

EGYPT

Torture and imprisonment for actual or perceived sexual orientation

Gays in Egypt suffer discrimination, persecution and violence simply for being who they are. Those who are detained because their actual or perceived sexual orientation is deemed to threaten socially accepted norms are at particular risk of torture and ill-treatment and other human rights violations.

Around the world, countless people are targeted simply because of their perceived or self-expressed sexual orientation. Their vulnerability to human rights violations is underpinned by a web of laws and social practices which deny them an equal right to life, liberty and physical security as well as other fundamental rights such as freedom of association, freedom of expression and rights to privacy, employment, education and health care. The degree to which discrimination is institutionalized varies from country to country, but almost nowhere are they treated as equal before the law.

Discrimination is an assault on the very notion of human rights. It systematically denies certain people or groups their full human rights just because of who they are or what they believe. It is an attack on the fundamental principle underlying the Universal Declaration of Human Rights: that human rights are everyone's birthright and apply to all without distinction.

Amnesty International calls on all governments to make the principle of non-discrimination a reality in practice as well as law. No one shall be discriminated on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In Egypt in 2001 alone, dozens of men, including at least one juvenile, have been held for months in detention solely on the grounds of their actual or perceived sexual orientation. The effective criminalization of consensual sexual relations between adults of the same sex is discriminatory and violates international human rights standards. The right to freedom from discrimination on the basis of sex, which includes sexual orientation, is recognized in international treaties, including the International Covenant on Civil and Political Rights (ICCPR), to which Egypt is a State Party.

On 14 November 2001 23 men were sentenced to prison terms of between one and five years by the (Emergency) State Security Court for Misdemeanours in Cairo; 29 others in the same trial were acquitted. Twenty-one men were convicted of “habitual debauchery”, one of “contempt of religion” and another of both charges. Amnesty International has adopted 22 of the 23 men as prisoners of conscience. The case of the twenty-third is still under consideration by the organization. In a related case, on 19 September 2001, Cairo Juvenile Court handed down a three-year prison term for “habitual debauchery” to a juvenile. This was subsequently reduced by the Cairo Juvenile Appeal Court for Misdemeanours to a six-month prison sentence on 19 December 2001.

Amnesty International considers all those who are detained solely on the grounds of their identity, including their actual or perceived sexual

orientation, to be prisoners of conscience and calls for their immediate and unconditional release.

1. The trial of the 52 alleged gays

On and around 11 May 2001 some 60 men were arrested in various locations in Cairo. Over half were arrested while in a night club on a boat, known as the *Queen Boat*, moored on the banks of the River Nile. Others were taken from two locations in downtown Cairo or from their homes. During the night of 11 May 2001, the detainees were held at different locations, including 'Abedin Police Station, Azbekiya Police Station and the department of the State Security Intelligence (SSI) in the Misr al-Gadida district of Cairo.

On 12 May 2001 they were presented before the State Security Prosecution, who issued 54 of the men with a 15-day detention order, and transferred to Tora Prison, in the south of Cairo. Fifty-two were later prosecuted and all of them remained in detention until the verdict was given on 14 November.

1.1. Torture and ill-treatment during pre-trial detention

Detainees reported that they were tortured, including by being beaten with a stick on the soles of the feet (*falaka*), during the first stages of their detention. Following their arrest, most men were detained in police stations, where they were reportedly beaten and verbally abused by police officers. One of the accused told Amnesty International:

“The real beatings started in the police station. They beat us with their hands and legs and with a cane and a thick stick. Then they made us strip down to our underwear and the insults and humiliation continued.”

On 12 May when appearing before the State Security Prosecution, this person – who requested not to be identified by name – informed the prosecutor of the beatings to which he had been subjected and showed him the marks on his body sustained as a result. The prosecutor noted “red vertical lines on the middle of the back...which the accused alleged were the result of beating with a slim stick...”. More than two weeks passed until the accused was examined by forensic experts who noted scratches on his arms but the injuries to his back had apparently faded. However, the forensic examinations of the detainees were aimed at establishing whether the accused had practised anal sex rather than identifying traces of torture.

