EGYPT

Update to 1983 report

an amnesty international update

Contents

PREFACE	2
AMNESTY INTERNATIONAL'S MEMORANDUM OF 26 AUGUST 1983	
O THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT	3
Introduction	3
Re-examination of legal issues on the basis of discussions with Egyptian authorities	3
Detention procedures	4
Legislation under which prisoners of conscience are charged and tried	5
Trials	5
Prisoners of conscience	6
Political prisoners	7
Allegations of torture and ill-treatment	8
The death penalty	9
Amnesty International's recommendations to the Government of the Arab Republic of Egypt	10
LETTER AND MEMORANDUM FROM THE GOVERNMENT OF THE	
ARAB REPUBLIC OF EGYPT TO AMNESTY INTERNATIONAL	11
Letter	11
Memorandum	11
Introduction	11
Examination of some legal issues	12
Detention procedures	12
Legislation under which prisoners are charged and tried	12
Trials	12
Prisoners of conscience	13
Political prisoners	13
Allegations of torture and ill-treatment	13
APPENDIX	14
Extract from Amnesty International's letter of 26 August 1983 to the	
Egyptian Minister of State for Foreign Affairs	14
Egyptian Ministry of Justice response to Amnesty International's letter of 26 August 1983	14

Preface

This publication updates Amnesty International's 1983 report Egypt: Violations of Human Rights, and draws on discussions and communications since then between the organization and the Government of the Arab Republic of Egypt.

After the report was published, an Amnesty International delegation went to Egypt for talks with officials there, between 17 and 25 May 1983. On 26 August 1983 a memorandum based on these talks and on tresh information received by the organization was submitted to the Government of Egypt for consideration and comment. This memorandum is reproduced in Chapter One.

The government's response was a memorandum dated 29 October 1983, prepared by Egypt's Ministry of Justice. Chapter Two contains the full text of this response and a covering letter from the Egyptian Minister of State for Foreign Affairs.

Amnesty International has continued to raise matters of concern with the Egyptian Government: an example appears in the appendix. This contains extracts from a letter of 26 August 1983 from the Secretary General of Amnesty International to the Egyptian Minister of State for Foreign Affairs and the 29 October 1983 response of the Ministry of Justice to this letter.

Amnesty International welcomes this dialogue with the Egyptian Government on human rights issues. However, several points in the government's memorandum call for comment, in particular:

- 1. Amnesty International disagrees with the Egyptian Government's view that Law 40 of 1977*, concerning political parties, "is fully consistent with the Covenant on Civil and Political Rights", and respectfully repeats its recommendation to the government that "all legislation relating to political activity be reviewed in the light of Egypt's ratification of the International Covenant on Civil and Political Rights".
- 2. Amnesty International maintains that the practice of ordering a retrial for the same offence—permitted by legal provisions related to the state of emergency—constitutes double jeopardy and is inconsistent with Article 14 (7) of the International Covenant on Civil and Political Rights. The Lyptian Government finds no such inconsistency.
- 3. Amnesty International remains concerned, despite assurances to the contrary by the Egyptian Government, that Pope Shenouda III, leader of the Coptic Orthodox Church, is still physically restricted. While the conditions of his confinement appear to have been somewhat ameliorated in recent weeks and months. Amnesty International still regards him as a prisoner of conscience and is working to have all the physical restrictions on him unconditionally removed.

There are provisions in Egypt's constitution that guarantee the rights and freedoms of the individual. Amnesty International considers that there have been a number of violations in recent years of those rights that fall within its mandate and has indicated in its memorandum and recommendations certain areas in which further safeguards might be introduced. In certain instances the organization has proposed practical steps to achieve this. Matters meriting special attention include safeguards against tor ture or ill treatment and protection from imprisonment of individuals who exercise non-violently their rights to freedom of opinion, expression and peaceful association. Amnesty International respectfully reiterates its request to the Egyptian Government that it seriously consider implementing the recommendations set forth in the organization's memorandum.

Amnesty International's memorandum of 26 August 1983 to the Government of the Arab Republic of Egypt

Introduction

On 24 June 1982 Amnesty International sent a memorandum to the Government of the Arab Republic of Egypt. The memorandum described Amnesty International's concerns in that country and proposed a series of recommendations to the Egyptian Government particularly in the light of its ratification of the International Covenant on Civil and Political Rights on 14 January 1982. Amnesty International's publication, Egypt: Violations of Human Rights, was based on the memorandum and appeared on 16 February 1983.

