security forces. Hence it allows the administrative detention of persons without having to adhere to the constitutional and procedural guarantees concerning the apprehension of suspects. It also allows restricting the freedom of assembly, movement and choice of residence. In addition to searching persons and places without being bound by the Criminal Procedure Code; ordering the surveillance, seizure and impounding of personal correspondence, newspapers, bulletins, publications, written materials and all other methods of expression before publication.

Furthermore, this law allowed encroachment upon the judicial authority, by establishing exceptional courts to judge on crimes committed in violation of the emergency authority or crimes under public law referred to it by orders of the President or a representative of his. Concerning the formation of state security courts – emergency, the law allows that a number of army officers be added by orders of the President or that they be comprised in full of army officers in certain cases or regions. Those submitted to the state security courts – emergency do not have the right to challenge the rulings before a higher court, and their verdicts are not final unless being ratified by the President of the Republic himself or a representative of his. In the course of the ratification process, the President of the Republic has the right to commute the penalty, replace it by a lesser one, cancel all or some of the penalties, stop the implementation of the penalty, cancel the ruling and leave the case on file, or order a retrial before another judicial circuit. This wastes any worth of judicial rulings, and makes them subject to the will of the executive authority.

Above all, the Emergency Law grants the President the right to refer any crime punishable under the Penal Code to military courts. According to this authority, the nineties have witnessed a surge in the numbers of civilians referred to criminal courts: 1029 defendants (all civilians) in 34 cases, 94 of them sentenced to death, in 1992-9. It is noteworthy that these trials were not confined to cases of violence and terrorism, but expanded to include several politicians charged of attempting to revive the banned Muslim Brothers group, or coordinating efforts to run for parliamentary or syndicate elections, or requesting permission to form a new party.

The Egyptian government justifies the continuation of the state of emergency since 1981 by the escalation of violence and terrorism. However, the state of emergency and the overuse of the powers given by the Emergency Law have resulted in the aggravation of a sense of revenge and vindictiveness on the part of the armed Islamic groups. This sense of vendetta manifested itself in the nineties in the broadening of the targets of these groups. In addition to police officers and soldiers, the Islamic armed groups targeted tourists, Copts, attempted the assassination of a number of state figures, and inflicted great harm on unarmed civilians through indiscriminate shooting or using explosives in crowded places.

According to estimates by the Egyptian Organization for Human Rights (EOHR), the death toll of the bloody confrontation between the state and the armed Islamic group in 1991-9 reached 1320, including 394 police officers, soldiers and assistants; 500 persons suspected of belonging to Islamic groups; 93 tourists; and 317 ordinary citizens, including 99 Copts[1].

Although the last two years have witnessed a noticeable decline in the acts of violence and terrorism (as the death toll includes only 43), the Egyptian government still insists on the preservation of the state of emergency and continues to refer civilians to military courts.

[1]Youssri Mustafa Abdel-Meguid, "The Power of Death and the Power of Life: The State's Responsibility in Violating the Right to Life" a working paper presented at the Seventh Intellectual Forum of the Egyptian Organization for Human Rights, Cairo, December 1999.

III- **The Egyptian Government's Attitude towards the International Human Rights Instruments and the UN Protection Mechanisms**

In 1982 Egypt acceded to the International Covenant on Civil and Political Rights (ICCPR) and to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Egypt is also a state party to many of the fundamental agreements on human rights, among them: the International Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Political Rights of Women; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child; and the Convention relating to the Status of Refugees of 1951 and its 1967 supplementary protocol.

It should be noted that the Egyptian government did not join the first Optional Protocol to the International Covenant on Civil and Political Rights that gives individuals the right to submit complaints to the UN Human Rights Committee. Nor did the government declare that it recognizes the competence of the Human Rights Committee -according to Article 41 of the ICCPR- to receive and consider communications and complaints from other states parties to the effect that Egypt does not fulfill its obligations under the Covenant.

In the same vein, Egypt did not declare that it recognizes the competence of the Committee against Torture (CAT), according to Article 21 of the Convention against Torture, to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Convention. Nor did it declare that it recognizes the competence of the Committee, according to Article 22 of the Convention against Torture, to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation of the provisions of the Convention.

This means that the Egyptian government disapproves of the international mechanisms that provide for the right of states and individuals to submit complaints to the UN Human Rights Commission regarding its non-compliance to its commitments according to agreements it had ratified. This disapproval is manifest also in the government's stance towards the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms adopted on December 9th,

1998, as Egypt's representative to the UN submitted a memorandum to the UN on behalf of 26 states declaring such reservations on the Declaration as to effectively nullify its significance. This position by the government can not be detached from its increasing hostility towards the human rights movement in Egypt. In December 1998, when the world was preparing for celebrating the fiftieth anniversary of the Universal Declaration of Human Rights, the secretary general of the Egyptian Organization for Human Rights (the most prominent and earliest human rights organizations in Egypt) was arrested. Wide calumniation campaign was launched against the human rights movement as a whole. The reason: the EOHR had published that summer a report on torture and collective punishment of hundreds of citizens in the village of *Koshah,* Sohag in upper Egypt. The government considers that communicating information on its human rights record to international organizations and UN committees and special rapporteurs as detrimental to the national image and security.

In this context, the government seeks to hem in and undermine the independence of human rights organizations through the Law on Associations number 153 of 1999 that was passed in May. This law aims in the first place at blocking all the legal outlets that allowed these organizations to work away from the government's grip on non-governmental activities.

Moving to the status of international instruments in the Egyptian legislation, we will notice first of all that presumably according to Article 151 of the Constitution agreements that have been concluded, ratified and published in the Official Gazette after the approval of the People's Assembly (the parliament) have the force of law. Nonetheless, the Egyptian Supreme Court (replaced later by the Higher Constitutional Court) was of a different opinion. And thus, in a verdict issued on March 3rd, 1975, the Higher Court judged that the Universal Declaration of Human Rights, signed by Egypt, was no more than a nonbinding recommendation, and that it did not have the same force as ratified international agreements. Even as regards the latter, the Higher Court considered that laws that contradict them are not to be deemed unconstitutional, arguing that international agreements are not of the same status or force as the Constitution and that they are not superior to law. In effect, this verdict nullifies any obligatory force international agreements may have, and obstructs the implementation of human rights instruments.

The prominent ruling by the State Security Court – Emergency of April 1987 concerning the train drivers' strike stands alone in rightly implementing Article 151 of the Constitution, and in applying the provisions of the ICESCR to the case in a way that conforms with the proper understanding of the Constitution and the human rights instruments. The Court acquitted the defendants on the basis that the indictment articles, which included Article 124 of the Criminal Code, had been implicitly abrogated by the provisions of the ICESCR joined by Egypt. The court affirmed that according to Article 151 of the Constitution, international agreements adopted by the established constitutional process and published in the Official Gazette are internal laws that should be applied by the judiciary.

It was only natural that the juridical rule established by this historic verdict agitate the authorities. The President used his prerogatives under the Emergency Law to object to the ruling and ordered retrial.

The rule established by the Higher Court on the one hand, and the reaction of the authorities to the verdict that was founded on the obligatory force of international agreements on the other, indicate a tendency on the part of the state to slight the commitments under the international agreements it has joined. Another feature of this tendency is the reservations made by Egypt on the Convention on the Elimination of All Forms of Discrimination against Women upon joining it in 1981. These reservations turn the ratification of the Convention into a dead letter, as they go against the very purpose of the Convention.

The first reservation concerns Article 2, wherein States Parties undertake to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation; to adopt legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; to establish legal protection of the rights of women on an equal basis with men; and to take al appropriate measures to modify or abolish existing laws, regulations, customs and practice which constitute discrimination against women.

The Egyptian government also entered a reservation on Article 9, paragraph 2, according to which the States Parties grant women equal rights with men with respect to the nationality of their children. It is well known that the Egyptian Nationality Law denies Egyptian women married to foreigners the right to pass their nationality to their children, whereas nationality is given to the children of Egyptian men married to foreigners.

Reservations also cover Article 16 which obligates States Parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, and to ensure equal rights to enter into marriage and at its dissolution.

As regards Egypt's commitment to submit periodic reports to the committees established according to international agreements, and concerning the government's adherence to the guidelines for the preparation of such reports, we may notice first of all the government's failure to submit reports in due time. For example, the second periodic report to the Human Rights Committee was submitted in July 1993, four years after its due time. The report aroused severe criticisms by the experts on the Committee, who noted the absence of any reference to legal provisions to bring the Egyptian legislation into conformity with the provisions of the ICCPR, ten years after ratification. They also noticed that the Egyptian government, in declaring and renewing the state of emergency, had neglected its commitment to officially notify other States Parties to the ICCPR. The representatives of the government tried to explain this away as "inadvertent."

The Committee's discussion of the report revealed a great flaw in Egypt's commitment to the provisions of the ICCPR. The Committee affirmed that the uninterrupted state of emergency was a major obstacle to the full implementation of the ICCPR provisions, specially in consideration of the prevalence of administrative detention for extended duration in which the detainees are subject to torture and maltreatment at the hands of the police.

Also noted by the Committee was the role of military courts in trying cases which do not refer to offences committed by members of the armed forces in the course of their duties. In this regard, the Committee asked the government to provide additional information on such vital issues as: the imposition of the death penalty, the investigation of torture claims, and the trial of perpetrators of torture, maltreatment and misuse of firearms. The Committee further called on the Egyptian government to give special attention to the protection of the rights of persons under any form of detention or imprisonment.

The right of the President of the Republic to ratify judgments, which includes his right to order retrial, was noted with concern by the Committee. On the other hand, the government representatives argued that this did not in any way constitute interference with the judicial

process. They even went so far as to claim that retrials were a guarantee to the benefit of defendants!! This is despite the fact that most of the instances where the executive intervened for a retrial were cases in which the defendants were acquitted by the court, as in the aforementioned case of the striking train drivers.

There is also the example of the "Tamma case." In October 1995, the Higher State Security Court – Emergency acquitted five of the defendants in the case known as the "Tamma terrorist organization case." The court opinion stated that the confessions attributed to the defendants were extorted, as forensic reports affirmed that the defendants had been tortured after their arrest, and thus were inadmissible as evidence. The Military Governor used his powers under the Emergency Law to cancel the ruling and order retrial before another judicial circuit of the same court. In December 1997, the second court sentenced two to death, two to life in prison with hard labor, and the action against the first defendant abated because of his death during trial.

Moving to the periodic and supplementary reports by the government to the Committee against Torture, we may notice, through the Committee's comments, that the government has ignored the Committee's constant demand that the established definition of torture set forth in Article 126 of the Egyptian Criminal Law be revised as it is much narrower that that adopted by the Convention against Torture. Article 126 defines as torture only those cases where it is perpetrated with the purpose of obtaining confession. Other wise, i.e. if a public official commits an act of torture for purposes other than obtaining a confession, the perpetrator is free from the punishment provided by this article (from 3 to 10 years of imprisonment with or without hard labor).

The Committee against Torture had first made this demand to the Egyptian government upon reviewing its first report in 1989, and renewed the demand at the discussion of its first supplementary report in late November 1993. Yet, this article remains to date a principal gateway for perpetrators of torture to escape deterrent punishment. Common practices of torture fall under the category "an act of cruel treatment," which is punished lightly by Article 129 of the Penal Code – no more than one year of imprisonment or a fine of no more than two hundred Egyptian pounds. And that is in case the Prosecution Office sees fit to prosecute the perpetrators of these acts, for the Egyptian legislation prevents the claimed victims of torture from directly filing action against the alleged torturers on the grounds that they are public officials.

The government has also ignored the CAT recommendations of 1993 and 1996 that stressed the necessity of a legislative reform to review the extensive jurisdiction of the executive concerning the duration and condition of detention and administrative arrest. The CAT also recommended that the Egyptian government take serious and expeditious measures to investigate the charges of torture made against the security forcees and bring the perpetrators to justice if the charges were attested.

