TABLE OF CONTENTS

State Injustice: Unfair Trials in the Middle East and North Africa

Introduction

'Abd al-'Aziz al-Khayyir, a Syrian medical doctor, is serving his third year of a 22 year prison term for having peacefully expressed his political views. Muhammad Mahdi 'Abdullah Makhrouf, a farmer in Yemen was tortured, convicted, acquitted and tried again in absentia on the same charge. He is now on death row. Ahmad Qatamesh, a Palestinian, is the longest serving administrative detainee in Israel, held without charge or trial since 1994. Fatima Ramez Tafla, mother of an eight year old son, received a death sentence amended to a 10 year prison sentence after a one hour trial. She is held in Kuwait Central Prison. Abdelsalam Yassine has been a prisoner in his own home in Morocco, and denied contact with his friends and family, since 1989. No one has told him why.[1] .These people are from different backgrounds and from different countries in the Middle East and North Africa, but they have something in common: they have all been denied their fundamental right to a fair trial.

The right to a fair trial is a basic human right. The international community has developed a wide range of standards to ensure fair trials, which are designed to protect people's rights from the moment they are arrested, while they are in pre-trial detention, when they are being tried, and through to their final appeal. Breaches of these standards are a major concern for Amnesty International around the world because they represent serious violations of human rights in and of themselves, and because they contribute to a wide range of other human rights violations. They result in the imprisonment of prisoners of conscience -- people who should never be tried in the first place, but who nevertheless end up being convicted of criminal charges. [2] They perpetuate discriminatory laws and practices and facilitate abuses against vulnerable groups of society. They encourage torture, as defendants are held incommunicado and because officials know that statements extracted under duress will be enough to secure conviction. They result in people suffering punishments that amount to torture or to cruel, inhuman or degrading punishments, including amputations, flogging, stoning and the death penalty. The horrifying injustice of these punishments, which Amnesty International opposes in all instances, is magnified still further when they are imposed after an unfair trial.

[1] See separate Appeals leaflets AI MDE 01/03/98

[2] Prisoners of conscience are people detained anywhere for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status - who have not used or advocated violence.

This report demonstrates the range of violations of international fair trial standards in the Middle East and North Africa.[3] In some countries there is a sophisticated legal and judicial framework, where the Constitution and law provide for adequate safeguards for detainees. However, these may not be applied in practice, particularly where there is interference by the executive branch of government in the judicial process. In other countries there is no independent judicial system, little clarity in the law, and abuses of international fair trial standards are tolerated or even encouraged by the authorities.

Across the region people suffer arbitrary arrest and detention on political and religious grounds. In many countries they are held incommunicado, without access to relatives, lawyers or doctors, in the weeks, months or even years before they are tried. Some people are held for prolonged periods without charge or trial, or are administratively detained, often repeatedly, outside any judicial process. Such conditions, whenever they occur, are known to facilitate torture.

Trials themselves often fall dismally short of the minimum standards for fair trial. The independence of the judiciary is a fundamental prerequisite for fair trial, and is a principle enshrined in constitutions across the region. Upholding this standard, some judges in some countries have acquitted prisoners whose “confessions” they found were extracted under torture or coercion. They have rejected as unlawful detention orders issued by security and police forces, where the grounds for detention were not sufficient to deprive the individuals of their liberty. Other judges, however, have routinely demonstrated their lack of impartiality, succumbing to the expectations or pressures exerted by the executive authority, sometimes even determining sentence before the trial has ended. This violates one of the cornerstones of a fair trial -- the right to be presumed innocent until proven guilty.

In some countries "confessions" extracted under torture may be accepted as valid prosecution evidence and even as the sole basis of conviction. In court, defendants are denied access to lawyers, or their lawyers are given insufficient time or access to documents to prepare the defence. Defence witnesses may be intimidated or prevented from appearing in court. Hundreds of people are sentenced each year to death or to corporal punishments amounting to cruel punishments or torture after trials that breach minimum standards for fair trial, let alone the special safeguards that are required, for example, in cases involving the death penalty.

[3] In this report, the "Middle East and North Africa" refers to the states and territories of: Algeria, Bahrain, Egypt, Iran, Iraq, Iraqi-Kurdistan, Israel and the Occupied Territories, Jordan, Kuwait, Lebanon, Libya, Morocco/Western Sahara, Oman, Palestinian Authority-controlled areas, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates and Yemen.

Most laws in the region allow for public trials, yet in practice hearings are often held in secret or *in camera* for no other reason than to conceal from the outside world the grossly unfair procedures that are being followed. Unfair trials are virtually guaranteed in special courts, which exist in well over half the countries of the Middle East and North Africa and operate outside the normal judicial process. Judges in these courts frequently lack independence and impartiality. In some of the special courts, people facing grave charges may be tried and sentenced within a matter of hours or even minutes. In most, the right to appeal against conviction and sentence is denied.

Emergency and special procedures have been introduced in several states. Such measures, which are allowed by international law only in extreme circumstances and for limited periods, have been maintained in some countries for years or even decades (as in Israel, Egypt and Syria), or have been integrated into permanent legislation (as in Algeria). What are supposed to be temporary measures in fact become institutionalized and the norm. When states of emergency do arise, protection of human rights becomes even more important, not less, yet many of the region's governments have used political crises to remove basic safeguards against abuses.