Amnesty International was subsequently invited by the Egyptian Government to send a mission to Egypt. Amnesty International welcomed this opportunity to discuss its concerns in depth with the relevant authorities, and to inform itself further about recent amendments in legislation and other developments. The Amnesty International mission took place between 17 and 25 May 1983 and concentrated on talks with high-level officials of the Egyptian Government and other authorities. Officials met by the delegates included the Ministers of the Interior and Justice, the Minister of State for Foreign Affairs, the Prosecutor General, the Socialist Prosecutor General, the Director of Prisons, and officials working at varying levels and offices of the niyaba* (see page 24).

This document draws on the discussions held during Amnesty International's mission to Egypt as well as on information gathered by Amnesty International since it submitted its memorandum to the Egyptian Government in 1982. Some of the concerns described in Amnesty International's publication have been

alleviated through changes in legislation and the release of large numbers of political prisoners. Other concerns remain.

This document updates Amnesty International's concerns in the Arab Republic of Egypt. While acknowledging those areas where improvements have occurred, at the end of this document, Amnesty International proposes a series of recommendations to the Egyptian Government which, if implemented, would provide important measures for the protection of human rights in Egypt.

Re-examination of legal issues on the basis of discussions with Egyptian authorities

Amnesty International's delegation had the opportunity to hold extensive discussions with the Egyptian authorities about legal issues related to some of Amnesty International's concerns. What follows is a summary of these concerns and Amnesty International's updated analysis of relevant legal provisions.

With respect to measures that are introduced in Egypt, as elsewhere, for the purpose of safeguarding internal security or to bring individuals

^{*} Sec pages 18 and 19 of Lgypt: Violations of Human Rights for a description of Law 40 of 1977

^{*} In order to avoid repetition of items or explanations referred to in the publication, it is recommended that this memorandum be read in conjunction with Egypt: Violations of Human Rights. All page references herein refer to that publication.

to justice. Amnesty International is concerned that adequate safeguards should be incorporated to ensure that:

- a) Individuals are not imprisoned for the nonviolent exercise of their rights to freedom of expression and peaceful association.
- b) Torture or ill-treatment of political or other detainees does not occur.
- c) Trials of political prisoners take place within a reasonable time and conform to internationally recognized norms.

Detention procedures

The state of emergency declared following the assassination of President Muhammad Anwar Sadat on 6 October 1981 was extended for a further year in October 1982 under Presidential Decree No. 480 of 1982. Several authorities, notably the Minister of the Interior, explained the need for the extraordinary measures afforded by state of emergency legislation in order to "combat terrorism". It was explained to the Amnesty International delegates that the Minister of the Interior was not using the full powers accorded to him under state of emergency legislation.

The Minister emphasized that dialogue with prisoners such as those accused in the Jihud cases was now an important factor in the government's dealings with them; and that it was an effective measure to prevent recurrence of such violence as took place in Assiut in October 1981, with subsequent mass arrests and allegations of torture and ill-treatment. The dialogue referred to by the Minister consisted of meetings arranged inside the prisons between the Minister of the Interior, the Director of Prisons, Muslim sheikhs and scholars, and those detained in the Jihad cases; and it concerned, among other things, Islam and the question of violence. This dialogue, according to the Minister of the Interior, resulted in a number of detainees renouncing their membership of the Jihad.

Amnesty International further notes that in June 1982 changes in legislation introduced significant safeguards for the individuals arrested and detained under state of emergency provisions. These changes are described below. Nevertheless, Amnesty International is concerned that legislation remains in force which permits the arrest and imprisonment of individuals for the non-violent expression of their con-

scientiously held beliefs, and which falls short of the standards set down in the International Covenant on Civil and Political Rights.

Amnesty International acknowledges improvements in the state of emergency provisions governing arrest and detention procedures under Law 50 of 28 June 1982, replacing Law 164 of 1981 and amending Law 162 of 1958 (see page 22)

Safeguards re-introduced through Law 50 of 1982 include the right of the person arrested to inform others of his situation and to contact a lawyer. An important new provision is that the detainee be informed in writing of the reasons for his arrest.

In addition Law 50 of 1982 reinstitutes the right of the detainee (arrested under Article 3 bis of Law 162 of 1958) to challenge his detention in a court of law (the Emergency Supreme State Security Court) in conformity with Article 9 (4) of the International Covenant on Civil and Political Rights, which states:

"Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

Under the provisions of Law 164 of 1981, now replaced by Law 50 of 1982, the detainee's sole recourse was to petition the President of the Republic for release at six monthly intervals (see page 22). Several of the authorities with whom the Amnesty International delegates discussed this previous procedure felt it had been an unconstitutional measure.