On 18 May Amnesty International sent a letter to the Public Prosecutor expressing concerns at reports of torture and ill-treatment of the detainees. The authorities failed to ensure that a prompt, independent and impartial investigation was conducted into the torture allegations in violation of their obligations under international human rights treaties. Over the past two decades thousands of detainees have been subjected to torture and ill-treatment in Egypt.

Victims come from all walks of life, including women, young people and the elderly. Torture and ill-treatment remain widespread because the Egyptian authorities refuse to take basic steps necessary to stamp out their practice in police stations and other detention centres¹.

Articles 12, 13 and 16 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)², to which Egypt is a State Party, require states to ensure that a prompt and impartial investigation is conducted whenever there are reasonable grounds to believe that an act of torture or other cruel, inhuman or degrading treatment has been committed. Article 12 makes it clear that this duty is not dependent on a formal complaint by a detainee.

The detainees were particularly at risk of torture and ill-treatment whilst their access to the outside world was restricted

¹ For further information, please refer to *Egypt: Torture remains rife as cries for justice go unheeded* (AI Index: MDE 12/001/2001); *Egypt: Women targeted by association* (AI Index: MDE 12/11/97); and *Egypt: Indefinite detention and systematic torture: the forgotten victims* (AI Index: MDE 12/13/96).

² Under Article 151 of the Egyptian Constitution, international treaties such as the Convention against Torture, ICCPR and the African Charter on Human and Peoples' Rights became part of domestic legislation after they had been signed by the President of the Republic, ratified by parliament, and published in the official law gazette.

during the initial period of detention. Reports suggest that the rights of the detainees to have access to legal counsel were infringed. Most detainees encountered their lawyers for the first time when presented before the State Security Prosecution on and around 24 May 2001. Until this time, they had no legal representation, including during their first appearance before the prosecutor on 12 May 2001. Principle 1 of the UN Basic Principles on the Role of Lawyers establishes the right to assistance at all stages of the proceedings, including interrogations:

“All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.”³

Family members report that they were not officially informed of their relatives' arrest and some report that they only received news of their detention through the media. According to Amnesty International's information, the first time detainees were allowed to be visited by members of their family was at least ten days after their arrest. Prevention of access of family members to the detainees violates international standards, as outlined in the UN Body of

³ The Human Rights Committee has also stressed that “all persons arrested must have immediate access to counsel.” (Concluding Observations of the Human Rights Committee: Georgia, UN Doc. CCPR/C/79/Add.74, 9 April 1997, para. 28)

Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles). Principle 19 of the Body of Principles establishes the right of detainees to access to the outside world:

“A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.”

Medical examinations to determine whether detainees had engaged in anal sex, carried out by forensic experts, amounted to cruel, inhuman and degrading treatment. One of the accused described the manner in which medical professionals conducted the anal examination:

“The first time was in front of four people, including one woman. They asked me to strip but I didn’t want to take my clothes off in front of a woman. They made me kneel down....It was really humiliating.”

The examination lasted approximately 45 minutes and on completion the chief doctor questioned the results and ordered that the examination be immediately re-conducted. Prior to both

examinations, the accused was threatened with beatings when he expressed reluctance to be examined in this way.

The detainees were reportedly also beaten by prison staff. On at least one occasion, the men were reportedly beaten by other detainees in prison with sticks and canes, which could only have taken place with the acquiescence of or in collusion with the prison administration.

1.2. Media coverage

Media coverage by Egyptian newspapers, particularly during the early stages of the case, raised serious concern for the detainees' right to privacy. In many instances, detailed information pertaining to the men was published in the press, including in at least one case the address of the family of an accused. On 15 May 2001 the semi-official Egyptian newspaper *al-Gumhuriya* published an article referring to the men as "the deviant slaves of Satan" in which it listed the names of many of the accused and, where known to the newspaper, their workplaces. Concerns arising from the negative portrayal of the men and its potential impact on their lives were raised by the defence during the trial. The negative coverage in the media exposed the men and their families to the risk of harassment and threats to their physical integrity.

In a letter addressed to the Public Prosecutor on 18 May 2001, Amnesty International expressed concern that publication of this

material infringes the right to privacy of the accused. In accordance with Article 17 of the ICCPR, State Parties are obliged to safeguard the right of every person to privacy,

“1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.”