Every government has the right and duty to bring to justice those responsible for crimes. However, when people are subjected to unfair trials, justice cannot be served. Inevitably, innocent people will be condemned, including prisoners of conscience. But in all cases, if those accused of crimes face unfair trials, it becomes impossible to know whether those who are convicted are in fact guilty. Doubt is thrown up on all convictions, regardless of the facts of each case.

Amnesty International believes that if the right to fair trial is strictly observed this will reduce significantly the widespread and gross human rights violations prevailing throughout the Middle East and North Africa. It is on this basis that the organization is publishing this report together with a set of recommendations to all governments in the region designed to redress the situation.

Chapter 1: Minimum requirements for fair trial

There are at least two requirements without which no trial can be fair or seen to be fair. The first is that trial proceedings must be wholly guided from start to finish by fair trial standards established by the international community. The second is that such standards must be implemented by an independent and impartial judiciary.

International fair trial standards

The right to a fair trial is clearly spelled out in the Universal Declaration of Human Rights (UDHR), which was adopted by the UN General Assembly and which every government in the world is expected to respect. Article 10 states:

"*Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*"

The right to a fair trial is a norm of international human rights law designed to protect people from the unlawful and arbitrary curtailment or deprivation of other basic rights, most notably the right to life and liberty. It is guaranteed under Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which provides that:

"*...everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*"

The rights guaranteeing a fair trial are spelled out in the ICCPR. Other important standards developed by the international community include:

- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles);
- UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules);
- UN Basic Principles on the Role of Lawyers;
- UN Basic Principles on the Independence of the Judiciary;
- UN Safeguards guaranteeing protection of the rights of those facing the death penalty (UN Safeguards);
- UN Guidelines on the Role of Prosecutors;
- UN Basic Principles for the Treatment of Prisoners;
- UN Code of Conduct for Law Enforcement Officials.

In addition to the UDHR and the ICCPR, standards covering relevant and important principles with regard to children and juvenile detainees include:

- UN Rules for the Protection of Juveniles Deprived of their Liberty;

- UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines);
- UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules");
- UN Convention on the Rights of the Child.

Standards that are important in relation to non-discrimination against women in the context of legal proceedings include:

- UN Convention on the Elimination of All Forms of Discrimination against Women;
- UN Declaration on the Elimination of Discrimination against Women.

There are also crucial safeguards to prevent torture with provisions relating to trial procedures:

- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture);
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Declaration against Torture);
- UN Convention on the Rights of the Child (which has been ratified by all states in the region).

Among the fundamental rights addressed by these standards are the following:

- **Freedom from arbitrary arrest or detention:** Article 9(1) of the ICCPR states that: "*No one shall be subjected to arbitrary arrest or detention*" and that "*No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law*". The Human Rights Committee has stated that the term "arbitrary" does not just mean "against the law": it should be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability.[5] Article 9 of the UDHR also states that no one shall be subjected to arbitrary arrest or detention.

- **Right to be told of your rights:** Everyone has the right to be informed of their rights in a language they understand. Principle 13 of the Body of Principles states: "*Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information and an explanation of his rights and how to avail himself of such rights*."

[5] UN Doc. CCPR/C/51/D/458/1991, para. 9.8.

- **Right to be informed of reason for arrest:** Everyone has the right to be told of the reason for their arrest. Article 9(2) of the ICCPR provides that: "*anyone who is arrested shall be promptly informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*"

- **Right to a lawyer:** Anyone who is detained has the right to a lawyer to defend him or her in all stages of criminal proceedings (Principles 10 and 17 of the Body of Principles). Principle 7 of the Basic Principles on the Role of Lawyers states that detainees "*shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention*". Article 14(d) of the ICCPR states that every detainee has the right *"To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right, and to have legal assistance assigned to him..."* All detainees also have the right to confidential communication with their lawyers (Principle 18 of the Body of Principles). These rights apply from the time of arrest, during pre-trial detention, during investigation and at trial, and through appeal proceedings (Principles 1 and 7 of the Basic Principles on the Role of Lawyers).

- **Right to inform family of arrest:** Everyone has the right to have their families told of their arrest. Rule 92 of the Standard Minimum Rules states that a detainee "*shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them...*"

- **Right to presumption of release:** There is a presumption in international standards that people charged with criminal offences should not be detained prior to their trials. Article 9(3) of the ICCPR states: "*It shall not be the general rule that persons awaiting trial shall be detained in custody but release may be subject to guarantees to appear for trial...*" Principles 36(2) and 39 of the Body of Principles contain similar provisions.

- **Right to review of detention:** Everyone has the right to be brought promptly before a judge after arrest or detention to have judicial review of detention, known in some countries as *habeas corpus*. This right is spelled out in Article 9(3) and (4) of the ICCPR and Principles 32(1) and 37 of the Body of Principles. This is to enable an assessment of whether legal reasons exist for the arrest and whether detention prior to trial is necessary. It is also to safeguard the well-being of the detainee and prevent human rights violations. Article 9(4) of the ICCPR, for instance, states that every detainee should be allowed access to 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".

- **Right to be free from torture:** In all circumstances torture and cruel, inhuman or degrading treatment or punishment is outlawed by international law. Article 5 of the UDHR states: "*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*". Similar words appear in international treaties, including the Convention against Torture and Article 7 of the ICCPR.