However, under provisions contained in Law 50 of 1982, the Minister of the Interior may appeal the court's decision to provisionally release a detainee (see page 20). If the Minister of the Interior contests the first court's decision on provisional release, the matter is referred to a second court of the same standing. While Amnesty International notes that the final decision to order release rests with the court, the direct intervention by a member of the executive authority introduces a political element into the judicial procedure which appears inconsistent with the spirit of Article 9 (4) of the International Covenant on Civil and Political Rights, given the non-judicial role of the Minister of

the Interior and the delay inherent in this procedure.

During 1982 certain aspects of a detainee's right to challenge his detention were brought into question. Previously some people detained under state of emergency provisions contested their detention before the Administrative Court of the State Council (page 23). (The Supreme State Security Court examines whether there is sufficient reason to grant provisional release, the Administrative Court examines whether the administrative decision to detain the individual is lawful.) This right was challenged in 1982, when the representatives of the government argued that, under Law 50 of 1982 (Article 3), the Emergency Supreme State Security Court alone is competent to examine appeals against the decisions and orders made pursuant to Article 3bis of Law 162 of 1958 as amended (i.e. governing arrest and detention), and that any cases or appeals should be referred to that court to the exclusion of others.

However, the Administrative Court upheld its right to examine such cases, and considered that the provision contained in paragraph 2 of Article 3 of Law 50 of 1982, which provides that the Emergency Supreme State Security Court has sole jurisdiction in such matters, was inconsistent with Articles 68 and 172 of the Constitution which state:

(Article 68)

"Litigation is a right safeguarded and guaranteed for all, and every citizen has the right of recourse to the Judiciary. The State ensures the contiguity of the courts of justice to the litigants, as well as speedy decisions in law-suits. It is forbidden to include in laws, any provisions, which exclude the supervision of the judiciary."

(Article 172)

"The State Council is an independent judicial body and is concerned with settling administrative disputes and disciplinary cases. The law defines its other functions."

The Administrative Court passed all documents on the case to the Supreme Constitutional Court to decide on the constitutionality of this provision of Article 3 of Law 50 of 1982. The decision has yet to be made.

Legislation under which prisoners of conscience are charged and tried

Amnesty International is concerned that the legislation providing for punishment of non-violent political activity which was quoted in its publication (see pages 17 and 18) remains in force. Amnesty International believes that legislation such as Law 40 of 1977 (Articles 22 and 23) is inconsistent with Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights and is currently being applied to at least two cases of non-violent political activity (see below).

Amnesty International delegates discussed this legislation in some depth with government officials, and were informed by the Minister of Justice that Law 40 of 1977 was necessary in order to avoid proliferation of political parties in Egypt. In this regard, Amnesty International respectfully reiterates its recommendation (page 3) that all legislation relating to political activity be reviewed in the light of Egypt's ratification of the International Covenant on Civil and Political Rights.

Trials

Amnesty International has acknowledged the high degree of independence of the judiciary in Egypt (page 27). This independence was frequently affirmed by authorities met by Amnesty International delegates during the mission, and has also been the view of lawyers interviewed by Amnesty International over a number of years. Amnesty International delegates have observed trials of prisoners of conscience in Egypt in 1975, 1978 and 1979, in military and state security courts. The observers consistently reported that the court proceedings appeared to give due respect to the rights of the defence.

Amnesty International remains concerned however that prisoners of conscience and other political prisoners convicted by Emergency Supreme State Security Courts or while a state of emergency is in force are denied the right of appeal (pages 23 and 24), contrary to Article 14 (5) of the International Covenant on Civil and Political Rights which states:

"Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

In addition to this lack of right of appeal, or

even review by the Court of Cassation, (see page 23), there is an element extraneous to the judicial process which may be seen to call into question the impartial functioning of that process: the power of the executive to order a retrial under Article 14 of Law 162 of 1958, as amended (see page 24). An example of this is the case of 176 people described on page 9 of the publication. Amnesty International considers this provision to be in violation of Article 14 (7) of the International Covenant on Civil and Political Rights, which states:

"No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country."

In addition Article 14 (7) of the Covenant is intended to protect the individual from harassment by repeated criminal prosecutions, a phenomenon which has occurred in Egypt, as described by Amnesty International on pages 18 and 19 of its publication.

In the course of the Amnesty International delegates' discussion of this provision the Minister of Justice explained that the decision of the first court was not considered "final" until it had been reviewed by the President. In response to this Amnesty International would maintain, however, that under provisions of the International Covenant on Civil and Political Rights such a non-judicial review cannot prevent the finality of a conviction or acquittal pronounced by a court, and that a retrial for the same offence as it occurs in Egypt constitutes double jeopardy.

It is also of concern to Amnesty International that the power accorded to the President of the Republic to review decisions of the courts appears to have been extended to the Prime Minister to whom, in his capacity as Deputy General Military Governor, all fields of competence attributed to the President of the Republic under Law 162 of 1958 are delegated (Presidential Decree No. 3 of 1982).