The CAT further stressed that the persistence of the state of emergency constituted a major obstacle to the full implementation of the Convention against Torture, and that combating terrorism should not be translated into measures that contradict the provisions of the Convention. The Committee added that exceptional circumstances could not be invoked to justify the practice of torture that is asserted by NGO reports and by information available to the UN Special Rapporteur on Torture.

After reviewing Egypt's third periodic report in May 1999, the CAT welcomed the mentioned release of a big number of persons detained according to the Emergency Law, the establishment of a human rights office at the Prosecutor General 's office to investigate claims of torture, and the compensations given to hundreds of victims of torture. However, the CAT reiterated its deep concern at the great number of torture claims, at the increasing death incidences in police stations and state security offices, and at what is mentioned by the reports of the S.O.S concerning the treatment of women in detention places which sometimes reaches rape, or threats of it, with the purpose of obtaining information regarding their wanted husbands or relatives.

IV- The Egyptian Legislation and the International and Constitutional Guarantees of Human Rights

It was noted earlier that the Emergency Law nullifies many constitutional guarantees and rights. Its persistence was considered by the UN human rights committees as an obstacle to the enforcement of international human rights instruments. However, it is the whole legal structure that denotes a great gap between human rights and their constitutional and international guarantees on the one hand and the legal framework tailored to organize the denial of these rights on the other.

Violation of the Right to Equality:

The Nationality Law denies Egyptian women who are married to foreigners the right to pass their nationality to their children, while it gives that right to Egyptian men who are married to foreigners. It should be noted that this has no basis in any religious tenets. However, this is not the only manifestation of the violation of the principle of equality before the law. We may also cite the provisions of the Penal Code that are more stringent in punishing women than men in crimes of honor and marital infidelity, also without grounds in religion. According to the Penal Code, judges are under the obligation to consider the commutation of penalty for a man who finds his wife in the very act of marital infidelity and kills her. The same obligation does not apply if a woman finds her husband in the very act and kills him.

One of the citizenship rights, the right to liberty of movement, for a woman is conditional upon the consent of her husband or guardian (who has to be a man).

Another prominent expression of the violation of equality before the law is the restrictions imposed by the “Khatt Hamayony” (Sultani Decree) on building and renovating churches. The 150-year-old Ottoman Sultani Decree provides that a Sultani order is required for building, repairing or renovating any church. Later, such an order was replaced by a presidential decree as requirement. This restriction is not made easier by the Presidential Decree no. 13 of 1998, which authorizes governors to undertake the prerogatives of the president in their respective governorates as concerns issuing permissions for repairing churches. Building or repairing mosques does not require such procedures.

Denying the Freedom of Opinion:

As regards the freedom of opinion and expression, the Penal Code is full of legal restrictions couched in equivocal wording that allow for criminalizing and punishing the expression of opinions under various pretexts. These include: threatening national unity and social peace; contempt of the government or the ruling regime; advocacy or commendation of some crimes; instigating non-compliance to the law; advocacy of the domination of one social class over others; dissemination of seditious or prejudiced propaganda; promotion of doctrines that aim at changing the fundamentals of the constitution or the principal institutions of society; discrediting the President of the Republic or presidents of foreign states or their accredited representatives; and insulting the legislative or judicial institutions, or the army, or public authorities and institutions.

In this context, we should note the right of the Council of Ministers to ban the circulation of any publications issued outside Egypt, according to the Publications Law of 1936. Also, the quasi-governmental Committee on Political Parties' Affairs has the right to stop any political party's paper/s. That is in addition to the restrictions that absolutely prohibit individuals from publishing newspapers, and those restrictions imposed on the right of private juridical persons to publish newspapers which became even stricter in the nineties. This point will be further discussed in the section on the "legislative attack on civil society."

Denying the Right to Freedom of Association:

1) There are numerous provisions in the Penal Code restricting the right to form associations and organizations. Moreover, the equivocal phrasing of such provisions gives room to penalizing public voluntary activity. For example, the Penal Code criminalizes forming, founding, organizing or directing associations or organizations that aim at the domination of one social class over others. The law provides for the imprisonment of anyone who forms, organizes or directs an association that has as its purpose the advocacy, by any means, of opposing the fundamental principles of the regime, or instigating the hatred or derision thereof. It also provides for the imprisonment of anyone to form, organize, or direct, without license by the

government, any association of international character or branches thereof.

2) These penalties complemented the provisions of the Law on Non-Governmental Associations no. 32 of 1964, which remained in force till May 1999, in undermining the right to form associations as provided by the constitution and in imposing state hegemony on public voluntary activity. Unfortunately, the Law on Non-Governmental Associations no. 153 of 1999 went even further in imposing the complete domination of the state over such activities. This will be further discussed in the section on "the legislative attack on civil society."

3) On another level, the Law on Trade Unions no. 35 of 1967 includes dozens of provisions that undermine the constitutional principle that trade unions shall be based on a democratic foundation. The law organizes trade unions in a pyramidal structure where all authority lies at the top. It turned the authority of the grass-root organizations to the general trade unions and the General Federation of Trade Unions, thus transforming the grass-root organizations into mere subsidiary bodies lacking any competence or ability to organize.

Law 35 of 1967 gave a wide array of prerogative to the executive, in the person of the Minister of Manpower, through which the course of trade union elections could be controlled. The Minister of Manpower is entitled to set the rules forming the different levels of the trade union, and to fix the dates and procedures of elections. The law and its amendments give wide opportunity for the disqualification of undesired candidates through the powers given to the Directorates of Manpower (which receive nomination applications and also objections to them), and through the general unions (from which candidates should obtain certification of the validity of their membership and proofs that they have paid their membership fees). The law also gave the administration the right to object against the formation of trade union organizations, and the right to determine the representation of trade union committees in the general assemblies of the general unions, and the representation of the latter in the General Federation of Trade Unions. Furthermore, Law 35 gives the Minister of Manpower and the administration the right to suspend the membership of board members of trade unions, and the right to demand the dissolution of trade union boards before the Court of First Instance.[*]

[*] During the last two years, the Administrative Causes Court referred to the Higher Constitutional Court eight challenges to the constitutionality of the Law on Trade

Violation of the Right of Peaceful Assembly:

As regards the constitutional right of peaceful assembly, the authorities have maintained the legal restrictions that were imposed by the British occupation in Egypt. Foremost among these is the Law on Crowding no. 10 of 1914, which prohibits the assembly of five persons or more if the authorities consider that it may jeopardize public peace.

There is also the Law on Meetings and Demonstrations no. 14 of 1923, which includes a number of restrictions such as: the necessity of prior notification of the security forcees; the right of the governor or the police to ban the meeting in advance; the right of the police to attend the meeting and determine its place; in addition to the right of the police to disperse the meeting. In addition to these restrictions there is the Emergency Law which gives the executive the right to impose restrictions on the right of assembly.

Violation of the Right of Participation:

The problems surrounding the right of participation in the conduct of public affairs do not stop at the previously mentioned constitutional provisions (such as the restrictions on the nomination for presidency, or the situation of the majority in parliament as at once adversary and arbiter concerning the soundness of the membership of the members of the parliament). In fact, the law gave the executive the full opportunity to steer the course of general elections and to affect their fairness and impartiality. The law charges the Ministry of Interior with full supervision of all the stages of election, from drafting and preparing the voters lists, to specifying the number and location of election committees and subcommittees, to announcing the results.

Although Article 88 of the constitution stipulates that voting shall be under the supervision of the judiciary, the Law on Regulating the Practice of Political Rights, even after its amendment in 1990, allows for the exclusion of the judiciary from supervising voting (which is the most critical of the election stages). This law stipulates that heads of subcommittees, where polling takes place, be appointed from among state

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Unions and its amendments tackling most of its provisions. The challenges are still under review by the Higher Constitutional Court.

and public sector employees, and that they be chosen as much as possible from among members of the judiciary or from the legal departments in state institutions and the public sector.

Although in amending the law in 1990 the legislature raised the maximum penalty for election violations, both in the sum of the fine and the duration of imprisonment, they stopped short of considering such serious violations as felonies. They are still considered mere misdemeanors punishable with a maximum of three years in prison. Even worse, Article 50 of the Law on Regulating the Practice of Political Rights paves the way for perpetrators of such violations to escape punishment. It provides that popular and civil actions abate with the lapse of six months from the date of announcing the election results or the date of the last procedure taken in the investigation of the case. This article constitutes an outright violation of Article 57 of the constitution, which states clearly that any infringement on the personal liberty, the sanctity of the private life of citizens, or other public rights and freedoms safeguarded by the constitution is a crime in relation to which criminal or civil actions are not subject to statutory limitations.

For reasons of space we are not able to deal in details with the great gap between the human rights guarantees provided by the constitution or international instruments and their translation in the Egyptian legislation. The previous review showed only indications of the glaring contradiction between human rights guarantees and the legal structure that stands against them. It is clear that the Egyptian state did not bring its laws into conformity with the provisions of the human rights conventions it had ratified. It did not undertake a comprehensive revision of all the laws enacted before accession to such conventions. On the contrary, it went along the opposite road in the laws adopted after ratifying them.

However, it is still necessary to pause at the most important laws issued in the nineties that express an eager desire on the part of the state to suppress civil society and its institutions.

The Legislative Attack on Civil Society:

The nineties in particular witnessed an increasing tendency to use legislation in restricting the different agencies of society and in greatly narrowing the relative democratic margin. This is manifested by a number of laws issued during this decade, among the most important of which are:

1) The government did not content itself with the severe restrictions on the freedom to form or join political parties provided by the Law on Political Parties no. 40 of 1977, nor with the de facto ban on the activities of the party and shutting them in their offices (through the legal restrictions on the freedoms of association and peaceful assembly). Thus it undertook to impose more restraints on those seeking to establish new parties and on the existing ones. The 1992 amendments to Law no. 40/1977 stipulated a complete ban on activities by parties "under establishment," and provided a penalty of five years in prison for violators. The intention of this provision was to tighten the grip around the political forces that are denied legal license, so that they could not practice any activity as a party "under establishment" as the Nasserist party had done for five years before it won its case in court.

The amendments also intensified the penalty on licensed parties if they breach the rules on contacting foreign political parties. According to the 1992 amendments, they have to inform the Committee on Political Parties' Affairs of any intended contacts with foreign organizations, and to submit a memorandum on the results of such contacts to the president of the said committee. In addition, the Egyptian parties were banned from making any contact with organizations that are not legally recognized n their countries.

2) Under the banner "Guarantees of the Democracy of Professional Syndicates" Law no. 100 of 1993 was issued with the purpose of strangling the syndicates and completely incapacitating them. Law 100 introduced impracticable conditions to prevent reaching the quorum legally required for the election of the boards of the professional syndicates. In this way it opens the door for the intervention of the authorities to appoint members of the board. It also involves the judiciary in the management of the syndicates, which contradicts the principle of the separation of powers and violates the independence and impartiality of the judiciary. Besides, this law has robbed the syndicates and their general assemblies of their established right to lay down their bylaws and board election regulations.

The practical application of this law and its amendment led to the implication of the judiciary in politically oriented conflicts between the state and the professional syndicates. It also opened the door for conflicts and legal disputes among syndicate members, which ended in the imposition of judicial sequestration on two of the major syndicates (the Bar Association and the Syndicate of Engineers), and prevented elections

in at least eleven syndicates although the terms of their current boards ended ten years ago.

3) In May 1994, the People's Assembly made amendments to Law no. 49 of 1979 on the Regulation of Universities. According to the new amendments college deans were to be appointed by university presidents instead of their election. Also, the representation of college deans and deputies of university presidents in the Higher Council of Universities was cancelled, limiting the membership of the Council to only university presidents. Despite the wide protests by university staff that these amendments provoked, as being an infringement on the independence of the university and a denial of the right of university staff to manage their affairs in violation of the most rudimentary rules of democracy, the People's Assembly adopted them after a discussion that did not take one full day.