- **Right to have torture allegations investigated:** Article 13 of the Convention against Torture requires authorities to ensure prompt and impartial investigations into all allegations of torture as does the Declaration Against Torture (Article 9). The Human Rights Committee has also stated that "*complaints must be investigated promptly and impartially by competent authorities...*"[6]

- **Non-admissibility of statements extracted under torture:** Article 15 of the Convention against Torture states: *"Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.*" Similarly, Article 12 of the Declaration Against Torture states that "*Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings"*. Article 14 (3)(g) of the ICCPR forbids the compelling of defendants to testify or confess guilt. The Human Rights Committee has also noted in its General Comment on Article 7 of the ICCPR that: "*It is important for the discouragement of violations under article 7 that the law must prohibit the use or admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment*".[7]

[6]Human Rights Committee, 44th Session 1992, Gen. Comment 20, para. 14

[7] General Comment No. 20(44) (article 7); CCPR/C/21/Rev.1/Add. 3 of 7 April 1992, para. 12.

- **Presumption of innocence:** Article 11(1) of the UDHR states: *"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.*" This right is also spelled out in Principle 36(1) of the Body of Principles and Article 14(2) of the ICCPR. The presumption of innocence should apply from the moment of arrest until a conviction is confirmed on final appeal. At trial, the prosecution therefore bears the burden of proving an accused person's guilt. The Human Rights Committee has stated: "...*by reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of the doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt.*"[8]

- **Prompt justice:** Article 9(3) of the ICCPR states that anyone arrested or detained on a criminal charge "*shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.*" "Promptly" has been interpreted by the Human Rights Committee to mean within "a few days".[9] Article 14(3)(c) of the ICCPR states that everyone is entitled "*To be tried without undue delay*". Principle 38 of the Body of Principles says: *"A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial*". The Human Rights Committee has noted that: *"this guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgment be rendered...*"[10]

- **Equality before the law:** Article 14(1) of the ICCPR provides that "*All persons shall be equal before the courts and tribunals*". This means that everyone must be granted, without discrimination of any kind, equal access to a court, and that fair trial guarantees must be equally available to all.

- **Public hearing:** Article 14(1) of the ICCPR guarantees the right to a public hearing as an essential element of a fair trial. The hearing should as a rule be conducted orally and publicly, and the court or tribunal should make available information about the time and venue of the hearing. The public and the media may be excluded from part or all of a trial but only in exceptional circumstances

[8] General Comment 13, para. 7 (Article 14), 21st session 1984, HRI/GEN/1, p. 14.

[9] General Comment 8, para. 2 (Article 9), 16th session 1982, HRI/GEN/1, p. 8.

[10] General Comment 13(10), Article 14, 21st session 1984, HRI/GEN/1, p. 15.

(such as if material in the case would genuinely threaten national security if publicized) and for specific reasons, as spelled out in the Article.

- **Competent, independent and impartial tribunal established by law:** Article 14(1) of the ICCPR states that proceedings in any criminal case are to be conducted by a competent, independent and impartial tribunal established by law. This principle is reiterated in the Basic Principles on the Independence of the Judiciary.

- **Rights of access to family and legal and medical assistance whilst in detention:** Everyone has the right to legal counsel (Principle 8 of the Basic Principles on the Role of Lawyers), to see their family (Rule 92 of the Standard Minimum Rules), and to medical examination and treatment (Rule 24 of the Standard Minimum Rules).

- **Humane conditions of detention:** Article 10(1) of the ICCPR demands that anyone who has been arrested "*shall be treated with humanity and with respect for the inherent dignity of the human person*". This imposes a positive obligation on states to provide reasonable conditions of detention and to respect detainees' rights.

- **The right not to incriminate oneself:** Article 14(3)(g) of the ICCPR and Principle 21 of the Body of Principles spell out that everyone has the right to be free from compulsion to incriminate themselves. These standards aim to prohibit coercion, physical or mental, that could be used to force defendants to testify against themselves or to confess guilt. Article 14(3)(g) has been interpreted to mean that evidence provided by means of such compulsion should not be admissible at trial.[12]

- **Adequate time and facilities for the defence:** Anyone accused of a crime is entitled "*To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his choosing*" (Article 14(3)(b) of the ICCPR). This right is also spelled out in Principle 8 of the Basic Principles on the Role of Lawyers.

- **Right to be present at trial:** Everyone has the right to attend their own trial: no one should be tried *in absentia* unless they have absented themselves (Article 14(3)(d) of the ICCPR).

.

[12] General Comment 13/21 of 12 April 1984 (CCPR/C/21/Add.3)

- **Right to defence:** Article 14(3)(c) of the ICCPR includes the right to defend oneself in person, to choose one's own counsel, to be informed of the right to counsel, and to receive free legal assistance. Such rights are also included in Principles 1, 5 and 6 of the Basic Principles on the Role of Lawyers.

- **Examination of witnesses:** Everyone is entitled "*To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him*". (Article 14(3)(e) of the ICCPR).

- **Right to an interpreter:** During all stages of legal proceedings subsequent to and including trial and appeal, interpreters should be made available to suspects or accused people, Principle 14 of the Body of Principles confirms this right for detainees. Everyone is entitled "*To have the free assistance of an interpreter if he cannot understand or speak the language used in court*" (Article 14(3)(f) of the ICCPR).

- **The right not to be retried for the same offence:** Article 14(7) of the ICCPR states that "*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.*"

- **Prohibition on retroactive law:** Article 15(1) of the ICCPR states that "*No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.*" Moreover, a penalty heavier than the one that was prescribed at the time the offence was committed may not be imposed. These rights are also confirmed in Article 11(2) of the UDHR.