Moreover, the availability of personal details of the accused in the media at such an early stage raises questions as to whether such details were leaked by the authorities.⁴

1.3 The charges

⁴Amnesty International expressed similar concerns about documents having been leaked to the media during the early days of investigations into the case of the Ibn Khaldun Center for Development Studies (*Egypt: Imprisonment of human rights defenders*, June 2001, AI Index: MDE 12/016/2001).

All 52 men faced the charge of “habitual debauchery”⁵ under Articles 9 (c) and 15 of Law 10 of 1961 on Combatting Prostitution while two faced an additional charge of “contempt of religion” under Article 98 (f) of the Penal Code.

Charge of “habitual debauchery”

Article 9 (c) stipulates prison sentences of between three months and three years for those who “habitually practice debauchery” or prostitution. Article 15 allows for police supervision to be imposed, for a period up to the equivalent of their prison sentence, on release from detention.

Although there is no explicit reference to homosexuality within Egyptian legislation, the term “debauchery” is applied to same sex relations in the context of prostitution of men as well as consensual sexual relations between men. Little definition is provided for “debauchery” within the law itself but it is elaborated in the

⁵In previous public statements by Amnesty International on the case the broader term of “immoral behaviour” has been used instead of “debauchery” to express the Arabic “fujur”. See Amnesty International joint statements on the case: *Concerns over detention of alleged gays* (8 June 2001, AI Index MDE 12/015/2001 - News Service Nr. 100); *Release child imprisoned for sexual orientation* (30 October 2001, AI Index MDE 12/029/2001 - News Service Nr.191); and *Verdict due in unfair trial of 52 men prosecuted for alleged sexual orientation* (12 November 2001, AI Index 12/030/2001 - News Service Nr. 197).

deliberation accompanying the written verdict. The written verdict does not confine itself to the term “debauchery” and makes numerous references to “sexual deviancy”¹ – a pejorative word for homosexuality. “Habitual debauchery”, as defined in the verdict, can amount to merely practising consensual sexual relations between men.²

Charge of “contempt of religion”

Two of the accused, Sherif Hasan Mursi Farahat and Mahmud Ahmad ‘Allam Daqla, faced an additional charge of “contempt of religion” under Article 98 (f) of the penal code which stipulates imprisonment for “exploiting religion (...) for extremist ideas with the aim of provoking a conflict or of showing scorn or contempt for one of the divinely revealed religions (...) or harming national unity or social peace”.

¹The Arabic word “shudhudh” denotes “sexual deviancy”.

²According to the verdict, “habitual debauchery”, under Law 10 of 1961, has three key elements: firstly, that “debauchery” has been practised between men; secondly, that the physical act is carried out in full knowledge of the absence of a legal bond, without discretion or consideration of remuneration; and finally, this act must have been practised on more than one occasion.

This charge was based on accusations that Sherif Hasan Mursi Farahat allegedly saw prophetic visions which led him to establish a religious group named "God's Agency on Earth". These visions and religious ideas were allegedly further elaborated in written form as a book. He was further accused of developing variant religious practices, most notably an alternative manner of prayer. Alongside Sherif Hasan Mursi Farahat, Mahmud Ahmad 'Allam Daqla was accused of spreading these ideas, particularly in gay meeting places, such as the *Queen Boat*. The prosecution alleged that Sherif Hasan Mursi Farahat was using religion in order to "provoke a conflict and cause confusion between citizens so that they become satisfied with practising sexual deviancy and consider it normal..."³.

1.4 The court

On the basis of a presidential decree on 28 June 2001 case number 182 of the year 2001/ Misdemeanours (Registrar number 655/2001) of the 52 alleged gays was tried before the (Emergency) State Security Court for Misdemeanours in Cairo, an exceptional court as established under emergency legislation⁴

³ Quoted from the verdict (page 7).

⁴ The state of emergency has been renewed repeatedly since its re-imposition on 6 October 1981, following President Anwar al-Sadat's assassination. Amnesty International believes that emergency legislation has brought about a deterioration in the enjoyment of human rights and has resulted in an increased risk of human

rights violations in Egypt. Amnesty International is concerned that under the Emergency Law some basic provisions of the ICCPR have been violated, including Article 14 (fair trial).