4) In the context of the same orientation, the People's Assembly concurrently adopted a law stipulating the appointment of village mayors and chiefs instead of their election.

5) In 1995 a new press law was passed (Law no. 93). It was a clear sign by the state to its desire to end its relative tolerance of the existing margin of the freedom of the press and the criticism directed at high officials. This law, unprecedentedly, abrogated the guarantees enjoyed by journalists against precautionary detention in publication offences. It disregarded journalists' goodwill in the case of reporting news or information that they believe to be true. In addition, the law provides punishments of imprisonment and fine for acts that were equivocally described, including: publishing false or prejudiced news, data or rumors, or seditionary propaganda, if it implies disturbing public peace, harming the public good, deriding states institutions or their officials, or spreading panic among the people. The law raised the imprisonment penalty to five years if publication aimed at harming the national economy or a national interest. It also raised the penalty provided by the Penal Code on libeling a public official or a representative of the people to a minimum of two years in prison, and also raised the fine in such case one hundred times.

The law was passed without any prior consultation or dialogue with the journalists or discussion in the papers. It was referred without warning to the parliament by the government, and was passed in an evening session attended by 44 out of a total of 454 members. The law was adopted with

the approval of 33 members, i.e. around 7% of the members of the parliament.

The wide resistance to the law by the journalists, the Press Syndicate and human rights organizations led to the government backing down partially on a number of its provisions only a year after its adoption. During that year the law was applied against at least 99 journalists and writers who were interrogated or tried before courts, among them 25 editors in chief or board chairpersons of newspapers. Seven court rulings were issued against journalists in that year, varying from two years with hard labor and fines of 30-50 thousand pounds.

The journalists were able to score a partial victory one year after the adoption of Law no.93/1995, dubbed by the media "assassination of the press law," and the in 1996 the People's Assembly passed new laws (95/1996 and 96/1996). The former revised the penalties against journalists and the procedural safeguards they enjoy in press offences, and the former set broad guidelines for the regulation of the press. However, such victory was not enough to end all restrictions to the freedom of the press and the freedom of expression in general, especially in the absence of the relative tolerance of these freedoms that characterized the eighties.[*]

Although the precautionary detention of journalists for press offences was prohibited, it remained in the case of "insulting" the President, although this term is equivocal and could encompass severe criticism and faulting. Also, detentive penalties in press offences were reduced while the extravagant fines were kept which if applied liberally could lead to the bankruptcy of some press firms. Moreover, the reduction of detentive penalties is not consistent with the legal jurisprudence that calls for canceling these penalties altogether as they imply deterring, terrifying and retaliation, and hence their persistence becomes in effect prohibitive to the practice of the freedom of the press[**]. This is especially true given the previously noted vagueness in defining the crimes of the press, opinion and expression which could be easily interpreted to pursue and punish both those who work in the field of expression and political opponents

[*] This is not to deny of course the occasional infringements on the freedom of the press in the eighties, which included the detention of some journalists according to the Emergency Law and subjecting some of them to torture, occasional confiscation of some newspapers, and assaulting journalists on professional missions.

[**] It should be noted here that the Higher Constitutional Court is currently considering a number of challenges to the constitutionality of detentive penalties for journalists in cases of press offences.

On another level, the Law on the Regulation of the Press no. 96 of 1996 reinforced the restrictions on the freedom of publishing newspapers as it maintained the existing ban on the right of individuals to publish or own newspapers. For juridical persons seeking to publish newspapers, the law made approval of the Higher Press Council obligatory and put excessive financial conditions regarding the stock capital of the company: one million Egyptian pounds for dailies; 250 thousand for weeklies; and 100 thousand for monthlies.

6) In January 1998 the People's Assembly passed Law no.3 amending some provisions of the Law on Joint Stock, Commandite, and Limited Liability Companies. Although this law was promulgated to encourage investment in Egypt through limiting the legal, administrative and bureaucratic obstacles that face private companies, it reflected on another hand the position of the government on the freedom of the press and information and on the independence of private activities in general from the domination of the state. Hence, as an exception to the facilities provided by the law, it imposes a number of restrictions on companies that have among its purposes working in the field of satellites, publishing papers, remote detection systems, or any of the purposes included in the Law on Non-Governmental Organizations and Private Associations. At the top of these restrictions comes the approval by the Prime Minister.

7) On May 27th, 1999 Law no. 153 on Non-Governmental Organizations and Private Associations was issued to replace Law 32/1964. The new law reinforced all the forms of governmental domination over public voluntary activity, and closed the outlets that had allowed some NGOs (especially advocacy groups in the fields of human rights and women's rights) to work independently from the intervention and tutelage of the administration.

In the last few years a number of NGOs registered as non-profit civil companies under civil law in order to avoid the provisions of Law 32/1964. This law gave the administration wide discretion concerning the registration and licensing of NGOs. The administration could refuse the registration of an NGO for security reasons or on the grounds that society did not need its services or that there was another NGO/s that fulfill the needs of society in that particular regard. The law also gave the administration the power to dissolve the boards of NGOs and appoint others, besides the right to close down their offices or dissolve the organization altogether.

The new law was issued amidst wide criticism on the part of human rights organizations, civil activists, political parties and a host of public figures. Even among its draft committee four members disclaimed the law; one of them considered the day it was passed a "black day" for public voluntary activity in Egypt. The Ministry of Social Affairs, charged with drafting the law, had referred the best draft to the Council of State to review before sending it to the parliament, and then disregarded the fundamental amendments the Council demanded so as to avoid challenges of unconstitutionality. These amendments were to give more freedom to public voluntary work and loosen the grip of the administration on it. Nevertheless, the government used the name of the Council of State to justify such amendments made to the law that multiplied its demerits in the final version.

Here follows are the principal objections to the law:

1st) The law extended the causes for banning NGOs or denying them legal license, going beyond Article 55 of the constitution which prohibits only those NGOs whose activities are hostile to society, clandestine or of military nature. The law adds to this NGOs whose purposes include practicing political or syndicate activities that are restricted to political parties and syndicates or trade unions. The Executive Regulations of the law explicitly prohibit any activities by NGOs in defense of employees against employers

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b) The law upholds the authority of the administration in granting legal license, instead of adopting the democratic alternative, namely that NGOs be established upon notification. The drafters of the law have neglected the legal opinion of the Council of State in this regard.

c) The law violates citizens' right to have recourse to their competent judge, as it withdraws the competence of the administrative causes courts to consider challenges to the decisions of the administration and gives it to courts of first instance, though the constitution recognizes the former as the court with general jurisdiction over all administrative disputes[*].

d)The law introduced an ad hoc committee to consider any such disputes that may arise between NGOs and the administration. The composition of the committee is not balanced, as it tilts towards the side of the administration.

[*] It should be noted here that three months after the adoption of this law the Administrative Causes Court of Tanta referred to the Higher Constitutional Court a challenge to the constitutionality of the jurisdiction of courts of first instance over disputes between NGOs and the administration.

This committee is more of a compulsory arbitration committee, as the law allows the referral of the dispute to court only after it issues a decision on the matter or after sixty days of bringing the case to its attention. This leads to the violation of citizens' right to have recourse to their competent judge.

e)The law gives the administration vast powers at the expense of the competence of the general assembly of the NGO. For example, it gives the administration the right to veto the statutes or the founders of the organization, and puts the organization under the supervision of the administration in amending its statutes. The law also gives the administration the right to veto any decision taken by the organization's general assembly and to demand its withdrawal, in addition to the right to convene the general assembly. Besides, the administration has the right to strike out the name of whomsoever it wishes from the list of candidates to the board of an NGO after the list is submitted to it. Moreover, the law arbitrarily imposes a certain system for electing NGO boards and the number of their members.

f) The law contradicts the constitutional guarantees that provide for the establishment of unions on democratic basis. It authorizes the President of the Republic to appoint the chair and one third of the members of the General Union of NGOs, and rules out pluralism -- whether on the level of regional and specialized unions or the general union.

g) The law gives the administration a wide scope to control the activities of NGOs by allowing it the right to veto the NGO joining or affiliating with any club, society or association outside Egypt. The law also makes acquiring financial assistance from abroad to fund the programs and activities of NGOs dependent upon the approval of the Minister of Social Affairs.

Given these and other shortcomings, the report of the joint mission of the Euro-Mediterranean Human Rights Network and the International Federation of Human Rights described this law as a step back for the promotion and protection of human rights. The report maintained that it unnecessarily restricts the right of freedom to associations as guaranteed by the International Covenant on Civil and Political Rights, and expressed the belief that the law will block the work of human rights NGOs. The report concludes that it is difficult to see that the new law is better than the previous Law 32/1964, as it is built on mistrust about civil society organizations and seems to a large extent to have been drafted in the spirit of the old.

lV- The Salient Features of Human Rights Violations

In the context of a legal environment that is hostile to human rights in general, and under an uninterrupted state of emergency since 1981, Egypt witnesses massive violations to the whole body of human rights. These violations were exacerbated by the rise of the political Islamic trend, with its agenda that opposes principal aspects of human rights, and the use of violence and terrorism by some of its factions (whether in a vindictive reaction against the violations committed by the state against a large number of their members, or in an attempt to impose their visions by force on the Egyptian citizens, and to realize their political objective, namely the establishment of an Islamic state).

It could be said that the emergency law has become a means to give free reign to the security forces against citizens in general. The arbitrary application of the emergency law, and the often violation of its provisions even, have resulted in the rise in the violation of a vast number of rights, foremost of which are: the right to life; the right to liberty and security of the person; the right to bodily integrity and protection from torture; and the right to a fair and just trial.

First: Violent Suppression of Peaceful Assemblies:

The security forces have increased their arbitrary use of firearms, whether in tracking down suspected members of violent or terrorist groups, or in dispersing some peaceful assemblies that have no relation to terrorism. In the first half of the nineties in particular, there were many allegations that scores of Islamic groups members were target for physical liquidation and extra-judicial killing. The EOHR has succeeded in documenting some of these cases. These allegations are backed by the official discourse, as a former minister of interior used to direct his officers repeatedly to follow a “shoot to kill” policy – and in the very heart.

The expansion in the arbitrary use of firearms against members of Islamic groups was also coupled by the excessive use of force to scatter some peaceful assemblies, which resulted in many victims. Here are some of the most notable examples. In August 1989, security forces barged into the Iron & Steel factory in Helwan (a Cairo suburb) to force workers to end their peaceful sit-in strike. This resulted in the death of one worker. In October 1994, security forces cordonned the buildings of the Spinning & Weaving Company in Kafr Al-Dawwar (in the Northern governorate of Al-Beheira) to force workers to end their sit-in strike. They opened fire

indiscriminately at crowds of citizens, which led to the death of four, and the injury of dozens (among them nine were hit by pellets in their eyes).

Furthermore, in April 1998, the security forces have used firearms to disengage a demonstration protesting against the death of someone because of torture in a police station in Bilqas, in the northern governorate of Daqahleya. This resulted in the death of another citizen who has been shot in the course of the demonstration.

Due to the heavy-handedness of the police in implementing house-clearance orders in the village of Al-Qurnah, Luxor (in Upper Egypt) in February 1998, there was a confrontation with the dwellers. The police opened fire intensively and indiscriminately, leaving four dead.

We may also note the severe violence of the police in dispersing the peaceful march of the Egyptian lawyers on May 17th, 1994, to protest against the death of their colleague, attorney Abdel Hareth Madani, when circumstances indicated his probable subjection to torture after arrest. The security forces showered the lawyers gathered at the offices of the Bar Association with tear gas bombs, rubber bullets and pellets. Eyewitnesses attested that the security forces had intentionally shelled their bombs at the levels of the attorneys' bodies, and into the Bar Association's rooms, instead of shooting them up in the air. This led to a high number of casualties among the lawyers, and many of them suffered asphyxia.

Earlier, in February 1991, the police violently attacked a peaceful student march inside the student hostel of Cairo University in protest against the Gulf War. One student died from severe wounds.