- **Safeguards in death penalty cases:** International standards emphasize the importance of strict adherence to fair trial procedures in capital cases. Article 6(2) of the ICCPR says that: "*the death penalty can only be carried out pursuant to a final judgment rendered by a competent court*". Everyone sentenced to death has the right to seek pardon or commutation of sentence, which may be granted in all cases (Article 6(4) of the ICCPR). The UN Safeguards spell out that every aspect of a trial must comply with international standards in a capital case. Safeguard 4 says that: "*capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts*".

- **Right to appeal:** Article 14 of the ICCPR states: "*Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*"

These standards are widely abused in the Middle East and North Africa, including by the 13 countries in the region that have ratified the ICCPR. The Gulf states of Bahrain, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE) have yet to even ratify this Covenant. Similarly, torture continues to be practised in virtually every country in the Middle East and North Africa, including in the 10 states that have ratified the Convention against Torture[13]. Only two countries, Algeria and Libya, have ratified the (first) Optional Protocol to the ICCPR, which allows individuals to bring complaints to the Human Rights Committee, and not a single one has ratified the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.

Every country that has not done so should immediately ratify these international treaties as a pledge to the world that they will abide by basic principles for the protection of human rights. All governments should also ensure that their laws and the practices of the judiciary, the police and other state officials are brought in line with the provisions of these treaties.

Miscarriages of justice can happen in the best of legal systems. They are inevitable if governments refuse to respect even the minimum safeguards stipulated by international law.

[13] Regional ratifications of the major international human rights treaties are listed in Appendix I

Independence of the judiciary

No trial is likely to be fair, nor will it be seen to be fair, if the people in charge of passing judgment and sentence lack independence or impartiality. A lack of bias in the judiciary is recognized as absolutely fundamental to a fair trial by both the UDHR and the ICCPR. The Human Rights Committee, the independent body of experts which monitors state parties' implementation of the ICCPR, has stressed the point further by stating that the:

"*right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception*".[14]

This requirement is based on the principle that different organs of the state should have exclusive and specific competencies. This means that the judiciary should have the exclusive power to decide cases before them. The judiciary as a whole as well as each judge should be free from interference by the executive authority or private individuals. Judges must be free to rule on matters before them on the basis of facts and in accordance with the law, without any interference, harassment or influence from any branch of government or private individuals. These standards are elaborated in the UN Basic Principles on the Independence of the Judiciary, which outlines standards to safeguard the independence and competence of the judiciary, in particular in relation to the manner of recruitment, tenure, assignment of cases and removal from post.

The requirement that courts are impartial means that judges must not hold pre-formed opinions about any case they are hearing or have any interest or stake in a particular outcome. They must also be able to work without any direct or indirect influence from government bodies, without inducements, and without pressure or threat from any quarter. The UN Human Rights Committee has stated that impartiality:

"*implies that judges must not harbour any preconceptions about the matter put before them, and that they must not act in ways that promote the interests of one of the parties*."[15]

Many courts in the Middle East and North Africa are neither independent nor impartial. Judges may be appointed for political reasons directly by government or military officials. They may then come under intense pressure to convict suspected government opponents, particularly in high-profile political cases. In some of the region's

[14] González del Rio v. Peru (Comm. 263/1987, para 5.2) views adopted on 28 October 1992

[15] Karttinen v. Finland (Comm. No. 387/1989), UN Doc A/48/40 (Part II), 1 November 1993

courts, military officers with scant training in law are appointed as judges, often on an *ad hoc* basis, as and when the government sees fit. Such a process does not provide the required guarantees of expertise, independence and impartiality.

A 1992 report by an independent observer, who headed a delegation of three people sent by Amnesty International to observe two trials before military courts in Tunisia, highlighted the ways in which judges can lack impartiality. The trials involved 279 defendants, of whom 265 were sentenced to terms of one year to life imprisonment, 56 *in absentia*. The observer reported:

"*Rather than ordering that the allegations of torture be carefully investigated, the allegations brought threats from the judge to the defendants that they could be charged with slandering or defaming the security forces... The judge also objected strongly to [the lawyer's] claim that [a victim] was killed by the security forces. Not only was he stopped by the judge but was admonished for making unsubstantiated allegations that would soil the reputation of society's protection agency... The presiding judge showed visible signs of irritation whenever defendants denied what to him seemed to be 'undeniable charges'. Not infrequently, he ridiculed the accused for denying what he obviously believed to be 'indisputable` facts.*"[16]

If the rule of law is undermined by prejudice and political bias, it becomes far more likely that state officials will feel able to commit human rights violations with impunity. Police will feel free to arrest people at random. Interrogators will believe they can torture suspects without fear of punishment. And the population at large will feel there is no one to turn to for protection or to receive justice.

[16] See Amnesty International's report, *Tunisia: Heavy sentences after unfair trials*, October 1992 (AI Index: MDE 30/23/92).

Chapter 2: Prisoners of conscience and vulnerable groups

There are many kinds of victim of unfair trial practices. They range from those whose suffering is solely the direct result of breaches of fair trial standards, to those who are already victims of human rights violations and who suffer further violations because of breaches of fair trial standards. Among victims in the latter category are prisoners of conscience and vulnerable groups in society, the focus of this chapter.