The Human Rights Committee has also expressed concern about “*the existence in Egypt of many special courts, such as the military courts whose functioning would suggest that they are subordinate to the head of the executive branch, since some provisions of the Act on the State of Emergency authorize the President of the Republic to refer cases to the State security courts and to approve the decisions handed down.*” (Concluding observations of the Committee against Torture : Egypt. 12/06/94. A/49/44, para. 88)

Furthermore Amnesty International believes that emergency legislation has been used to place impermissible restrictions on other rights, including the right to freedom of thought (Article 18), expression (Article 19) and association (Article 22), thereby constituting further violations of Egypt's obligations under the ICCPR.

*In the light of the serious human rights violations that have been facilitated by emergency legislation, Amnesty International has strong reservations about the continuation of the state of emergency. In February 2000, Amnesty International asked the Egyptian government to consider not renewing the state of emergency and to conduct a review of the emergency legislation in order to bring it into line with international human rights standards. The state of emergency was extended in May 2000 without any review having been conducted. Amnesty International recommends that while the state of emergency remains in force a number of measures should be taken to minimize the risk of abuse (see *Egypt: Muzzling civil society* [AI Index: MDE 12/21/00] for further details).. Contrary to international standards for fair trial, people convicted in an (Emergency) State Security Court for Misdemeanours do not have the right for any appeal or review before a higher tribunal. According to Article 14 (5) of the ICCPR: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."*

Proceedings before this court not only violate the fundamental right of the accused to appeal but also contravene principles of the independence of the judiciary as its verdicts have to be submitted to the Military Governor who ultimately decides whether to uphold or quash the verdict or to order a retrial. Such interference by the executive powers constitutes a flagrant violation of the UN Basic Principles on the Independence of the Judiciary.

Lawyers of the Hisham Mubarak Law Center⁵, an Egyptian human rights organization, have challenged the referral of this case by a presidential decree to the (Emergency) State Security Court for Misdemeanours before the Administrative Court. They argued that presidential powers to refer a case to court breach the independence of the judiciary, as guaranteed under Article 165 and 166 of the Egyptian Constitution.

Amnesty International has been raising its concerns about the issue of unfair trials in Egypt for many years⁶, most notably those held in military courts and courts established under emergency legislation. Trials before these courts violate fundamental requirements of international law and standards for fair trial, as recognized by Article 14 of the ICCPR. This includes the right to be tried before a competent, independent and impartial court established by law and the right to a full review before a higher tribunal.

1.5 The verdict

⁵ Lawyers of the Hisham Mubarak Law Center defended several of the accused in this trial.

⁶ For further information, please refer to *Egypt: Imprisonment of human rights defenders* (AI Index: MDE 12/016/2001); *Egypt: Muzzling civil society* (AI Index: MDE 12/21/00); *Egypt: Indefinite detention and systematic torture: the forgotten victims* (AI Index: MDE 12/13/96); and *Egypt: Military Trials of Civilians* (AI Index: 12/16/93).

On 14 November 2001, 23 allegedly gay men were sentenced to prison terms of between one and five years by the (Emergency) State Security Court for Misdemeanours in Cairo; 29 others in the same trial were acquitted. Twenty-one men were convicted for “habitual debauchery”, one for “contempt of religion” and another for both.

*On 29 November, following discussions on the ratification of the Euro-Mediterranean Association Agreement between the European Union (EU) and Egypt, the European Parliament adopted a resolution on the importance of Egypt resolving outstanding human rights issues, making explicit reference to the case of the 52 alleged gays⁷. The resolution provoked a written response to the President of the European Parliament from the Speaker of the Egyptian Parliament, Fathi Surur, who rejected the view that the men had been convicted for homosexuality. According to an article in the semi-official newspaper *Akhbar El-Yom* on 1 December, Fathi Surur argued that the men were convicted for “debauchery” and a lack of respect for religions, emphasizing that Egyptian law does not make reference to “sexual deviancy” – a pejorative word for homosexuality.*

Conviction under charges of “habitual debauchery”

⁷ European Parliament Resolution 29 November 2001, Association Agreement with Egypt (B5-0740/2001): European Parliament resolution on the conclusion of an Association Agreement with Egypt.