In addition, four citizens were killed in 1997 by the security forces when they used firearms to disperse some demonstrations against the implementation of the new law on agricultural land tenure.

Second: Torture: A Crime without Punishment:

The spread of torture on a wide scale, the maltreatment of detainees and prisoners, the poor conditions in prisons, and the lack of the minimum standards of health care inside of them, have led to the rise in deaths inside police stations, state security police offices and prisons. Basing on the EOHR reports, we can say that no less than 120 persons have died inside prisons and other detention places from 1990 to 1999, as a result of torture, maltreatment and the lack of the minimum health care standards.

The latest Amnesty International report[2] indicates that torture is still being practiced regularly on political detainees in state security police offices, in police stations and sometimes in prisons. The report mentions that the most common methods of torture are: electrocution, beating, hanging in various positions, burning by cigarettes, in addition to various means of psychological torture, such as the threat to kill, rape or sexually abuse the detainee, or threatening to rape or sexually abuse his female relatives[3].

The EOHR had earlier presented a detailed report to the Committee against Torture (CAT), during its discussion of the Egyptian Government report of 1993, which included 221 cases of torture. The EOHR documented these cases on the basis of judicial rulings; examinations by the court of the victims' bodies, reports by the Forensic Medicine Authority of the Ministry of Justice, the minutes of investigation by the prosecution office, in addition to examination by EOHR staff. We should note here that three EOHR board members and a number of its members were subjected to torture in 1989 and 1991. In its 16th session in 1996, the Committee against Torture concluded that torture is being practiced routinely by security forces in Egypt, especially by the state security police.

The Egyptian government denies its practice of torture, claiming that in most cases it is a mere allegation on the part of suspects or convicts in terrorist crimes who try to avoid indictment. However, torture and all other kinds of maltreatment have, since the mid-eighties to date, been applied against all political currents – Nasserists, communists, Muslim Brothers, Shiites, in addition to members of violent and terrorist groups. The practice of torture and maltreatment included Copts as well. According to EOHR reports, many people were tortured because of their claimed conversion from Islam to Christianity, or because they allegedly undertook Christian missionary work. Torture was practiced on a wide scale against the people of the predominantly Christian village *Koshah* in August 1998 to obtain information in an ordinary case of murder.

Torture in police stations against suspects of non-political crimes punishable under public law has increased. It is committed with the purpose of obtaining confessions; in some cases officers committed torture as a kind of "favor" to their relatives, friends or some influential person. Torture in police stations has taken some abominable forms. The

[2] The 1998 Amnesty International report on human rights violations in the world.

[3] See: *Torture in Egypt: An unpunished Crime* (The Egyptian Organization for Human Rights; Cairo; 1993).

EOHR records cases in which the victim was injected with polluted substances. Al-Nadim Centre for the Rehabilitation of Victims of Violence records the case of an officer spilling kerosene on the body of a victim, setting him on fire and leaving him till he died in the police station.

It is evident that the exacerbation in the practice of violence in Egypt has been closely linked to a number of factors, on top of which are the following:

1- Undermining the legal guarantees provided to those arrested or detained, whether by virtue of the Emergency Law or the legal amendments on combating terrorism.

2- Consigning the detainees to illegal places of custody, such as state security police offices, or the training camps of the central security paramilitary forces. This is besides the continued closing of prisons and preventing prisoners from contacting their relatives or lawyers, in violation of law and many judicial rulings.

3- The slight penalties against torture, especially in the light of the flawed definition of torture in the Egyptian Penal Code. The law defines torture as such only when its purpose is to obtain a confession, and thus most of the crimes of torture come under the category of "maltreatment," punishable only by a maximum of one year in prison (even if torture had led to the death of the victim). This legislative defect also explains the recurrent denial by the Egyptian government before the UN human rights committees of the practice of torture and its continuous assertion that they are exceptional individual incidents[4].

4- Depriving citizens of their right to file criminal lawsuits against those who tortured them. Filing a criminal action and proceeding with the case against public officials is the exclusive right of the prosecution office. The prosecution may at any point order *nolle prosequi*, leave the case on file, or consider there is no cause of criminal action.

[4] A former Prosecutor General (in charge of initiating legal proceedings against suspects of committing torture) states that "the cases classified as torture, as a felony, are limited individual cases, and are not as common as some imagine. The other cases are classified as an act of cruelty, and are regarded by law as misdemeanors." He adds that the "acts of torture that have been referred to the criminal court were assaults with a sharp tool. In many cases, the assault was not grave, yet the assaulted could not bear it. There is no flagrant torture. Some blows might be light but the victim could not endure them and fell dead." An interview published in the Egyptian Al-Musawwar magazine on January 26th, 1990.

Third: Arbitrary Detention:
Thousands have been arbitrarily detained without charges and without being brought to trial under the powers given to the Ministry of Interior by the Emergency Law, which allows the arrest of people on suspicion. The escalation of acts of violence and terrorism has added further pretexts to broaden the scope of arrests to include large numbers of citizens who are in no way connected to the acts of violence. It has become a common practice on the part of the state to hold as hostages the wives, parents or siblings of wanted persons, whether in crimes of violence or any other crimes. Thousands of people were subject to recurrent and prolonged detention in circumvention of final court rulings to release them for the insufficiency of causes of arrest. Security forces release those who receive release orders but only on paper; in reality they are removed to other detention places, confined there for some time, and then brought back under new detention orders. In 1995, the EOHR was able to document the numbers of those repeatedly detained, which reached approximately 7000 at the time. Many of them were in detention for more than five years without charges or trial, although they had received final court verdicts ordering their release.

Despite the release of several thousands of persons under administrative detention in 1998 (which is a positive indicator), of others are still detained according to Amnesty International estimates. Among the detainees are scores of lawyers who have been detained several years ago. Some of them had been considered arbitrarily detained in November 1995 by the Working Group on Arbitrary Detention of the UN Human Rights Center, which asked the Egyptian government to give clarifications to deny these information or present an acceptable explanation to the continuation of their arrest.

In relation to the prevalence of torture and the great number of resultant deaths, the prevalence of arbitrary arrest, the intentional concealing of information about the places of detention, the closing of prisons and the isolation of prisoners from the outside world, there rose the phenomenon of the enforced disappearance of a number of arrested persons. Based on the complaints it receives the EOHR estimates the number of persons subject to enforced disappearance from 1992 to the end of 1998 at thirty-one. Efforts to determine their whereabouts by the EOHR and their relatives have been in vain.

Fourth: Circumscribing Participation:
In nearly twenty-three years of restricted political pluralism, the political life in Egypt has witnessed the establishment of fourteen parties.

Nevertheless, the freedom of establishing parties has been often targeted and curbed either by law or in practice. Those deprived of this right, particularly the communists and the Muslim Brothers, have been pursued, maltreated or unfairly tried before State Security, Emergency or Military Courts.

The legal foundations of pluralism were bound by the philosophy of the totalitarian system that sought to preserve the heritage and traditions of the one-party system in place since 1952. Thus, the aforementioned provisions of the Law on Political Parties do not allow the freedom to form political parties to any independent intellectual trends. A new party has to commit itself to: the principles of both the 23rd of July and the 15th of May revolutions; the tenets of the *Shari'a*; and what the law describes as the requirements of preserving national unity, social peace, fundamentals of the constitution, the socialist gains and the alliance of the working peoples forces. Remarkably, besides the commitment to such rigid political and intellectual frameworks, a new party has to present a distinctly different program! On the basis of this condition alone the majority of the new parties were rejected.

The problems of the existing parties are not confined to their historical origin or to the severe restrictions on the permissible difference between their orientations, programs and policies and those of the ruling regime. In fact, the legal frameworks that curtail the freedoms of opinion, expression, the press and peaceful assembly, and those that deny the right to take part in the conduct of public affairs have in turn prevented the parties from fulfilling their political functions (political education, interaction with the public and influencing the decision-making process).

All these restrictions shut the existing parties within their offices. Their principal means of communication and of influencing public opinion has become their newspapers. The effectiveness of the party press however has been governed by the tolerance of the ruling regime and its desire to either use or not use the penal system against political opponents. The role of the parties was marginalized, their membership shrank, and their isolation from the masses was increased because of the penal system on the one hand and the extension of the Emergency Law applications and torturing practices to include those active in political parties on the other. This was further aggravated by the disillusionment about the opportunity

of political change through general elections whose results bolster the hegemony of the one party system.[*]

The participation of the parties in the conduct of public affairs through nomination and voting is rendered impossible under the restrictions imposed on the freedom to form parties and under the legal structure that stifles the activities of the parties and political activity in general. This is especially true given the domination of the government and the ruling party over elections to all representative bodies. In addition to the state's total monopoly of the radio and TV, and their employment all day long in praising the government and its party, with the exception of few minutes given to the opposition parties' leaders on the eve of parliamentary elections. The government has not responded at all to the opposition's repeated demand of guarantees to the fairness and neutrality of elections. On top of these guarantees is the necessity of full judiciary supervision on all the electoral process.

Under these circumstances, only a number of five opposition parties succeeded in entering the parliament, and only marginally. The 1995 elections, in which all the opposition parties participated, was a crystal-clear manifestation of the one-party-system philosophy as the opposition parties altogether held only thirteen seats in the parliament, i.e. 2.9% of the total number of seats.

If we move to those political forces that are denied the right to form their own independent parties or organizations, foremost of which are the communists and the Muslim Brother, we find that their activity is under constant siege. Members of such organizations are subject to recurrent pursuits, precautionary detention and trials before the state security, emergency or military courts.

[*] On the experience of pluralism and the problems of the existing parties see: Essam el-Din Hassan, *The One Party System in a Pluralistic Form,* The Centre for Human Rights Legal Assistance, Cairo, 1999.

Fifth: Limits of the Freedoms of Opinion, Thought and Creativity

The Egyptian legislation is replete with normal and exceptional provisions that criminalize the freedom of opinion and expression, and impose restrictions on those working in these fields. Yet, the eighties –in particular- gave an impression of tolerance on the part of the regime towards dissidence, despite possessing the legal tools to punish at will those who exercise such freedoms. This latter option became clear in the nineties, which witnessed in its later half an increasing tendency to marginalize these freedoms in the context of a legislative attack on civil society and democratic freedoms.

It could be said that the pressures on these freedoms come from three sources. First: the state, its legislative restrictions, regulations, police practices, and its yielding to pressure from the other two sources. Second: some Political Islamic groups that generate pressure to ban whatever contradict with their concepts and visions. Third: the pressure by some Arab governments on the Egyptian authorities to black out criticism of their political stances or the conduct of their rulers.

To argue the relatively better condition of these freedoms in the eighties is not to belittle the gravity of the violations that occurred in this period. A report by the Egyptian Organization for Human Rights (EOHR)[*] mentions that in 1988-90 three journalists and writers were prevented from travelling abroad, fifteen journalists were provocatively stopped at Cairo airport on returning from abroad, the homes of two journalists were broken into and their books and papers confiscated, thirteen journalists were assaulted while on professional missions, thirty three were detained in police stations and prisons for periods ranging from two days to seven months, ten of them were subjected to beating and torture.

The nineties brought forth more pressures against the freedoms of opinion, expression, thought and creativity – whether by the state or some Political Islamic groups that used intellectual and physical terrorism against their opponents from among the intellectuals and artists. In its battle against the freedom of opinion and expression in the nineties, the state showed increased intransigence and summoned the reservoir of exceptional legislation to terrorize those who work in this field. This is

[*] See Bahey el-Din Hassan (editor), *In Defence of Human Rights,* Cairo, EOHR, 1993, pp. 208-227

evidenced by the referral of journalists and writers to military courts; the imprisonment of journalists on an unprecedented scale; the increased measures impounding and suspending newspapers; in addition to the increasing number of confiscated publications.

In this regard, it should be noted that from 1990 to 1995[*] the government brought ten journalists before the Military Prosecutor General , and referred four of them to military court for publishing views and information on the charges of divulging military secrets and threatening national security.