Prisoners of conscience

Across the region there are laws that allow for the imprisonment of prisoners of conscience, or vaguely worded laws that are open to abuse. In some cases, the authorities use trumped-up criminal charges to conceal the prosecution of people for their political or religious views. Yet many of these countries have ratified international human rights treaties under which the governments are legally bound to safeguard human rights. For example, Mahjouba Boukhris, a 35-year-old nurse and mother of three, was targeted by the Tunisian authorities simply because of who she knew and alleged links to the unauthorized Islamist opposition group, *al-Nahda*. Her husband was already serving a 12-year prison sentence and her brother was tried alongside her. She was condemned to seven years and three months on the strength of a 'confession' extracted under duress.[17] Yet Tunisia is a state party to the ICCPR, without reservation.

Prisoners of conscience are in jail in virtually every country in the region. They have been targeted solely for expressing their views or on suspicion of opposing the government. They have not used or advocated violence. None should have been detained in the first place, let alone tried. The fact that so many have been convicted in courts of law is a damning indictment of both the laws and practices in the region.

In many states, including Algeria, Egypt, Iran, Iraq, Jordan, Libya, Morocco/Western Sahara, Saudi Arabia and Tunisia, national laws allow for people to be punished for exercising peacefully their fundamental human rights. Such laws include those that unduly restrict freedom of expression and association and ban certain opinions or beliefs. They should be immediately repealed.

In Libya, Law No. 71 of 1972 defines party activities in a way that encompasses almost any form of group activity based on a political ideology opposed to the principles of the *al-Fatah* Revolution of 1 September 1969, and considers such activities as treason. It punishes with death all those involved in these activities, whether as leaders or as rank and file members, irrespective of whether violence has been involved.

[17] See separate Appeals Cases AI MDE 01/03/98

In Iran, vaguely-worded sections of the Islamic Penal Code, such as "being at enmity with God" or "corrupt on earth", appear to allow the imprisonment of prisoners of conscience.

In Iraq, many laws and decrees suppress freedom of thought, opinion and expression, and prohibit any dissent from the government's Ba'thist ideology. For example, Revolutionary Command Council Decree 840 of 4 November 1986 prescribes penalties ranging from life imprisonment to death for insulting the President of the Republic or his deputy, the Revolutionary Command Council, the Arab Socialist Ba'th Party, the National Assembly or the Government.

In Jordan, the charge of insulting the King (*italat al-lisan)* has frequently been used as an all-purpose charge against opposition activists. Dozens of the more than 500 people arrested after bread riots in August 1996 stated that they were charged with *italat al-lisan* without any specification of time, place or further details of the offence. All those detained were released by royal amnesty after up to three months' detention.

In Tunisia, in addition to laws which allow the imprisonment of people for the peaceful exercise of their right to freedom of expression and association, prisoners of conscience also face trumped up criminal charges, which have been brought simply to silence government opponents, to intimidate them and others like them, or to remove them from public life.

If international fair trial standards were respected in the Middle East, no court would convict and sentence any prisoner of conscience. This report includes the cases of several prisoners of conscience to highlight the gross injustices of the legal procedures they have faced. None should have been prosecuted. The fact that they have been -- and then have been found guilty -- demonstrates the extent to which laws, the functioning of the judiciary and the courts are in need of urgent review and reform.

Vulnerable groups

Equality before the law is a key feature of constitutions in the Middle East, as well as of international standards. Yet it is a principle that is widely disregarded in both law and practice in the region. As a result, people who are vulnerable or disadvantaged, including women, children, religious and ethnic minorities, foreign nationals and those considered stateless, may find that far from redressing the imbalance, the administration of justice perpetuates the inequality in allowing them fewer rights or punishing them more harshly.

a) Discrimination against women

Penal laws and procedures in Middle Eastern states, including Egypt, Iran, Saudi Arabia and Yemen, formally discriminate against women, resulting in unfair trials. In Iran and other countries, the law gives more weight to testimonies given by men than to those given by women. In Egypt, Article 274 of the Penal Code stipulates that a woman proven to have committed adultery can be punished by a maximum of two years in prison, yet under Article 277 a man can be punished for the same offence by a maximum of six months in prison. Under Article 237 a husband who kills his wife for committing adultery can be sentenced to a maximum of three years in prison, whereas a wife who kills her adulterer husband faces death or life imprisonment.

In Yemen, women can be detained indefinitely when arrested on suspicion of "moral" offences such as *zina* (adultery) and *khilwa* (an unjustified meeting between an adult man and an adult woman who are not close relatives). In both *zina* and *khilwa* cases, the punishment in theory is the same for men and women. In practice, however, women have often been held after the expiry of their sentences on grounds that they cannot be released unless a male relative collects them. Men involved in the same cases are, as a rule, released upon completion of the sentence.

Laws and practices that mete out harsher penalties for women than men are clearly in violation of the Convention on the Elimination of All Forms of Discrimination against Women, in particular Articles 1, 2, 3 and 15.

b) Other victims of discrimination

In Saudi Arabia, foreign workers seeking to support their families can find themselves trapped in a system they do not understand and where their lack of understanding of Arabic is actively exploited. Nieves, a Filipina married mother of two, was working in Saudi Arabia. She went out with a married couple and another woman friend to celebrate a birthday. The married man met a colleague and asked him to join them at the table in the restaurant. Nieves and her friends were arrested by the religious police (*mutawa'een*) during the meal and accused of prostitution. When the *mutawa'een* could not convince Nieves to confess freely to the accusation at their headquarters, they resorted to deception and asked her to sign a report written in Arabic which she did not understand. She thought the report was a "release order" and signed it. However, instead of being released, she was detained in Malaz Prison. It was only when she was brought to court that she realized that she had signed a "confession". She was convicted on the basis of the "confession" and received 25 days' imprisonment and 60 lashes.