The Egyptian authorities drew the attention of Amnesty International delegates to the fact that Articles 14 (5) and 14 (7) of the International Covenant on Civil and Political Rights are not included among the rights from which States Parties cannot, under any circumstance, derogate. In response to this Amnesty Interna-

tional respectfully submits that, according to the text and spirit of the Covenant, certain rights may be derogated from under a state of emergency, but only to the extent and for the period of time that are strictly necessary in order to meet the needs of the emergency. In addition, Article 4 (3) of the International Covenant on Civil and Political Rights states that:

"Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation."

To Amnesty International's knowledge Egypt has not adopted these measures, and it must therefore be presumed that the obligations contained in the Covenant apply to it without exception.

Regardless of whether or not a state of emergency is justified in Egypt, it is the view of Amnesty International that there are no reasonable grounds to justify depriving accused persons of their right to appeal, or submitting them to double jeopardy, contrary, in both cases, to internationally accepted standards for fair trial.

Prisoners of conscience

Under Article 1 (a) of its Statute, Amnesty International works, irrespective of political considerations, for the release of prisoners of conscience. Prisoners of conscience are defined as persons who are "imprisoned, detained, or otherwise physically restricted by reason of their political, religious or other conscientiously held beliefs or by reason of their ethnic origin, sex, colour or language, provided that they have not used or advocated violence".

At the time of writing there is only one person in the Arab Republic of Egypt whom Amnesty International considers a prisoner of conscience. The Coptic Orthodox Pope Shenouda III has remained at a monastery in Wadi Natroun since September 1981, and was adopted

as a prisoner of conscience after consideration and assessment of information from many sources. The case was further discussed by Amnesty International delegates during their mission. Amnesty International is concerned that, although no written order appears to exist, the Coptic Pope remains under guard and physically restricted to the monastery, and any visitors must first obtain verbal, if not written, authorization. Amnesty International believes that Pope Shenouda's confinement to the monastery was because of the role he played as leader of the Coptic community, and that he did not use or advocate violence.

The statement by the Egyptian authorities that the Coptic Pope has chosen to remain in the monastery and is not being restricted is, in Amnesty International's view, inconsistent with the circumstances of his confinement.

Amnesty International continues to urge the immediate lifting of all physical restrictions imposed on Pope Shenouda III, in accordance with Article 1 (a) of its Statute.

Amnesty International is currently monitoring three trials involving approximately 250 people, all of whom are believed to be provisionally at liberty at present. Amnesty International is concerned that, if convictions ensue, these people will become prisoners of conscience.

Two of these trials (Supreme State Security Case No. 632 of 1979 and Supreme State Security Case No. 207 of 1981) involve people accused of political activities within the framework of the banned Egyptian Communist Party. The first case relates to 30 people whose alleged activities took place between the end of 1977 and August 1979, when they were arrested. The second relates to alleged activities between the end of 1979 and March 1981 by 47 people. Some individuals are accused in both cases, and have previously been tried and acquitted in similar cases. Legislation under which they are charged includes Article 98A of the Penal Code (page 17) and Articles 22 and 23 of Law 40 of 1977 (page 18).

Both these cases are currently being examined by the same court acting as Supreme State Security Court in case 632 of 1979, and Emergency Supreme Security Court in case 207 of 1981 (page 23).

The third trial which may result in prisoners of conscience is the case of 176 people arrested in connection with the so-called Food Riots of

18 and 19 January 1977 (page 9). This case is currently undergoing a second trial after the President of the Republic vetoed the Supreme State Security Court's decision in April 1980 to acquit 156 defendants and sentence the remaining 20 defendants to either one or three years' imprisonment. This case is an illustration of the non-judicial intervention by the executive which Amnesty International finds incompatible with Article 14 of the International Covenant on Civil and Political Rights.

Political prisoners

An important distinguishing factor between prisoners of conscience and other political prisoners is that, under Amnesty International's definition, prisoners of conscience "have not used or advocated violence". Amnesty International does not work for the release of political prisoners who are not prisoners of conscience, but does advocate fair trial within a reasonable time for all political prisoners (Article 1 (b) of its Statute). In addition it opposes torture or other cruel, inhuman or degrading treatment or punishment of all prisoners, and the infliction of the death penalty in all cases, without reservation (Article 1 (c)).

Amnesty International has insufficient information at its disposal to assess, in many current individual cases, whether the prisoner is a prisoner of conscience.