The government also invoked the legal amendments on combating terrorism to pursue eleven journalists, and put a number of them under precautionary detention, on such charges as insulting the President of the Republic, contempt of the government, and threatening social peace. During the same period, thirteen journalists were referred to court on charges of libel or insulting public officials.

Impounding of publication increased in range to include sixty books and three periodicals, among them two foreign. It is noteworthy that a large number of these books dealt with social or political conditions in some Arab countries, particularly the Gulf states, which denotes compliance to the pressures exerted by the governments of these countries.

Moreover, the role of Al Azhar in impounding publications took on a new shape. Instead of merely recommending confiscation, some committees at Al Azhar Islamic Research Council impounded publications by themselves. Al Azhar came to be considered the principal censorship authority, especially after the legal opinion issued by the State Council in 1994. It maintained that it was Al Azhar alone that had the binding opinion over the Ministry of Culture in deciding on the Islamic considerations for granting or denying license to audio-visual materials.

The same period witnessed grave threats to the freedoms of opinion, expression and thought. The secular intellectual Farag Fouda was assassinated, and Naguib Mahfouz was almost killed in an attempt on his life. The pressures of the intransigent Islamic trend came to bear within the academia. For example, Assistant Professor Nasr Hamed Abu Zaid of the faculty of art, Cairo University, was denied promotion as his researches and views were considered in contradiction with the

[*] For more details see: Negad Borai (editor), *Gagged Mouths: The Second EOHR Report on the Freedom of Opinion and Expression in Egypt,* Cairo, EOHR, 1995.

Shari'a.(Islamic law) Islamist lawyers used the "Hisba" concept to take Dr. Abu Zaid to court demanding that he be divorced from his wife on the grounds of his alleged apostasy[*]. A number of intellectuals, writers and artists were likewise brought to court according to "Hisba." In addition, twenty-six journalists, writers, poets, university teachers and cinema managers and owners were brought to court using the Penal Code on such charges as: jeopardizing national unity or social peace; the propagation of ideas or opinions that imply sedition or disparaging religions; and the dissemination of whatever conflict with public morals.

According to Law no. 93 of 1995, known as the assassination of the press law, ninety-nine writers, journalists and editors in chief were either interrogated or brought to trial. However, its amendment by Laws no. 95 and 96 of 1996 was not enough to put an end to the attack on the freedoms of the press, opinion and expression. On the contrary, 1996-9 witnessed the escalation of the attack, by using the provisions of the Penal Code against journalists.

The EOHR notes that no less than eighty journalists were interrogated or tried in thirty-five libel cases in 1998.[**] There was a noticeable expansion in these cases in the use of detentive penalties in press and publication violations. In 1998, six journalists were sentenced to imprisonment for 3-6 months or a year. The sentences were carried out in full or in part. Also, in 1999, a final verdict sentenced three journalists at *Al Shaab* newspaper to one year in prison for libel against the Deputy Prime Minister and Minister of Agriculture.

A brigadier in the police was brought to a disciplinary trial on the charge of insulting the police force in his novel *Diaries of an Officer in the Countryside*. The novel tackled the relation between the police, citizens and public prosecution in Upper Egypt, and touched on the practice of torture in police stations. Though judged innocent of charges, the brigadier was suspended for one month. In May 1997, writer Ala'a Hamed was again sentenced to prison. A final court ruling ordered his imprisonment for one year on the basis of his novel *The Bed,* which

[*] The court ruling which ordered the separation of Dr. Abu Zaid and his wife became the basis of a religious *fatwa* sanctionign his killing, which forced him to move outside Egypt. Charges of apostasy were directed also at Naguib Mahfouz, the secular intellectual Chancellor Saiid Ashmawy and Dr. Hassan Hanafy, professor of philosophy at the faculty of arts, Cairo University.

[**] "The Condition of Human Rights in Egypt: The 1998 Yearly Report," EOHR, Cairo, 1999, pp. 103-110.

contained, according to the charges, ridicule of the clergy and invitation to moral degeneration.

Moreover, impounding newspapers increased in the last four years. For example, issue no. 8 of *Al Tadamun* (Solidarity) newspaper, which is licensed in Cyprus and printed and circulated in Egypt, was impounded. In addition, the Minister of Information ordered a ban on its printing in Egypt. The independent weekly *Al Dostour* (The Constitution) was impounded and stopped from circulation more than once in 1996. In February 1998, the Minister of Information issued an administrative decree prohibiting its printing and circulation in Egypt. The paper officials sought to acquire a license according to the Law on Stock Companies, but the relevant administrative authority refused to grant them the license on the basis of the objection of some security agency.

The English-language *Middle East Times* was impounded or stopped from circulation eight times in ten months in 1996. In 1997, a court ruling ordered the suspension of *Al Shaab* for three consecutive issues on the grounds that the paper had contravened the Prosecutor General ’s ban on publishing in relation to the charges brought against the paper by the Minister of Interior. *Al Shaab* had launched a wide campaign against the Minister of Interior charging him with abuse of power.

Cairo Times and *The Middle East Times* were once again impounded and prevented form printing in 1998. The ban on printing extended to apply to dozens of newspapers and specialized periodicals, as the Head of the General Authority for Investment ordered a ban on the printing of papers and journals of all kinds and languages inside the free zones. This decision harmed more than thirty papers and journals that were licensed abroad in order to evade the severe restrictions on the publication of papers in Egypt. Also in relation to impounding, we should note the confiscation of issues no. 1 and 2 of a newspaper called *Arabian Nights*, which was denied access into Egypt although it is an artistic paper and is licensed in Cyprus.

Also in this context, we may note that the amendments to the Law on Stock Companies, which require the approval of the Prime Minister for the registration of companies with the purpose of publishing newspaper, have led in effect to precluding the production of no less than twenty papers in 1998.

VI- Effort towards the Protection and Promotion of Human Rights

First: The Role of the Egyptian Judiciary

The role of the judiciary in protecting and promoting human rights depends on the following:

1) The legislature upholding public rights and freedoms and human rights guarantees.
2) Safeguarding the right of all citizens to litigation and to have recourse to their competent judge.
3) Guarantees to the independence and impartiality of the judiciary and its immunity from pressures or interferences from the executive authority.
4) Respect of judicial rulings on the part of the executive authority.

A Glorious Role by the Higher Constitutional Court:

Despite the infringements on the independence of the judiciary, the pressures of the executive, the exceptional courts, and the often denial of citizens' right to have recourse to their competent judge, the Egyptian judiciary has on numerous occasions stood for public rights and freedoms and checked the hostility of the legislation towards them.

As regards the role of the judiciary in challenging the laws that violate human rights and contradict the principles of the constitution and the constitutional guarantees of public rights and freedoms, a survey of the rulings of the Higher Constitutional Court[*] reveals that it has abrogated no less than 120 provisions of different laws, decrees and regulations since its inception in 1979 until October 1997. The court found these provisions in violation of 53 articles of the constitution (out of a total of 211).

These rulings show that the abrogated provisions did not leave a single human right without denying it or restricting it in such a way that precluded its exercise. These provisions have for years violated public rights and freedoms in addition to such principles as the equality before the law, the equality of opportunity, the independence of the judiciary, and the subjection of the state to law. This is in addition to such rights as

[*] See Essam el-Din Hassan, "The Egyptian Legal Structure, the Constitution and Human Rights," a working paper presented to the Conference of Political Parties and Forces, December 1997, on the occasion of the 49th anniversary of the Universal Declaration of Human Rights.

property rights, equality between women and men, and the rights to work, to education and to social security.

For example, 49 of these abrogated provisions had violated the principle of equality before the law. Eighteen had violated the right to liberty and security of the person. Seven had violated the freedom of opinion and expression, and ten violated the right to vote and to be elected. Twenty-one provisions had violated citizens' rights to litigation and to have recourse to their competent judge, in addition to violating fifteen constitutional articles to the effect that punishment is personal, that there shall be no punishment except by law, no punishment without a ruling by a court of law and no punishment except for acts committed subsequent to the date of coming into force of the law. In addition, sixteen provisions had violated Article 67 of the constitution which states that the accused is innocent until proven guilty by a court of law where he is guaranteed the means to defend himself. The Higher Constitutional Court abrogated also 12 provisions that violated the rights to legal defense as provided by the constitution. Moreover, five laws had violated Article 64 of the constitution which stipulates that the rule of law is the basis of government. The rulings of the court record that fourteen of the abrogated provisions had violated the principle of the subjection of the state to law and the principle that the independence of the judiciary is an essential guarantee to the protection of public rights and freedoms.

Needless to say, the size of this study does not allow us to deal in detail with the role of the Higher Constitutional Court in opposing dozens of laws that contradicted human rights. Yet, it may suffice to note that judgments of this court have led to the dissolution of two People's Assemblies, the Shura Council (the upper chamber of the parliament), and the popular and municipal councils elected in 1992. The Court ruled that the laws regulating the election to these councils were in violation of the constitutional guarantees to the equality of opportunity between citizens, equality before the law, the right to the freedom of opinion and expression, and the right to vote and to be elected.

The Higher Constitutional Court was able also to defeat the severe restrictions on the freedom to form and join political, parties and on the practice of political rights in general, that had been provided by Article 4 of the Law on Protecting the Internal Front and Social Peace. This article had barred those who participated "in corrupting political life before the revolution of July 23rd, 1952" from joining parties or practicing political rights or activities. The Court has also abrogated Article 4 of the Law on

Political Parties that had denied those who oppose the Egyptian-Israeli peace treaty from their right to form political parties.

In addition, the Higher Constitutional Court abrogated a number of the provisions of the Law on Vagrancy and Suspicion that had allowed consigning the suspects of certain crimes to a work establishment to be determined by the Minister of Interior for a period of no less than six months and no more than three years. These provisions had also provided for consigning the suspects to public prisons for thirty days.

In protection of the freedom of opinion and expression, the Court abrogated the legal provisions that had provided for the criminal liability of the president of a political party for publication offences by the party press, and the criminal liability of the editor in chief of a newspaper for publication offences by the paper.

Other landmarks:

In addition to the prominent role of the Higher Constitutional Court, other Egyptian courts have taken outstanding positions in defense of human rights, by condemning and documenting human rights violations, uncovering arbitrary measures against citizens and ordering redress, as well as requiring the authorities to take some measures (including legislation) to prevent violations or to ensure that the perpetrators of violations are pursued and deterred.

One of the most prominent court rulings to be based on the international human rights law was that acquitting striking train drivers by the Higher State Security Court -- Emergency in 1986. In its judgment the court considered that the International Covenant on Economic, Social and Cultural Rights ratified by Egypt provides for the right to peaceful strike and thus annuls the Penal Code provisions that punish it. However, this significant precedent was not maintained and was effectively sidelined by the powers of the President under the state of emergency: the President did not ratify the ruling and ordered retrial before another judicial circuit.

Many court rulings have reversed the orders by the Ministry of Interior to close four prisons, under the pretext of security considerations, denying prisoners any contact with the outside world, their lawyers or families..”

As regards the judiciary's protection of the freedom of opinion and thought and its opposition to confiscation of books (especially at the recommendation of Al-Azhar Islamic Research Council), we should note the ruling by Cairo Northern Court of First Instance in August 1997 ordering the release of Dr. Sayyed Qimni's "The God of Time." The verdict spelled out the court's rejection of the logic of confiscation, and affirmed the importance of dialogue and respect of different opinions as a safeguard of the integrity of the nation. The verdict further declared that the disagreement between the opinions of the author and that of the Islamic Research Council can not be solved by one negating or confiscating the other, as that contradicts with the freedom of opinion and scientific research provided by the constitution. Thus, the verdict stated, it can be solved only by sober scientific dialogue and by unbridling thought and ideas so that the truth may become evident and minds be clear.[*]

The Judiciary Stands against Omissions by the Prosecution Office:

In consistency with the constitution and the Convention against Torture, the Egyptian judiciary has in many cases disregarded coerced confessions. A number of rulings courageously exposed the practice of torture, and sometimes the judges themselves had to undertake investigation into the claims of torture when they felt that the Prosecution Office had neglected it. Some rulings called upon the state to adopt a number of essential measures to stop torture. Here are some examples:

- The ruling by the Higher State Security Court of February 1990 acquitting fifteen defendants in what was known as the "Armed Nasserist Organization" case. The court established that the confessions of the defendants were the result of torture.