Members of the *bidun* (stateless Arab) community have also faced discrimination before the law. In Kuwait, Huwaidi Khalaf al 'Udwani Muharib, a member of the *bidun* community, was acquitted in June 1993 of "collaboration" with Iraqi occupying forces.

However, he remained held four years later as a possible prisoner of conscience under a deportation order. No state would accept him as he was born and brought up in Kuwait.

c) Abuse of children's rights

Children's rights are protected by a special Convention as well as other human rights standards. All states in the Middle East and North Africa have taken the important step of ratifying or acceding to the Convention on the Rights of the Child, and in so doing recognize that children need special care and increased safeguards. Article 37(d) states that *"every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty..."* Article 9(4) obliges the authorities, upon request, to inform the family of the whereabouts of a child detainee. Article 37(b) emphasises that *"no child shall be deprived of his or her liberty unlawfully or arbitrarily"* and that *"the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort for the shortest appropriate period of time."*

Other international fair trial standards have been developed to protect juveniles during arrest, detention and trial, and in relation to punishments. These are contained in Articles 6(5), 10(2), 10(3) and 14(4) of the ICCPR; the UN Rules for the Protection of Juveniles Deprived of their Liberty; the Riyadh Guidelines; and "The Beijing Rules". In practice, these provisions are violated on a daily basis and children are subjected to human rights violations like adults in almost every country in the region.

Muhammad 'Ali Muhammad al-'Ikri was 14 years old when he was among hundreds of children arbitrarily detained during round-ups in Bahrain in 1995. Many were arrested following demonstrations, sit-in strikes and other non-violent political activities, and some were reportedly dragged off school buses. Some of the arrested juveniles were held incommunicado without charge or trial, leaving them vulnerable to ill-treatment and unfair trial. Most were subsequently released without charge. Muhammad 'Ali Muhammad al-'Ikri was charged with throwing a petrol bomb at a policeman. He was taken to the Juveniles Court and sentenced to 10 years' imprisonment, later overturned.

Similarly, in Algeria, under the 1992 "anti-terrorist decree", which was incorporated almost unchanged into permanent legislation in 1995, the age of legal responsibility was lowered to 16.[18] This has resulted in 16-year-old youths being tried as adults when accused of "terrorism-related offences".

In Iran, children can and do face unfair trials, including those involving the death penalty. In February 1997, for example, Somayeh Shahbazinia and her friend Shahrokh Vosugh, both aged 16, were sentenced to death for murder. It is not known what has happened to them since then.

Women and children in Iran are also detained because of their relatives' actions. Soheila Bigzadeh and her three sons, Sohrab (16), Salar (15) and Sardar Farman (eight), have been detained in Iran since June 1995, possibly without charge or trial. They were arrested shortly after Soheila Bigzadeh's husband, an air force pilot, fled Iran with a military helicopter. He had been a staff representative involved in trying to improve pay and conditions of service. He had been detained for three months in 1993 on suspicion of affiliation with the opposition, inciting fellow staff against the military management and making false accusations against high-ranking military and civil officials. Fearing rearrest in 1995, he fled the country.

Soheila Bigzadeh and her children were arrested in their apartment in Isfahan and taken to an army facility in Kermanshah. Soheila Bigzadeh was reportedly brought before a military court on several occasions following interrogation apparently aimed at forcing her to denounce her husband on television, or to divorce him, which she refused to do. It is not known if she has been sentenced. There are also reports that she was tortured or ill-treated during her initial detention, suffering cuts and bruises to her face. She and her sons were later reportedly transferred to an army base in Isfahan where they are believed to be still held.

To protect children from human rights violations such as those detailed above, states must uphold international standards which they have freely ratified.

[18] The decree was incorporated into Algeria's Penal Code and Code of Criminal Procedure.

Chapter 3: Pre-trial detention irregularities

Violation of the individual's human rights frequently begins with the state breaching the international safeguards governing pre-trial detention. Such breaches include arbitrary arrest, secret detention and long-term detention without trial. These practices have affected hundreds of thousands of victims across the region in recent years.

Arbitrary arrest

The law in most countries in the Middle East and North Africa prohibits arbitrary arrests and usually stipulates that arrest warrants must be produced. Yet in virtually no country of the region are warrants shown when political suspects are arrested. Sometimes, as in Algeria today, the arresting authorities may refuse even to identify themselves. In many countries, the arresting authorities do not tell detainees or their relatives where they are being taken to or why they are being detained. A story commonly told in many countries in the region is of families trekking around police stations trying to track down their relatives, or, in countries such as Iraq and Saudi Arabia, being too afraid even to make inquiries.

Libyan law allows a wide range of authorities to arrest or detain people without a warrant and without adequate recourse to the judiciary. In particular, the law does not guarantee that detainees are notified of the charges they face and informed of their rights. This is contrary to Articles 9 and 14(3)(a) of the ICCPR, which Libya has ratified. Moreover, to exercise one's rights effectively one must know that these rights exist, a necessary pre-condition not afforded to detainees in Libya and in many other states in the Middle East and North Africa.