According to official figures, more than 4,000 political prisoners, including prisoners of conscience, were released during 1982. These included people arrested in September 1981 by order of President Sadat, as well as some of those arrested following his assassination on 6 October 1981, when the state of emergency was re-imposed. The Minister of the Interior informed Amnesty International delegates that approximately 40 people remained in detention without charge or trial, and that they had been arrested after October 1981. Amnesty International believes that they should be charged and tried expeditiously or released.

In addition, several hundreds are facing trial in connection with the violent events of Assiut and on other charges carrying lesser penalties connected with the *Jihad* organization. Amnesty International's concerns with respect to these defendants are that:

as they are to be tried by the Emergency

Supreme State Security Court, they will have no right of appeal against their sentence, contrary to internationally recognized norms for a fair trial, as explained above;

- many of those currently facing trial claim to have been subjected to torture or ill-treatment. Amnesty International commends the decision of the court to permit defendants to undergo forensic medical examination, but urges that a full public inquiry be made into all allegations of torture or ill-treatment;
- some defendants may face the death penalty. Originally the prosecution demanded the death penalty for 299 out of 302 defendants. Recent reports indicate that the number has since been reduced to 57.

Allegations of torture and ill-treatment

In its publication Amnesty International indicated the need for an independent and impartial body to investigate and initiate inquiries into all allegations of torture and ill-treatment. In the course of discussions held during Amnesty International's mission to Egypt, various authorities explained that these duties, among many others, fall within the responsibility of the nivaba. Amnesty International considers that a vital element of any institution undertaking such inquiries is that it act and be seen to be acting impartially and enjoy the confidence of all individuals or organizations with which it works. Whether or not the nivaba fulfils these conditions was an important subject for examination by the Amnesty International delegates.

The Prosecutor General explained to Amnesty International delegates that the *niyaba* investigates and assesses all the evidence with a view to ensuring that the guilty are punished and the innocent freed and that above all it represents the public interest. The *niyaba* acts as investigating judge and, if it deems it necessary for the interests of state the defendant can be denied immediate access to a lawyer.

Since it is Amnesty International's experience through its research conducted worldwide that torture or ill-treatment is frequently inflicted in order to extract confessions, the Amnesty International delegates raised numerous questions

about the law and practice in Egypt regarding confessions. The Prosecutor General explained that if the prisoner is not considered dangerous, the actual questioning of the prisoner takes place at the nivaha office, and that it is the nivaha's responsibility to ensure that if the detainee confesses, the confession is clear and specific and that it was not extracted under pressure, through physical violence, threats or other harassment. He explained that the defendant may withdraw a confession at any time, and a confession which has been obtained through illegal means is not accepted as valid by the courts. In most cases the nivaba asks to see detainees within 24 hours of arrest (this may vary according to the detention procedure applied). The niyaba representative may undertake a complete visual inspection of the detainee and record his complaints and any trace of physical injury in evidence. If necessary, he may call a forensic medical doctor to examine

During the mission Amnesty International delegates made efforts to inform themselves of the procedures set down and practical measures followed by the *niyaba* in the accomplishment of its tasks in prison inspection and the investigation of complaints. The Amnesty International delegates felt that prison inspection by an impartial body representing the public interest was important. The Amnesty International delegates were informed that the institution of the *niyaba* is designed to perform this function. In order to examine this issue the delegates had talks with several *niyaba* representatives with different areas of responsibility.

Frequent and previously unannounced visits for the purpose of prison inspection can act as an important safeguard for the correct treatment of detainees. Amnesty International considers this to be specially important for those prisons which are outside the administrative system of the Bureau of Prisons, such as the Citadel, and where untried detainees are held. In this regard Amnesty International notes the decision of the Egyptian Government to demolish the Citadel Prison within one year, and commends its decision to revise the prison administrative system in order to bring all places of detention under the authority of the Bureau of Prisons.

According to the *nivaba*'s own manual of rules and procedures, *Ta'alimat an Nivaba*, the

month. The prison visits should be conducted in such a way as to ensure that no one is wrongfully detained; it should receive complaints from prisoners and establish that the treatment of prisoners is in accordance with prison regulations. The *niyaba* should also ascertain that the necessary records are maintained in the prison.

Article 1759 of Ta'alimat an-Niyaba states that if the inspection reveals that all laws and regulations are being applied correctly, and there are no outstanding observations, no written report is necessary, and that a record that the visit was undertaken in the prison log is sufficient. Otherwise a copy of the report should be sent to the Office of the Prosecutor General and Attorney General.