The case documents, including the records of the investigations, the medical reports and the verdict, leave no doubt that the men have been convicted for having engaged in consensual sexual relations with other men.

Convictions under the charge of “habitual debauchery” were mainly based on three kind of evidence all of which aimed to establish whether the men had had sexual relations with other men: namely confessions of the accused; medical examinations; and photographs. Confessions alone were considered by the court sufficient evidence to lead to a conviction.

Medical examinations, which allegedly found positive evidence of anal sex having been practised, alone led to the conviction of many of the accused. For others, medical examinations produced negative results; nevertheless, the court confirmed that such relations had taken place on the basis of confessions by the accused themselves. On numerous occasions, the court noted that anal examinations were not conclusive, stating that “it is possible for an adult male to carry out penetrative sodomy⁸ without that leaving a trace, by using lubricants and extreme care and with consent between the two parties”⁹.

⁸ The Arabic word “*liwaʿ*” has been translated as “penetrative sodomy”.

⁹ Quoted from the verdict (page 9). This quotation refers to one of the accused; similar remarks are made with regard to several other accused.

Some 800 photographs were presented to the court by the prosecution as evidence. A substantial number were taken from the house of the first defendant, Sherif Hasan Mursi Farahat, whose conviction was based in part on photographs of naked men. The verdict accuses him of having taken photographs featuring “naked boys and in sexual positions”. At present, Amnesty International is not in a position to confirm or refute accusations relating to these photographs allegedly featuring juveniles and confiscated in the house of the defendant. Therefore, the organization has not finalized its assessment of whether Sherif Hasan Mursi Farahat is a prisoner of conscience.

As to the conviction of the 21 men who have been sentenced to imprisonment of up to two years on charges of “habitual debauchery”, Amnesty International considers them prisoners of conscience, solely detained for their actual or perceived sexual orientation. Their imprisonment is in disregard of the right to freedom from discrimination on the basis of sex, which includes sexual orientation, as it is expressly recognized in Article 2 (1) of the ICCPR, to which Egypt is a state party.

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant,

without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

In 1994, the UN Human Rights Committee noted that reference to sex in the non-discrimination clauses of the ICCPR include “sexual orientation”, thereby affirming that the rights set out in the ICCPR cannot be denied to any individual because of their sexual orientation¹⁰.

Conviction under charges of “contempt of religion”

On the charge of contempt of religion, the court sentenced Sherif Hasan Mursi Farahat to a maximum five year sentence in addition to three years of police supervision following his release on the basis of both charges of “habitual debauchery” and “contempt of religion”. Mahmud Ahmad ‘Allam Daqla was convicted solely for “contempt of religion” and sentenced to a three year prison term.

The conviction of the two men on the basis of Article 98 (f) is a clear violation of the rights of the accused to freedom of thought, conscience and religion, as set out in national and international law. Article 18 of the ICCPR states:

¹⁰ Human Rights Committee, *Toonen v. Australia* (Views on Communication, No. 488/1992, adopted 31 March 1994)

“(1). Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

(2). No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

(3). Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

The right to freedom of conscience and religion is also guaranteed under Article 8 of the African Charter on Human and Peoples' Rights.

Amnesty International has repeatedly raised concerns about Article 98 (f) of the penal code which prescribes prison sentences of a minimum of six months and a maximum of five years for “contempt of religion”. This vaguely-worded article has been used as the legal pretext for the imprisonment of prisoners of conscience. Some people have been sentenced for the publication of materials discussing religious issues, whilst others have been imprisoned because their religious practice has been considered a criminal offence. Over the last three years, at least 26 people have been sentenced under Article

98 (f) for “exploiting religion for extremist ideas” to imprisonment of up to five years , though none of them has used or advocated the use of violence.

Amnesty International believes that Sherif Hasan Mursi Farahat and Mahmud Ahmad ‘Allam Daqla have been convicted under charges of “contempt of religion” for the non-violent expression of their real or allegedly held beliefs. Amnesty International considers Mahmud Ahmad ‘Allam Daqla a prisoner of conscience. The organization considers Sherif Hasan Mursi Farahat a prisoner of conscience in relation to his conviction on the charge of “contempt of religion”. However, in the light of the aforementioned photographs, the organization has not finalized its assessment of whether Sherif Hasan Mursi Farahat is a prisoner of conscience.