Over the years many hundreds of people have been arrested in Libya without being shown an arrest warrant, and without any explanation for their arrest. In most cases it has taken families weeks or months to trace their relatives. For example, Al-Saghier al-Shafi'i, a 35-year-old army officer, was arrested reportedly for political reasons at his parents' home in Zlitin, east of Tripoli, on 20 October 1994. He was reportedly celebrating his wedding when armed men wearing civilian clothes, believed to be from *al-Amn al-Dakhili* (the internal security) arrested him without showing him a warrant or explaining why he was being arrested. The family did not discover where he was being held until months later when they heard that he was being held in Abu Salim Prison. He was thought to be still held there three years later.

In Yemen, the security forces, particularly the Political Security (PS), routinely arrest political suspects without a warrant and hold them incommunicado for weeks or months without access to a lawyer. In doing so, they act beyond any judicial control and in flagrant violation of Yemen's domestic laws, as well as international standards. Article

47(b) of the Yemeni Constitution categorically prohibits the arrest, search or detention of anyone unless an arrest order has been issued by a judge or the prosecution, or unless the suspect is caught in the act of committing an offence. The Code of Criminal Procedures provides that no one may be arrested except for offences punishable by law. Article 73 of the Code requires that any suspect must be informed immediately of the reasons for arrest and guarantees the suspect's right to see the order of arrest.

Among the many victims of arbitrary arrests in Yemen have been dozens of journalists. One of them, Ibrahim Hussein Muhammad al-Basha, a writer and journalist, was arrested at his home in Sana'a during the night of 27 May 1995. His family was not informed of the identity of those who arrested him, nor where he was being taken, nor the reasons for his arrest. Amnesty International delegates visiting Yemen at the time were told by the Deputy Head of the PS, the arresting authority, that no one of his name was being held and that no arrest warrant had been issued for his arrest. In fact, it appeared that the office of the Attorney General was unaware that the arrest had taken place. A day later Ibrahim Hussein Muhammad al-Basha was transferred to the Public Prosecution where he was interrogated about an article he had published. He was released shortly after without charge. Following meetings with Amnesty International in July 1996, the government undertook to take action to put an end to the violations of human rights standards but arrests of political suspects continue as before, without a warrant, and detainees remain subject to lengthy incommunicado detention.

In Lebanon, contrary to the provisions of the law and its obligations under international treaties, the authorities continue to arrest people arbitrarily for expressing or distributing critical opinions. Since the end of the civil war in 1990, hundreds of people have been arrested for political reasons or on security grounds by the army security forces and military police, and by Syrian military personnel in Lebanon. A former detainee held in 1994 in the headquarters of the Ministry of Defence in Beirut told Amnesty International:

"*I was detained, tortured and released without any reason nor any legal justification or formality. Upon my release I was threatened not to be involved in politics, social activities or even clubs nor to take part in any normal gathering where it involved friends or otherwise they would capture me again."*

In Syria, arrests of political suspects continue to be governed by state of emergency legislation (issued by Legislative Decree 51 of 22 December 1962) which allows "*preventative arrest of anyone suspected of endangering public security and order"*. Those arrested are generally held incommunicado by the arresting authority with no information being given to the detainee's family. The existence of several arresting authorities operating independently of each other encourages secret detention and makes it impossible for relatives of detainees to gain information promptly. It took

the families of Khadija Dib and Doha 'Ashur al-'Askari (arrested in 1992 and 1993 respectively) nearly two months to find out that they were being held in Duma Women's Prison in Damascus. They were subsequently charged with membership of *Hizb al-'Amal al-Shuyu'i*, Party for Communist Action (PCA) and referred to the Supreme State Security Court (SSSC) for trial. In 1995, they were each sentenced to six years' imprisonment.

In Tunisia, the laws that do exist to protect the rights of detainees are routinely violated. According to officials, as soon as an arrest has been made, a telegram is sent from the arresting police to the public prosecutor of the local area, informing the office of the arrest. The information should then be registered by the office. However, for the thousands of suspected members of the unauthorized opposition groups who have been arrested since 1990, virtually no part of their arrest has conformed to any legal standards or officially sanctioned practices. Relatives of those detained describe a pattern of nocturnal arrests, typically by men in plain clothes who refuse to show any identification. Houses are searched without warrants, and members of suspects' families are abused. Arrest dates are subsequently falsified by officials to conceal the illegal prolongation of *garde à vue* detention beyond the 10 days allowed by law. The same violations persist today. Abdellatif Mekki, former secretary-general of the Tunisian student union (*Union generale tunisienne des etudiants*), was arrested on 14 May 1991. Four days later his family sent a registered letter to the authorities asking to know his whereabouts. On 22 May 1991, his arrest was publicly announced by the Minister of the Interior at a press conference. However, the official records give his date of arrest as 11 July 1991. He had been held in secret detention for eight weeks, during which he was tortured. All this was brought to the attention of the court during the trial, but the court took no action to investigate his illegal secret detention and torture, and he was sentenced to 10 years' imprisonment.