- The ruling by the Higher State Security Court declaring twenty-seven defendants innocent on the charge of assassinating the former speaker of the parliament (Rifaat Al-Mahgoub) on the ground that none of them was saved from torture.

In July 1991, the court had to assign a Justice of its members to investigate the incidences of torture due to the prosecution office's negligence it noted. The ruling stated: "although the court has referred the defendants to the competent prosecution offices to investigate these incidences, until the day of fixing a date for announcing judgment, three years later, no investigation results reached the court. The court did not wish to wait longer so that judgment would not be further delayed."

[*] EOHR, "The Condition of Human Rights in Egypt," the 1997 yearly report, Cairo, 1998, pp. 126-7.

- The ruling by the Higher State Security Court of January 1987 acquitting thirteen defendants on the charge of selling spirits. The court disregarded all the confessions attributed to them given the torture they had been subjected to which included repeated beating and inserting sticks and fingers in their behinds.

- The ruling by the Higher State Security Court – Emergency acquitting four defendants on the charge of setting fire to video rental clubs in Imbaba. The court based its judgment on the fact that the defendants had to give false confessions under torture.

- The ruling by the Higher State Security Court – Emergency in the case known in the media as the "people of Al-Kom Al-Ahmar village case." In addition to acquitting the defendants (twenty-six), the ruling made explicit note of the forms of collective punishment against the people of Al-Kom Al-Ahmar after an ordinary fight between a police officer and one of the residents in 1988. The court stated that the confessions of some defendants were a result of the physical and moral coercion against the whole village not the defendants alone. The ruling also mentioned that more than four hundred of the villagers were subject to torture and maltreatment, and that women were taken hostages until their male relatives turned themselves in[*].

- In its ruling of February 1990 in the case no. 382/1986, the Higher State Security Court tackled the impartiality of the prosecution office in some cases involving the freedom of opinion and the danger of entrusting the prosecution with the faculties of the Inquiry Judge, especially in political crimes and crimes related to the expression of opinion. The ruling stated:

> The court notices that the charges usually directed at arrest proceedings have extended to apply to the public prosecution's investigation proceedings, such as: impartiality, omitting some sayings or incidences, threats, favoring police officers and others. If this spreads it would inevitably affect the whole process of justice. This can not be ended or precluded except if the investigators themselves provide the guarantees to safeguard their proceedings and

[*] On these cases see: EOHR, *Torture in Egypt: An Unpunished Crime,* op. cit., pp. 40-51.

acts from well-founded charges. The ultimate guarantee is the members of the prosecution and judges themselves, not a provision to be enacted or a regulation to be published. A just judge outweighs any legal provision in the establishment of justice. It grieves the court that challenges are made to the public prosecution proceedings, and that such challenges are based on reasons that documents prove. Hence, the court calls for the amendment of legislation so that only Inquiry Judges carry out investigation in case involving the freedom of opinion, and that suspects in political cases may request the appointment of an Inquiry Judge. In the latter case, investigation should be invalid if the request of the suspect is not answered or if the judge's assumption of investigation was hampered. Only such an amendment could safeguard the rights of suspects in political cases and those involving the freedom of opinion, as some law-enforcement officers feel specially hostile towards them and thus err and fall into the pit of committing torture.[*]

[*] Abdullah Khalil, *The Laws Restricting Civil and Political Rights in the Egyptian Legislation,* op. Cit., pp. 354-5.

Second: The Role of the Human Rights Movement in the Protection and Promotion of Human Rights

The birth of the Egyptian Organization for Human Rights (EOHR) in 1985 marked the actual beginning of the human right movement in Egypt. Since then, the role of this movement has been steadily increasing for a number of factors[5]:

1. The increase in the general awareness of the value of democracy in light of the absolute failure of the regimes which tried to propose social justice and national liberation as excuses to forfeit democracy.
2. The deterioration of human rights conditions in Egypt, which was manifested in:

- Declaring the state of emergency once again in 1981, which meant placing security forces above the law, and giving an implicit protection to the practices of torture, detention, and extrajudicial killing.
- The escalation of the political Islamist movement with its agenda which opposes freedoms of thought, creativity, opinion and expression; and the realization by intellectuals that the human rights movement would provide a solid fighter in the defense of these rights and the rejection of any blackmail under the name of religion.
- The unprecedented escalation of acts of violence committed by armed Islamist groups, and the widening of its scope to go beyond targeting officials and security men, to include intellectuals, Christians, and foreign tourists, in addition to innocent citizens whose lives were not taken into consideration by the violent plans of Islamist groups.

3. The failure of political parties to absorb the changes and consecutive political defeats took place in the last decades; and their failure to express the prospects of the new generations, and to provide alternative policies other than those adopted by the ruling party, and create appropriate frameworks that would achieve the aspiration towards justice.
4. The over concern by the current political regime about the international public opinion, particularly about its image in front of the world.
5. The escalation of the international human rights movement, and its concern about Egypt and its human rights situation, given its relative weight in the region; and showing solidarity and cooperation with the human rights movement in Egypt.

[5] Bahey El-Din Hassan, "Towards a consistent strategy for the Egyptian human rights movement" , in "The challenges of the Arab human rights movement", The Cairo Institute for Human Rights Studies, Cairo, 1997, pp. 122, 123.

Over a period of about fifteen years, the human rights movement in Egypt has witnessed a huge development in terms of quantity and quality. The continuos work of the EOHR has led to produce scores of cadres who are equipped with the professional skills needed to manage work in the field of human rights. This has contributed to the birth of many institutions that work in specialized fields, side by side with the EOHR. They all adopt international human rights standards as reference to their work.

This development of the human rights movement has allowed its activities to cover different tasks in the human rights field such as monitoring, observing, documenting, and reporting on human rights violations, providing legal support and judicial assistance for victims of human rights violations, helping in the rehabilitation of the victims of torture, as well as providing training and education to disseminate the human rights culture. There have also been organizations which defend the rights of specific groups such as labors, women, farmers, and prisoners. Similarly, there have been organizations more concerned with conducting specialized studies and research in the human rights field, and dealing with the problems that hamper ingraining the human rights principles in the Egyptian society.

Major among the non-governmental institutions working in the field of human rights and women, other than the Egyptian Organization for Human Rights, are:

1. The Cairo Institute for Human Rights Studies (CIHRS): It was established in 1993, and works on the level of the Arab region. It aims at educating and promoting the human rights culture in Arab countries through its research, academic, and intellectual activities, and through analyzing the problems which hamper the application of international human rights law. It pays special attention to training and education in the field of human rights.
2. The Group for Democratic Development (GDD): It was established in 1996 with the aim of improving the performance of the legislative institution (the Parliament) in order to be able to support the democratic development. It also aims at the promotion of democratic concepts and thoughts in the society, and at widening the scope of political participation.
3. The Arab Center for the Independence of the Judiciary and the Legal Profession (ACIJLP): It was founded in 1997, and works as a regional center. It aims at organizing and mobilizing for support for judges and lawyers, raising the awareness of the constitutional and international safeguards provided for them, and supporting the independence of the

judiciary and the legal profession as basic fundamentals for the promotion of human rights.

4. The Human Rights Center for the Assistance of Prisoners (HRCAP): It was founded in 1997. It monitors the condition of prisons, and offer legal assistance to prisoners and detainees. It works for the amelioration of the prisoners' living, health, and social conditions.
5. The Center for Egyptian Women's Legal Assistance (CEWLA): It was founded in 1994. It aims to develop women's awareness of their rights, conducts studies on discrimination against women, and provides legal assistance to women.
6. The Egyptian Center for Women's Rights (ECWR): It was established in 1996, and aims to reinforce women's rights in political participation. It also offers legal assistance and advice to women, raises their awareness of the importance of their political participation.
7. Al-Nadeem Center for the Rehabilitation of Victims of Violence and Torture : It aims to rehabilitate the victims of violence, and build strong relations with organizations and individuals who deal with the victims of violence to coordinate efforts on behalf of the victims, and conduct research and studies on various forms of violence, and its reasons.
8. The Center for Trade Union and Workers Services (CTUWS): It was founded in 1990. It aims to defend the social and economic rights of workers, and raise their skills with the hope of realizing a democratic society where all members participate in the decision making process and in the conduct of its affairs, a society which defends the democratic, economic, and social rights of its citizens, and protects the freedom and independence of trade unions.
9. Hisham Mubarak Center for Law: It was founded in 1999 to continue the mission for which the Center for Human Rights Legal Aid had been established in 1994. This is to provide legal and judicial assistance and advice for victims of human rights violations, and to try to change and develop the legal structures which conflict with human rights, through suggesting alternative draft laws, or challenging the constitutionality of the laws conflicting with human rights.
10. Land Center for Human Rights: It was founded in 1996. It monitors the violations committed against the rights of farmers and agricultural laborers. It also monitors the problems related to the pollution of the environment.[6]

[6] On the Egyptian human rights organizations, please see Iman Hassan in "The Human Rights Movement in the Arab Region- case studies on Lebanon, Tunisia, and Egypt", Human Rights Issues, the Arab Organization for Human Rights, fourth issue, Cairo, Dar Al-Mustakbal Al-Arabi, 1999, pp. 75-100.

These centers were established as civil companies in order to fall under the protection of the civil law, and avoid the firm restrictions and pressures imposed by the associations law, which gives the administration broad power over non-governmental organizations, and allows it to undermine their activities away from the government intervention.

In addition to the above mentioned organizations, there are a number of development associations which have activities related to raising the awareness of human rights. Major among them are:

1. The Association of Upper Egypt for Education and Development (AUPED): It has 36 free primary schools affiliated to it (35 of which are in Upper Egypt). They include about 10 thousand students. It implements two programs related to human rights:

- The first is civil education for children. It is directed to school students, and aims to raise their awareness of the rights of the child. A child-rights group is formed in each school to work like a small parliament which helps in directing the school affairs, by applying what the children have learnt about their rights.
- The second program is directed to youth centers in seven governorates. It aims to raise the awareness of human rights and the importance of political participation. The program is managed in a way that would build strong ties between the target groups (children and youth) and their local community, and urge them to play active roles in improving environmental, health, and social conditions in their communities.

Both programs include activities that raise the awareness of human rights, the rights of women and children, and of the role of civil society.

2. The Coptic Evangelical Organization for Social Services (CESO): It focuses on issues related to the rights of the child within its development activities. It organizes training sessions on these topics, for teachers of its schools, and the staff of the children's clubs affiliated to it. It has been a pioneer in implementing development projects which focus on both improving health and social conditions in poor areas, and raising the awareness of the rights of women and children. It was able to realize leading achievements in this field, perhaps major among them has been the initial taken by an Egyptian village to prevent the practice of Female Genital Mutilation, and issuing a collective document to this effect in 1992. This event was a subject of a field study conducted by the Cairo Institute for Human

Rights Studies. The findings of this unique experience were issued in a book in both Arabic and English.

The organization second concern is raising the awareness of human rights issues, their reflection on the development of civil society, and the relation with the others with different religion. It achieves this goal through organizing conferences which gather intellectual elite, and those concerned with human rights and the development of civil society, as well as representatives of main religious authorities.

3. Caritas (An Egyptian association affiliated to the international organization Caritas): It undertakes an ambitious program to eradicate illiteracy from Egypt, which exceeds 50%.

   This association is mainly concerned with literacy, not in its limited sense of learning how to read and write, but it is extended to provide students with general cultural, health and social knowledge. This includes knowledge about the environment, women's reproductive rights, and female genital mutilation. The size of this program could be featured if we realize that its beneficiaries in 1998 alone reached 15,320 participants from 10 governorantes, mostly from Upper Egypt.