2. Imprisonment of a child

The case of 17-year-old Mahmud¹¹ is yet another sad example of the Egyptian authorities’ failure to protect children from human rights violations, including torture or ill-treatment.¹²

In September 2001 he was sentenced to three years’ imprisonment for “habitual debauchery” in connection with his alleged sexual

¹¹ In a previous AI document an incorrect age was given for Mahmud. His date of birth is 17 December 1983 and he was 17 years old at the time of his arrest.

¹² Other cases of human rights violations of children are documented in *Egypt: Torture remains rife as cries for justice go unheard* (AI Index: MDE 12/001/2001).

orientation solely on the basis of confessions he made in police custody but later withdrew in court¹³.

Mahmud was arrested on 10 May 2001 in the centre of Cairo. He was first held at al-Azbekiya police station, before being transferred to the State Security Intelligence Department in the Misr al-Gadida district of Cairo. There he was questioned in connection with investigations into the case of the 52 alleged gays. On 12 May Mahmud was brought before the State Security Prosecution along with the others and, like them, detained pending investigations. On 18 September Mahmud was sentenced for “habitual debauchery” to three years’ imprisonment with labour and a subsequent three-year term under police supervision by Cairo Juvenile Court. Following his conviction, he was transferred to a Juvenile Punitive Institution in al-Marg near Cairo. On 19 December the Cairo Juvenile Appeal Court for Misdemeanours ordered a reduction in Mahmud’s sentence to six months’ imprisonment.

In the opening session of the appeal trial on 31 October 2001, a trial observer mandated by four international human rights

¹³ Amnesty International adopted Mahmud as a prisoner of conscience. After having served more than seven months in detention, he was due to be released following the reduction of his sentence to a six-month prison term on 19 December 2001.

organizations, including Amnesty International¹⁴, was able to talk briefly to Mahmud who told him that he was beaten during the first days after his arrest. Further reports received by Amnesty International are consistent with these allegations and suggest that Mahmud was tortured during the initial period of his detention, including being beaten with a stick on the soles of his feet (*falaka*).

During the initial two weeks of detention he was denied the fundamental right to meet his family or be seen by a lawyer. Such disregard for basic safeguards in detention is extremely dangerous and put Mahmud at serious risk of further human rights violations. According to Rule 15 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”),

“(15.2.) The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile...”

Furthermore, Article 37 (d) of the UN Convention on the Rights of the Child, to which Egypt is a State Party, states that,

¹⁴ Lebanese lawyer Firas Abi-Younes observed a hearing in the appeal case of Mahmud on 31 October 2001 on behalf of Amnesty International, Defence for Children International, Human Rights Watch and International Federation of Human Rights. The trial observer was also present at a hearing on 15 August 2001 in the case of the 52 men on behalf of Amnesty International, Human Rights Watch and International Federation of Human Rights.

*(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance ...*¹⁵

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence.”.

For more than four months, Mahmud was detained at Tora Prison together with adults. Article 37 (b) of the Convention on the Rights of the Child stresses that deprivation of the liberty of a child should “be used only as a measure of last resort and for the shortest appropriate period of time”. Similar provisions are included in the UN Standard Minimum Rules for the Administration of Juvenile Justice and the UN Rules for the Protection of Juveniles Deprived of their Liberty. The Convention on the Rights of the Child provides clear guidelines for the protection of children in detention. According to Article 37 (c) of the Convention on the Rights of the Child:

¹⁵ See also Article 40.2 b of the Convention on the Rights of the Child: “Every child alleged or accused of having infringed the penal law has at least the following guarantees: (...)”

“Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances”.

Mahmud was subjected to a medical examination to establish whether he had practised anal sex; results were negative. However, confessions extracted from Mahmud in the absence of a lawyer or guardian were used as evidence in a trial leading to his conviction. His lawyer claims that these confessions were extracted under pressure and they were later withdrawn. Article 40.2 b (iv) of the Convention on the Rights of the Child stipulates that no child shall “be compelled to give testimony or to confess guilt”.