The Amnesty International delegates discussed the frequency of the *nivaba*'s prison visits with the Minister of Justice, who offered the suggestion that they might be increased in number

Amnesty International delegates sought precise written instructions on the way in which the inspections are to be carried out, but it appears that such instructions do not exist, although new members of the nivaba do not undertake prison inspection on their own until they have accompanied more experienced members on such inspections. In view of this apparent lack of written instructions and in the light of reports from lawyers and former detainees that nivaba visits were conducted less frequently and less thoroughly than might be necessary Amnesty International respectfully suggests that the procedures governing the nivaba's duties concerning prison inspection and the investigation of prisoners' complaints be carefully reviewed, and that detailed instructions be drawn up on the conduct of thorough prison inspection and the manner of dealing with prisoners' complaints, particularly those concerned with torture, ill-treatment or illhealth.

Amnesty International noted in its June 1982 memorandum to the Egyptian Government and in its later publication that the organization received allegations of torture or ill-treatment between the period October 1981-March 1982. Amnesty International did not indicate that torture of political detainees took place routinely in Egypt, but expressed deep concern that, in contrast to preceding years, serious and

consistent allegations of torture and ill-treatment were received by the organization during this period.

However, since Amnesty International's report was published in February 1983, the organization has received no allegations of torture*, although there have been occasional reports of ill-treatment of political detainees currently standing trial, on their return from court to the prison. It is Amnesty International's understanding that these reports may have been investigated by the *nivaha* according to procedures mentioned above. Amnesty International respectfully recommends that the results be made public.

Amnesty International welcomed the decision of the Supreme State Security Court to permit detainees accused in the Jihad case (comprising 302 defendants) to undergo medical examination by forensic medical doctors, as a result of their complaints of torture or ill-treatment. Amnesty International respectfully recommends that the nivaba conduct a thorough investigation into these complaints, taking into account the forensic medical reports, and that the findings be made public. In conformity with its role of representing the public interest the nivaba should take steps to bring to justice those responsible for the infliction of torture or illtreatment, and ensure that the victims are duly compensated. It is Amnesty International's view that such measures would constitute a practical demonstration of the Egyptian Government's declared intention of 24 June 1981 to comply with the United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by the General Assembly on 9 December 1975 in Resolution 3452 (XXX)).

The death penalty

In response to Amnesty International's call (page 5) for the commutation of all outstanding death sentences and for a moratorium on all executions until serious consideration could be given to the question of abolishing the death

^{*} Allegations of torture received by Amnesty International after submitting this memorandum were subsequently raised in a letter from the Secretary General to the Egyptian Government on 22 September 1983.

penalty, the Egyptian Government explained that its retention of the death penalty was based on Islamic law which, under Egypt's Constitution, is the main source of legislation.

Under Article 1 (c) of its Statute, Amnesty International opposes the application of the death penalty in all cases, without reservation. It considers the death penalty to be the ultimate cruel, inhuman and degrading treatment or punishment. Amnesty International therefore continues to urge commutation on humanitarian grounds of all death sentences passed in Egypt which come to its attention.

Amnesty International's recommendations to the Government of the Arab Republic of Egypt

Since Amnesty International submitted its first memorandum to the Government of the Arab Republic of Egypt in June 1982 it has commended the release of at least 4,000 political prisoners, and acknowledged other improvements relating to amendments to certain legislation, and allegations of torture and ill-treatment. In addition Amnesty International has welcomed the opportunity to hold extensive discussions with members of the Egyptian Government.

Following Amnesty International's updated analysis of its concerns in the Arab Republic of Egypt, described in the preceding pages, Amnesty International respectfully recommends:

- 1. That a review be conducted of all legislation concerned with political activity with particular reference to Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights to ensure:
 - the protection from arrest and imprisonment of individuals non-violently exercising their human rights;
 - the full observance of the principle of independence of the judicial function;
 - the right of the defendant in all cases

to appeal against his sentence before a court of law.

- 2. That all physical restrictions imposed on the Coptic Orthodox Pope Shenouda III be lifted in accordance with Article 46 of the Constitution and Article 18 of the Covenant.
- 3. (a) That a thorough inquiry be set up into all allegations of torture and ill-treatment since October 1981, and that the procedures as well as the results of the investigation be made public;
- (b) that any officer responsible for the infliction of such treatment be brought to justice in accordance with Article 126 of the penal code;
- (c) that any victim of torture or illtreatment be duly compensated.

Amnesty International believes that such a thorough inquiry may also bring to light additional ways to protect detainees from torture or ill-treatment.

- 4. That the *niyaba*'s procedures in the field of prison inspection and investigation of prisoners' complaints be reviewed with the aim of:
 - increasing the frequency of visits by the *niyaba* to inspect prisons, particularly those such as the Citadel and Tora Reception Prison, where untried detainees are commonly held (*niyaba* visits are now stipulated to occur at least once each month);
 - requiring thorough reports by the *nivaba* of each prison visit, ensuring that such reports are duly considered by a central authority, and making such reports available to lawyers and other relevant bodies;
 - providing instructions for immediate and thorough investigation of prisoners' complaints of torture, ill-treatment or ill-health, and making these findings public.