Generally, it can be said that over the last decade, the Egyptian human rights movement has become a major fact in the daily political life in Egypt, and the resort which parties, groups, and individuals seek whenever a gross human rights violation takes place, looking forward to its announced statements. Moreover, the security bodies frequently look forward to the statements which condemns the violations committed by violent Islamist groups. In addition, the human rights vocabulary started to appear in the headlines of main newspapers, whether governmental or opposition. Human rights organizations have become 'houses' to receive complaints by ordinary citizens from the grievances of every day life. The circle of complainers has even expanded to include police men.

The impact of this influence on the government can be summed up by saying that it has become more aware that disregarding human rights will have an accumulative effect on its record inside the country, and harm its image outside it. This fact has been reflected in a number of practices, such as paying attention to human rights concepts and language in the political discourse of statesmen; creating two human rights offices: one in the Ministry of Foreign Affairs, and one in the office of the Public Prosecutor; teaching human rights in some university faculties; and removing items of religious intolerance from school curricula.

On anther level, the increasing influence of the movement on people can be detected in that observing human rights has become a focal aspect in assessing the government performance. It can also be noticed in the revision taking place by various political trends, including the Muslim Brothers, of the consistence of their stances with the human rights principles[7]. Moreover, an increasing tendency by political parities can even be noticed towards adopting the demands raised by human rights organizations as part of the parities agenda for legislative, constitutional and electoral reforms.

In fact, the role played by human rights organizations in monitoring and documenting human rights violations has widely disclosed the government human rights record to local the public opinion. On basis of the reports of these organizations, particularly the EOHR, the Egyptian parliament witnessed a form of 'hearing' of the government's abusive practices took place in 1989, particularly regarding its expansion in the use of administrative detention, which took place by virtue of the emergency law, and the speared of the use of torture, collective punishment, and extrajudicial killing. As part of the EOHR's campaign against torture launched in December 1991, an independent member of the parliament interpellated the Minister of the Interior at that time about the spread of torture in Egypt. In this interpellation, the MP relied on long extracts of the relevant EOHR reports. Thus, the cabinet then was forced to discuss this issue in one of its meetings under the title: "false allegations of not observing human rights principles." In this regard, the cabinet decided to form a ministerial committee made of representatives of the ministries of the interior, justice, foreign affairs, and information to refute these 'allegations.' The Minister of the Interior at that time announced that he is ready to open the prisons for visits by human rights organizations to listen to the complaints of prisoners. Subsequently, the U.S. based Human Rights Watch was allowed to visit six Egyptian prisons to investigate their conditions. This is although an application by this same organization to visit Egyptian prisons had been denied two years before by the ministry of the interior[8].

[7] On the Egyptian human rights organizations, please see Iman Hassan in "The Human Rights Movement in the Arab Region- case studies on Lebanon, Tunisia, and Egypt", Human Rights Issues, the Arab Organization for Human Rights, fourth issue, Cairo, Dar Al-Mustakbal Al-Arabi, 1999, pp. 75-100.

[8] See the EOHR press release on 15 February 1992 under the title: "Important results of the EOHR's campaign against torture in Egypt."

Also, the opposition in the parliament, though of little weight, relies on the reports of human rights organizations when the extension of the state of emergency is discussed in the parliament.

In addition, the efforts of human rights organizations, combined with the struggle of the Journalists Syndicate, succeeded in confronting law no. 93 of 1995 known as 'the law to assassinate the Press.' In the face of these efforts, the authorities had to revoke the law one year after its promulgation.

Moreover, the institutions specialized in offering legal assistance to victims of human rights violations have offered this legal service to thousands of people, which led in many of the cases to revoking abusive decisions against the victims. This has been particularly true with cases when certain individuals were persecuted for their syndical activities, and in cases related to abusive dismissal or collective dismissal of workers. In many cases, a compensation was obtained to the victims of torture, victims of the use of force in dispersing peaceful assemblies, and victims of abusive dismissal from work.

The tool of offering legal assistance allowed human rights organizations to challenge the constitutionality of many legal provisions which conflict with human rights principles. These challenges, which are related to the freedom of unions, freedom of opinion and expression, and equality between the people before law, are still being heard by the Supreme Constitutional Court.

On the international level, the Egyptian human rights movement succeeded in building a broad network of international relations which enabled it to enjoy good respect on the international level. The international support with the Egyptian human rights movement has contributed to reinforcing its role in confronting human rights violations, and in taking human rights activists out of prisons in many occasions. This support also increased the financial resources of Egyptian human rights institutions, particularly in light of the legal restrictions imposed on collecting local donations on the one hand, and the lack of general awareness of human rights on the other. These resources also enabled human rights institutions to give special attention to training and raising the skills of the workers in the field of human rights, and to raising legal awareness, and implementing educational programs on human rights[9].

[9] The Cairo Institute for Human Rights Studies plays an important role in this regard through the annual educational courses it organizes for university students, and other specialized courses in the field of human rights. For this effort, the CIHRS was chosen by the UNESCO to represent the Arab

Due to the high professional performance of the human rights movement, and its impartiality in different situations, the reports issued by human rights institutions have become a reliable source for international organizations. Moreover, their annual reports have become the base upon which human rights conditions in Egypt are evaluated.

Little by little, human rights organizations gain more experience in dealing with international human rights instruments. This experience was clear in the reports made by the EOHR in 1993, to be parallel to the government's reports. This was when the UN Human Rights Committee was discussing the Egyptian government report on the progress achieved in putting the International Covenant on Civil and Political Rights into effect; and when the UN Committee Against Torture was discussing the government report on its commitment to the provisions of the Convention Against Torture. These discussions clearly revealed that the experts in both committees relied on the reports of the EOHR, which included documented information, and successful selection of examples of the legal structure, which legalize human rights violations or secure impunity to perpetrators of torture. It is clear, as well, that the United Nations special raportuers rely on the reports of the Egyptian human rights organizations in the annual reports these raportuers make to address the Egyptian government.

However, the Egyptian human rights movement has developed its work mechanisms by learning from the experiences and mechanisms of the international human rights movement. On the other hand, the interaction with the international human rights movement has drawn the attention that it is important for international organizations to give special attention to the violations committed by non-governmental parties. In its recommendations presented to the World Conference for Human Rights held in Vienna in 1993, the EOHR called on the United Nations to give special attention to the fact that non-governmental groups, who are not accountable before the state or before the international community, commit gross violations of human rights such as assassination, organized killing, sectarian massacres, taking hostages, and attacking properties. The EOHR stressed the increasing need that the UN adopt a stance in this regard based on the provisions of article five of the International

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region in cooperating with it in preparing a project on an educational human rights guide for primary and secondary schools. It was part of a UNESCO project to make a unified guide which take into consideration various cultures of geographic regions in the world.
The Egyptian Organization for Human Rights, as well, organizes annual educational courses for its old and new members (more than two thousands), on the characteristics of the struggle for human rights, and international instruments to protect these rights.

Covenant on Civil and Political Rights which does not give "….any State, group, or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein….."

It must be noted here that the contributions made by the Cairo Institute for Human Rights Studies to the assessment of the effectiveness of the human rights movement on the local, Arab, and international levels, has resulted in the first international project to be made by the center. This is to search for new strategies for the international human rights movement to confront the challenges it faces[10]. The project will start in the Arab region first in the year 2000.

Relation with the Government:

The government refused to give legal status to the mother organization - the EOHR - for over one and a half decades. It challenged the legitimacy of other human rights institutions which were founded as civil companies. The human rights institutions tried to keep the channels of dialogue open with the government, on the grounds that this dialogue is an inevitable approach to realize tangible progress in the human rights field. However, the government did not pay any attention to this dialogue and its channels. In this respect, it is enough to point out that in 1994 and 1995, the EOHR sent more than 1200 letter to the authorities, but received only 80 replies in this period. Also, in 1997 alone, the number of letters and notifications sent by the EOHR to the authorities reached 1221, and it received only 46 replies in that year. In 1998, the EOHR sent more than 1400 letters to the concerned authorities, and received only 42 replies. This refrain by the authorities continues although on following the EOHR newsletter, one can notice that the government replies are highly welcomed.[11]

The Egyptian authorities always try to isolate human right institutions from their society, whether by imposing news blackout on their activities, or by trying to discredit them before the public opinion by accusing them of defending terrorists, causing disunity in the nation, harming the country's image by the reports they disseminate on human rights violations, or saying that they are a tool to harm the supreme national

[10] See: "Towards regaining the power to take initiatives: the future of the human rights movement strategies", a joint statement by the CIHRS and the International Human Rights Training Program, Rowak Arabi magazine, issue 3, July 1996, Cairo, Cairo Institute for Human Rights Studies, pp. 191-194.

[11] See Negad El-Borae "Hasn't the strategy been consistent?", Rowak Arabi magazine, issue 3, July 1996, Cairo, Cairo Institute for Human Rights Studies, pp. 66-69.
The EOHR annual report in 1997, and the EOHR annual report in 1998.

interests. The situation could reach the level of seizing the activities of these institutions by preventing them from holding an extended meeting outside their offices, hosting conferences of regional and international nature, or by hampering the training and educational sessions they hold. With this hostile stance by the authorities, human rights activists and leaders were not safe from harassment and torture for their defense for human rights.

In this regard, and in the wake of the solidarity expressed by the EOHR with the iron and steel worker who were detained and tortured for organizing a peaceful strike in August 1989, the authorities detained scores of people, including two members of the EOHR board of trustees, and a number of its members who, directly after their arrest, were tortured and ill treated. They were then released as a result of a local and international campaign for solidarity with them[12].

In February 1990, the authorities arrested a third member of the EOHR board, who was exposed to intensive torture over ten days at the State Security Investigations at Lazoughli[13].

In another event, following the EOHR report on collective punishment and torture of large number of citizens in Koshah village in August 1998, and amidst a war-like environment in which workers in the human rights field were accused by newspapers of being betrayals, the public prosecution ordered the preventive detention of the EOHR' secretary general pending investigations. He faced accusations included disseminating false news with the aim of harming the country's image and interests, and receiving funds and donations without permission form the concerned authorities. The detention of the secretary general and interrogating him took place only few days before the international celebration of the 50th Anniversary of the Universal Declaration of Human Rights, and the adoption by the UN of the first document on the protection of the rights of human rights defenders!

A broad solidarity campaign, locally and internationally, was then launched and led to the release on a bail of the EOHR secretary general six days after his arrest. The case has not, however, been closed so that

[12] See the EOHR report on the torture of the workers of iron and steel, and its report on the ill treatment and torture of the EOHR leaders. The two reports were issued in "In defense of Human Rights", Bahey El-Din Hassan, above mentioned reference, pp. 69, 70, 307-309.

[13] See the brief report on the torture of Dr. Mohamed Mandour, EOHR board member, "Dr. Mohamed Mandour, a new evidence on the spread of torture in Egypt", Bahey El-Din Hassan, the above mentioned reference, pp. 312-314.

the accusations remain a hanging sword on the officials of the EOHR to be used at any time.

However, this hostile attitude by the government towards human rights activities, and denying legal status to institutions working in this field, are not enough to explain the limited influence of the human rights movement, and the decreasing circle of the future of its message, and the scope of the people influenced by it. Other factors have added to this situation such as the lack of democratic values in the political prevalent culture, particularly in light of the chronic forfeit of free political life for more than two decades under the name of social justice, national independence, and facing outside challenges. Also among these factors has been the bad reputation given to the human rights idea, specially among the progressive and leftist trends who considered human rights as an American tool to disunite the national Arab ties, and the socialist bases from inside. This fear increased in early eighties when the signs of the collapse of the socialist states of Eastern Europe appeared.