In the written verdict, the court responds to the defence’s request to withdraw Mahmud’s testimony from the evidence, arguing that it “is sure that the confession was given of his own free will and choice and was not the result of coercion”. It goes on to conclude that “the court has total freedom to assess the verity and value as evidence of the confession in criminal matters”¹⁶.

¹⁶ Quoted from the verdict (page 7).

Media reports in the Egyptian press seriously breached Mahmud's right to privacy, as guaranteed by the Convention on the Rights of the Child. Details of his trial were made public in newspapers, including the publication of a photograph of the juvenile in the semi-official newspaper *al-Ahram* on 19 September 2001. Article 40.2 b states that,

“Every child alleged or accused of having infringed the penal law has at least the following guarantees: (...)

(vii) “To have his or her privacy respected at all stages of the proceedings.”

3. Further arrests and detention of alleged gays

Amnesty International has received reports about the arrest and detention of other allegedly gay men. The most recent case was that of four men who were arrested on 10 November 2001 and detained in Bulaq Dakrur Police Station in Giza. They were subsequently brought before the public prosecutor who ordered extensions to the period of their detention. At the time of writing, their next hearing was scheduled for 30 December 2001. According to Amnesty International's information at the time of writing this report, the men have not been formally charged but remain in detention under investigation. However, it is thought that they are being held in connection with Article 9 (c) of the Law on Combatting Prostitution for “habitual debauchery”.

According to the prosecution, the men were arrested in an apartment belonging to one of the men. However, the men said that they were arrested in the street. The men alleged that they were subjected to torture, including suspension by the arms and beatings with sticks. No investigation is known to have been conducted into these allegations.

Recommendations

Amnesty International calls on the Egyptian authorities:

- to release immediately and unconditionally the 21 men sentenced to up to two years' imprisonment for their actual or perceived sexual orientation and Mahmud Ahmad 'Allam Daqla sentenced to three years' imprisonment for "contempt of religion", whom the organization considers prisoners of conscience;

- to release immediately and unconditionally anyone imprisoned or detained solely for their actual or perceived sexual orientation or gender identity. This includes those detained for consensual same-sex sexual relations in private, those held for advocating lesbian, gay, bisexual, transgender rights, and those detained for their political beliefs or activities under the pretext of charges of homosexuality.

- to review all legislation which, in violation of international human rights standards, could result in the prosecution and punishment of people solely for their sexual orientation or gender identity and for the

mere exercise of the right to freedom of thought, conscience and religion;

- to ensure that the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and the UN Convention on the Rights of the Child are implemented in law and practice;

- to ensure that all allegations and reports of torture or ill-treatment are promptly and impartially investigated and those responsible brought to justice. The authorities should establish effective independent mechanisms to monitor the actions of law enforcement and judicial officials to identify and eliminate all forms of discrimination in the criminal justice system, and remove any obstacles preventing those responsible for torture or ill-treatment being brought to justice;

- to end the practice of medical examinations to determine whether a suspect has engaged in anal sex, as these amount to cruel, inhuman and degrading treatment;

- to publicly condemn torture and make clear that any act of torture or ill-treatment, whoever the victim, will not be tolerated. They should ensure that they do not make any public statement or order

which could reasonably be interpreted as a licence to torture or ill-treat people because of their sexual identity. Those who make such statements should be held accountable for instigating, inciting or abetting torture.

- to ensure that all law enforcement personnel, prison staff, medical personnel and other relevant officials are trained in how to protect lesbian, gay, bisexual and transgender detainees from torture or ill-treatment, including when it is inflicted by other detainees;

- to guarantee all accused the right to a fair and free trial, including the right to appeal to higher tribunal; to ensure that all Egyptian courts conform to international standards for fair trial; and

- to improve safeguards for children, and guarantee that no juvenile is interrogated without the presence of a parent, a guardian or legal counsel.

Letters to the Egyptian authorities should be sent to:

His Excellency Muhammad Hosni Mubarak

President of the Arab Republic of Egypt

'Abedine Palace, Cairo, Egypt

Fax: ++202 390 1998

30 *Egypt: Torture and imprisonment for actual or perceived sexual orientation*

email: webmaster@presidency.gov.org