Letter and memorandum from the Government of the Arab Republic of Egypt to Amnesty International

A letter dated 30 October 1983, signed by Dr Boutros Boutros Ghali, Egypt's Minister of State for Foreign Affairs, and addressed to Amnesty International's Secretary General stated:

"With reference to your letter no. MER,SGO,EGYPT,JR,SP dated August 26, 1983, and the annexed memorandum, prepared by your Organization for consideration by the Government of the Arab Republic of Egypt, I would like at the outset, to express my appreciation for the interest shown by your Organization in this matter.

"Needless to say that the noble cause of

Amnesty International is shared and supported by the Egyptian Government by virtue of its constitution and legislation as well as its firm commitment to international obligations.

"In this context, I would like to assure you once again of our full cooperation and assistance in the fulfilment of our common cause. In this respect your delegation was received in Egypt, in May 1983, and given full support.

"Enclosed, please find a memorandum, prepared by the Egyptian Minister of Justice, together with an annex containing the latest information required on some particular cases. I am sure that it will help in alleviating any concern."

The following communication dated 29 October 1983 was received by Amnesty International:

6 Memorandum prepared by the Egyptian Ministry of Justice

I. Introduction:

Respect and application of law is one of the fundamental elements of the Constitution of the Arab Republic of Egypt, which stipulates that the supremacy of law must prevail in all activities performed by the state.

The Egyptian legal system is based on full respect of human rights. The Constitution embodies certain provisions in this respect, particularly Articles 42 and 57.

All legislation in force is based on the constitutional concept of

ensuring personal freedom of individuals.

- 2. A very illustrative evidence of the Egyptian commitment to human rights is that Egypt had acceded to the relevant international treaties, namely the International Covenant on Civil and Political Rights as well as the International Covenant on Economic Social and Cultural Rights, on 1st. January 1982.
- 3. It is worth mentioning that according to Article 151 of the Constitution, all international agreements to which Egypt is a party become an integral part of national legislation, thus acquiring the force of law.
- It should also be noted that the Egyptian legal system is based on the civil law system in which the prosecution (Niaba) corresponds to the "Parquet" in the French system. No argument could be raised to suggest that this institution in countries under civil law system does not ensure the full protection of freedom of individuals. Under the Egyptian legal system every detainee should be presented to the district attorney within 24 hours. He could order the detention to be prolonged for not more than 4 days. A further prolongation is only possible by a decision of the court.

II. Examination of some legal issues.

1. Detention Procedures:

The legislation organizing the state of emergency (Law no. 162, 1958) amended by Law no. 50 (1982) comprises considerable safeguards which are fully consistent with the International Covenant on Civil and Political Rights.

Reference should be made to a new law no. 194 (1983)* which abolished two laws, namely no. 34 (1972) and no. 2 (1977) on the protection of national unity and the diffusion of rumours affecting the security of the State and certain other offences.

As for the authority of the Minister of Interior to appeal the court's decision to provisionally release a detainee, it should be emphasized that the final decision to order release rests with the court.

2. Legislation under which the so-called prisoners of conscience are charged and tried:

The purpose of Law no. 40 (1977) is to establish rules governing political parties and is issued for the purpose of protecting national unity and is fully consistent with the Covenant on Civil and Political Rights.

3. Trials:

Despite the fact that [a] state of emergency is in force, all trials in this regard are performed before judiciary tribunals which are fully and completely independent of the executive authorities. It is evident that this constitutes a considerable safeguard for the citizens.

Although Article 4 of the Covenant on Civil and Political Rights permits the suspension of certain legal requirements and procedures, the Egyptian authorities used this provision only in rare cases directly affecting the security of the State.

As to the power of ordering a retrial under Article 14 of law 162 of 1958, in some exceptional and

very limited cases, it should be stressed that the order of a retrial brings the case under the consideration of a judiciary tribunal which is a very important and sufficient safeguard.

This does not constitute a contradiction with Article 14 (7) of the Covenant which meant to ensure that nobody could be punished more than once or retried after being finally convicted or acquitted. The word "finally" does not apply in our case because the retrial may be ordered in these exceptional cases.

III. Prisoners of conscience

As for the case of the Coptic Orthodox Pope Shenouda III, he is staying voluntarily at Wadi Natroun Monastery, for reasons of his own concern.

Furthermore, several foreign leading cardinals together with officials from the Council of Churches were received by the Pope. He still receives foreign as well as national guests.