Conclusion

The principal of participation is the dominant factor in the UN Declaration on the Right and Development.[14] We can even say that the right to participation is the essence of the right to development, which means that the right to development is considered as more of a political than an economic process. This is clearly indicated by the five articles in the declaration, that is half the Declaration, which consists of ten articles. These articles are 1,2,6,8 and 10.

In the first article of the Declaration, the right to development is presented as the right of all human beings and people to "participation", and taking part in the achievement of economic, social and cultural development and the attainment of the development. Development, in this sense, is not a technical economic process, but it is also political and depends on participation to achieve it and enjoy its results. It is not only the collective responsibility of peoples but, also concerns individuals: "every human being".

The second article stipulates that the human being is "the subject of the development" and should therefore be an active partner in, and beneficiary of the right. To this end, the Declaration speaks of the inevitable need for an appropriate political system for development and affirms that development policies, aimed at achieving prosperity for all the population and all individuals, should be based on the free, active and purposeful participation in development and the fair distribution of the ensuring benefits.

Article 6 refers to the difficulty of exercising the right to development without taking into consideration civil and political rights, the fundamental freedom, and equality without discrimination. The Preamble of the Declaration refers to obstacles existed to the development of human beings and peoples, and mainly the denial of political and civil rights.

Article 8 stipulates that people's participation should be taken to implement factor in development.

Article 10 asserts that legislative measures and policies should be taken to implement to development.

[14] Bahey El Din Hassan, Towards the implementation of the Right to Development. The action of the Right to Participation is a Decisive Factor, Human Rights &sustainable Human Development with focus on poverty & illiteracy in Egypt. A workshop held by the Society of Human Rights Supporters of Egypt in cooperation with the UNDP.

It is noteworthy that the reports of the World Bank, the world Health Organization and the United Nations have endorsed this concept and closely link the right to a decent human life to the political and cultural factors in such a life. The last Human Development Report issued by the United Nations Development Program has stretched the definition of poverty to include the inability to exercise human rights and political rights and lack of dignity, confidence and self-respect. In the Human Development Report issues in 1991, the UNDP affirms that a high degree of participation in an essential element in any political process that is of benefit to the poor and encouraging the independence of citizens is an end in itself and participation is the way to guarantee the availability and fairer distribution of goods and services. The participation of people in decision-making will make policies and projects more realistic, pragmatic and sustainable.[15]

In his report for 1997, Jose Pengois, the Reporter for the UN Human Rights Committee notes that, although the economies of the distribution of national income in these countries, which continued to suffer from a great disparity between minority and the poor masses.[16]

Economic growth alone does not guarantee the exercise of economic and social rights, to say nothing of civil and political rights. This depends on the division of power and the distribution of benefits.[17]

Jack Donnelly says the poverty is not only an economic phenomenon but also a political one, in a time of plenty. The violation of civil and political rights generally takes place in order to protect economic privileges. The elite that dominates the political mechanisms which distance people, make exceptions and ensure hegemony generally practices the violation of economic and social rights.[18]

The views of Egyptian development experts point in the same direction: economic growth alone is not enough to limit poverty, unless the poor "participate" in the fruits of such growth, that is to have a say in the process of "distribution." This necessitates "community participation" in all development stages[19]. This in turn requires a balance between various groups in society (preventing any group/s from dominating the others), transparency and accountability, which is unperceivable without

[15] See Dana Bohill "Hagger fi Miyah Rakida" (A stone in Stagnant Water) the ideas of supporters of economic, social and cultural life at the local and national levels. The international Human Rights internship Program. Washington 1997.
[16] See Human Rights Monitor, No.38, 1997. International Service for Human Rights.
[17] Jack Donnelly, Universal Human Rights in Theory and Practice, the Academic Library, Cairo, 1997.
[18] ibid.
[19] The National Planning Institute, " Egypt: Human Development Report," Cairo, 1996.

information being accessible to all, or what the 1996 Egypt Human Development Report calls "enjoying the same level of knowledge."[20]

The report adds that it is difficult to design anti-poverty policies and programs without knowing how the poor in a certain society think of their livelihood. Thus the report calls for letting the poor "express themselves" as one of the ways to "empower" them[21]. Another means of empowerment is that "those who stand in defense of the poor have more influence on public policy in Egypt;"[22] such defenders as "human rights and environmentalist organizations that have come to play a vital role in discussions on the ways to alleviate poverty."[23]

When development experts mention the necessity of transparency and knowledge they are indirectly speaking of safeguarding the right to the unfettered freedom of circulating information and exchanging views. When they mention the importance of accountability they are pointing at the right to take part in the conduct of public affairs, which presuppose the rights to vote, to be elected, and to form political parties, unions and associations – the rights that make for an effective civil society. Another precondition is that the administrative should not tyrannize over the legislature or the judiciary and prevent them from overseeing it on behalf of society. They are in short the basic essentials for the enjoyment of human rights.

This is the same conclusion reached by the group of authors of *The Wisdom of the Egyptians* issued in late 1999 that was awarded by the General Book Organization as one of the best books in 1999. The book, offering a rereading of Egypt's history, concludes that there are five main approaches to a better 21st century Egypt, namely:

1- Human development.
2- Skipping the earlier techno-industrial stages and immediately entering the field of high technology.
3- Political development.
4- Civil society and unbridling public voluntary initiatives.
5- Symbiotic society.

In the very last paragraph, the author underscores the necessity of embarking concurrently on two indispensable routes towards the advancement of Egyptian society. Firstly, reinforcing national

[20] Ibid.
[21] Ibid.
[22] Radi Asaad and Malak Rushdi, *Poverty and Strategies to Alleviate it in Egypt,* Center for the Study of Developing Countries, Cairo University, 1999.
[23] Ibid.

integration; secondly, "that all Egyptians enjoy their human rights, that their dignity be resuscitated, and that their public and private liberties be safeguarded both in legislation and in practice."[24]

In a recent comparative study on the relation between the state and development in Egypt and five other developing countries[25], Hassanein Tawfiq notes that corruption has become one of the main problems in Egypt[26]. Another problem is the increasing imbalances in the distribution of the returns of development since the beginning of the nineties: regional imbalance increased (poverty level in some parts of Upper Egypt reaches 70%), the gap between social classes and strata grew larger, and the middle class continued to decline. The author stresses that the distribution of the burdens and fruits of development is "a political process in the first place."

Tawfiq further argues that activating the role of the Egyptian state in development requires "comprehensive reform on the constitutional, legal, political, institutional and administrative levels." Such reform necessitates the following: "annulling the Emergency Law and other exceptional laws restricting citizens' rights and freedoms;" putting an end to the transgressions by the executive and the legislative powers against the independence of the judiciary; and "reforming the electoral system." It also requires reforming the party system by dropping the legal restrictions on forming political parties and on their activities, and amending the laws that restrain the work of syndicates and NGOs and impact adversely on their role in development.

In the end the author affirms that Egypt has no other choice; focusing on economic reform only would is not a solution to Egypt's problems, on the contrary it might provide new fountainheads of political and social violence. "In short, the Egyptian state on the brink of the 21st century finds itself at crossroads: the first option is to initiate serious and systematic reform that would enable the state machine and its political and non-political institutions to deal effectively with internal and external variables and new changes. The second is to continue to palliate problems by partial solutions and patched-up policies, which means that Egypt would enter into the 21st century encumbered with acute social problems that constitute a cause for the persistence of political and social

[24] Muhammad Saiid (editor), *The Wisdom of the Egyptians*, CIHRS, 1999.
[25] Hanssanein Tawfiq, *The State and Development in Egypt – The political Aspects: A Comparative Study*, Center for the Study of Developing Countries, Cairo University, 1999.
[26] Egypt ranks very low (63) in the world as regards the availability of transparency needed for checking corruption. S*ee*, Transparency International, Country Perspective Index, 1999.

congestion, extremism, violence and crime on the internal level and dependency on the external level.

To avoid such a scenario, it would not be enough to focus on economic reform; political and social reform is incumbent. This is especially so given the notable growth of civil society institutions and forces and the remarkable increase in the number of youths banging the doors of politics seeking participation and aspiring to better livelihood. Unless such energies, which constitute the real capital of the Egyptian states, were assimilated within a state-led project for revival and development (whose ultimate aim is to provide the essentials of dignified living), they would be channeled into activities and organizations that threaten political and social peace.

Now, is there a political will to take the road of reform and shoulder its implications? This is the real challenge."[27]

[27] Tawfiq, op. Cit., p. 336.

References

- *Laws Restricting Civil & Political Rights in the Egyptian Legislation*, Abdallah Khalil, 1999, CIHRS. (Cairo).

- *Democracy in Danger – Elections where All Failed*, Negad El-Borey, 1996, CIHRS. (Cairo).

- *In Defense of Human Rights*, Volume 1, edited by Bahey El Din Hassan, 1993, CIHRS. (Cairo).

- *The One Party System in a Pluralistic Form*, Essam El Din Mohamed Hassan, 1999, The Center for Human Rights Legal Assistance. (Cairo)

- *The Egyptian Legal Structure, the Constitution and Human Rights*, a working paper tabled to The Conference On the Egyptian Political Parties and Forces held in Cairo in December 1997, Essam El Din Mohamed Hassan.

- *Face to Face*, EQHR's reply to the Egyptian government's report to the U.N, EOHR, Cairo, 1993.

- *Torture in Egypt: An Unpunished Crime;*. EOHR's comment on the 1st additional report submitted by the Egyptian government to the Committee Against Torture, EOHR, 1993.

- *In defense of Human Rights*, Volumes 2,3,4,5 including the organization's publications for the years 1994, 1995, 1996, 1997, EOHR.

- *The Conditions of Human rights in Egypt*, a yearly report 1990-1998, EOHR.

- *Human Rights Issues in Egypt 1997*, a yearly report published by The Center for Human Rights Legal Assistance in 1998, Essam Al Din Hassan.

- *Human Rights Issues in Egypt 1998*, a common report issued by Al Nadim Center for the Rehabilitation of the Victims of Violence in cooperation with The Center for Human Rights Legal Assistance and The Human rights Center For Prisoners Assistance.

- *Towards a consistent Strategy of the Human Rights Movement in Egypt*, Bahey El Din Hassan, Arab Human Rights Internal Problems, Rowaq Arabi magazine, 3rd issue, July 1996, CIHRS,

- *Al-Wafd*, December 30th, 1999, the editorial

- *Al-Wafd*, November 18th, 1999.

- [1]Youssri Mustafa Abdel-Meguid, "*The Power of Death and the Power of Life: The State's Responsibility in Violating the Right to Life*", a working paper presented at the Seventh Intellectual Forum of the Egyptian Organization for Human Rights, Cairo, December 1999.

- The 1998 Amnesty International report on human rights violations in the world.

- Tarek Abdel-Al, "*The Peaceful Rotation of Power*," a paper presented to the Seventh Intellectual Forum of the EOHR, Cairo, December 6-7, 1999.

- Negad Borai (editor), *Gagged Mouths: The Second EOHR Report on the Freedom of Opinion and Expression in Egypt*.
-
- Bahey El Din Hassan, *Towards the implementation of the Right to Development. ,* a workshop held by the Society of Human Rights Supporters of Egypt in cooperation with the UNDP.

- Dana Bohill "*Hagger fi Miyah Rakida" (A stone in Stagnant Water).* The international Human Rights internship Program. Washington 1997.

1.
- Jack Donnelly, *Universal Human Rights in Theory and Practice*, the Academic Library, Cairo, 1997.

[1] - The National Planning Institute, " *Egypt: Human Development Report*," Cairo, 1996.

- Radi Asaad and Malak Rushdi, *Poverty and Strategies to Alleviate it in Egypt*, Center for the Study of Developing Countries, Cairo University, 1999.

- [1] Muhammad Saiid (editor), *The Wisdom of the Egyptians*, CIHRS, 1999.

- [1] Hanssanein Tawfiq, *The State and Development in Egypt – The political Aspects: A Comparative Study*, Center for the Study of Developing Countries, Cairo University, 1999.

- *Transparency International*, Country Perspective Index, 1999.