IV. Political prisoners

The Egyptian concerned authorities are taking necessary measures to expedite the trial of 27 persons remain-

ing so far in detention. The cases of those 27 persons are being investigated in view of their possible and imminent release.

V. Allegations of torture and ill-treatment

According to the Egyptian judiciary system, the prosecution has the responsibility and the authority to investigate and initiate inquiries about any allegation of torture or ill-treatment.

This body is an integral part of the judiciary system. It performs its functions in complete independence of the executive authority, according to law no. 46 (1972).

The rights of individuals in this regard, are protected under the provisions of the Constitution. Article 57 prohibits any violation of the personal freedoms of individuals. Crimes of violation of these freedoms shall not be subject to any prescription.

Article 42 forbids any physical or moral assault on the detained persons and necessitates that the detention should take place in public prisons.

These provisions of the Constitution together with legislation in force are to ensure the independence and impartiality of the prosecution in investigating any allegations of torture or ill-treatment which are classified in the Egyptian penal law as serious criminal offences. 9 9

^{*} This law was promulgated after Amnesty International had submitted its 26 August 1983 memorandum.

Appendix

A. In a letter dated 26 August 1983 and addressed to Dr Boutros Boutros Ghali, Minister of State for Foreign Affairs, Amnesty International sought clarification on the following two issues:

"The first concerns approximately 40 juveniles who, according to some reports, have been detained in connection with the *Jihad* cases, but without charge or trial, for many months, some of them possibly since October 1981. Amnesty International respectfully requests that the Egyptian Government look into these cases as a matter of some urgency, with a view to charging the individuals concerned and bringing them to trial in the very near future, or to releasing

B. The following was sent on 29 October 1983 by the Egyptian Ministry of Justice to Amnesty International in response to its letter of 26 August 1983.

66 Annex

Latest Information on some Particular Cases.

1. Juvenile defendants in Al-Jihad Case:

The Attorney-General at the High State Security Prosecution decided, on 6th. June 1982, to refer those defendants to Cairo Juvenile Court to stand trial for the accusations attributed to them.

All those defendants had been released before the above-mentioned decision.

them. In this regard, Amnesty International would appreciate being informed of the disposition of these cases.

"The second matter concerns the reported deaths, while in detention, of the following individuals after their arrest in October 1981:

- -Rifa'iy Ahmed Sadiq
- -Ahmed Youssef Hegazi
- —Hatem Zaki Nasif
- -Bakr Abdul Fadhil
- -Ali Mahmoud.

"Amnesty International respectfully requests clarification of these reports, including the results of any investigation initiated into the circumstances of the deaths."

2. Decease of some detained defendants:

a. The Southern Cairo Prosecution investigated the decease of Rifai Ahmed Sadek, who died at Toura prison and who was detained for possessing unlicensed arms and ammunition (Case No. 5044, 1981, Agowza).

The outcome of investigations (listed under No. 3183, 1982, Al-Khalifa) was a decision on 28 Oct. 1982 to file the case as there was no evidence of a criminal act.

However, the Prosecutor-General

cancelled this decision on 8th. Jan. 1983 and instructed review of investigation.

- b. The General Prosecution investigated the decease at Cairo University Hospital of Ahmed Youssef Soliman Hegazy. Investigations revealed that he was not detained and that his decease was due to disease (chronic kidney failure, bleeding from digestive canal and high blood pressure). No accusation was levelled to him in the Jihad Case No. 462, 1981 and no detention warrant was issued against him.
- c. The General Prosecution investigated the decease of Hatem Zaki Nasser, accused in the Jihad Case No. 462, 1981. The medical report stated that he was suffering from a bilharziac liver and a spleen inflammation for several years. Death was due to an acute failure of liver function.
- d. The General Prosecution is investigating the complaint No. 5, 1982 filed by next of kin of the deceased Bakr Abdel Fadeel Ayatt Rashwan, in which they

alleged that death was not due to a heart and blood-circulation failure and an acute nervous shock (as stated in the medical report), but that it was due to torture and beating by policemen.

Anatomists stated that the request for re-examination of the body was received after the body had been buried too long for a satisfactory post-mortem to be carried out. However, they stated that anatomy might show bone fractures. Investigations will be completed after receiving relevant medical report.

e. The General Prosecution is examining file No. 329, 1983 to see whether Ali Mahmoud Mohamed Ahmed—a member of Al-Jihad Organization—had been killed during participation in the violent incidents which took place in Assiut on 8 Oct. 1981.

His left index fingerprint was identical to that lifted from body No. 57. Nevertheless, his next of kin and his colleagues at Faculty of Medicine - Assiut did not recognize the body to be his. Investigations continue. 9