In Iraq, arbitrary arrests of suspected government opponents continue unabated. Each year the victims include prisoners of conscience, although details are hard to come by because of the reluctance of the authorities to provide information or allow access to the country to non-governmental human rights organizations and because victims' relatives live in fear of reprisal. In many cases, prisoners are held for long periods without charge. 'Aziz al-Sayyid Jassem, a well-known Iraqi writer and

journalist who is married with five children, was arrested in Baghdad on 14 April 1991 by plainclothes members of the security forces. He was taken to the General Security Directorate in Baghdad, where he was reportedly held in solitary confinement and tortured. His family received no news of him for a year. The authorities acknowledged his arrest, but have refused to provide details of any charges against him or information about his fate and whereabouts.

'Afaf 'Abd al-Amir al-Jamri, a young Bahraini woman, was arrested when she went to visit her father in prison in May 1995. She was held incommunicado for almost a month, reportedly beaten by women police officers, and then released without charge or trial.

She was among hundreds of women who were arbitrarily arrested and held without charge after the outbreak of anti-government protests in Bahrain in December 1994. Some were held for their peaceful support of the protests. Others, including 'Afaf 'Abd al-Amir al-Jamri, were apparently detained as punishment for the activities of their male relatives.

While some were detained in connection with acts of violence, many were prisoners of conscience. At least 4,000 people were arrested in Bahrain in late 1994 and in 1995. The vast majority were reportedly arrested without judicial warrants. Many people were simply picked up during raids on their villages by security forces. House-to-house searches were conducted, also without warrants, often accompanied by violence. Following raids, the security forces sometimes marked houses with an "X" to denote that a member of the household had been arrested. Numerous check-points were set up outside villages, at which scores of people were arrested. At times, all males over the age of 14 were arrested at check-points or during raids. These were clearly arbitrary arrests and as such unlawful under international standards. There was no legal basis for the arrests, and no warrants were issued identifying individuals suspected of specific crimes.

Widespread arbitrary arrests of suspected political and religious opponents of the government also continue to be the norm in Saudi Arabia. Arrests are normally carried out by *al-Mabahith al-'Amma*, General Intelligence, although other security and police forces also carry out arrests and detain people on political or religious grounds. Detainees are routinely arrested without warrants and are not informed of the reasons for their arrest. Frequently, they are held without trial for prolonged periods, in some cases for over two years. In general, access to family members is permitted only after interrogation has been completed and detainees have been transferred to communal cells.

Israel has kidnapped people in other countries and taken them to detention –sometimes without trial –in Israel. Mordechai Vanunu was abducted by agents of the Israeli Government in Rome on 30 September 1986, and secretly moved to Israel after providing the *Sunday Times*, a British newspaper, with information suggesting that Israel was running a nuclear military program. His detention was not officially acknowledged until 9 November 1986 and his trial, including the appeal before the Supreme Court, was held entirely *in camera*. He was sentenced to 18 years' imprisonment and, more than 11 years later, he is still held in isolation in Ashkelon Prison, in southern Israel. Lebanese nationals like Shaykh 'Abd al-Karim 'Ubayd and Mustafa al-Dirani, suspected leaders of groups fighting the Israel is in Lebanon, have been abducted from Lebanon; others, like Ahmad Jallul and Ahmad Tayeb, two sailors, were secretly transferred from Lebanon to Israel, where they have now been held for more than eight years without charge or trial. The UN Human Rights Committee has more than once expressed the view that the abduction of a person from one state to another constitutes arbitrary arrest and detention.[19]

Safeguards to ensure fair trials should be implemented from the moment someone is arrested. If officials feel free to abuse detainees' rights from the beginning, there is every chance that abuses will continue, increasing the risk of physical harm and wrongful convictions.

Secret and long-term detention without trial

With rare exceptions, detainees arrested in countries across the region are frequently held in prolonged incommunicado detention. This violates international human rights standards, which require that anyone deprived of their liberty shall have prompt access to their families, lawyers and doctors (Rule 92 of the Standard Minimum Rules). Principles 15 and 16(4) of the Body of Principles also make clear that even in exceptional

[19]Human Rights Committee, 36th Session 1981, Supplement no. 40 (A/36/40), Appendix XX. para. 11

circumstances communication with one's family may *"not be denied for more than a matter of days*". The UN Special Rapporteur on torture has noted that: "*Torture is most frequently practised during incommunicado detention. Incommunicado detention should be made illegal and persons held incommunicado should be released without delay*."[20]

Detainees are often kept in secret or unauthorized places of detention, and are held for long periods without charge or trial. International standards require that everyone is promptly informed of any charges they face (Article 9(2) of the ICCPR), and that everyone is entitled to face trial on those charges "without undue delay" (Article 14(3)(c) of the ICCPR). In most countries in the Middle East and North Africa, ordinary domestic law is in line with these provisions. But in practice such safeguards are widely ignored.

The law in Yemen, for example, provides significant safeguards against arbitrary detention. A suspect is entitled to inform anyone they wish of their detention and to seek the assistance of a lawyer, and the authorities are obliged in any case to inform relatives or other concerned parties of the arrest. Article 76 requires that every detainee must be brought before a judge or the prosecutor within 24 hours of arrest. The judge must explain the reasons for the arrest and offer the detainee the opportunity to challenge the lawfulness of the detention. Detention beyond 24 hours may be extended by a judicial order, but should not exceed seven days. Violation of these safeguards is punishable by imprisonment. Yet all these provisions are routinely violated.

The consequences of such failings can be extremely serious. In Iraq, the fate and whereabouts of thousands of people known to have been arrested remain unknown as they are held incommunicado. Over the years, vast numbers of people are feared to have "disappeared" as a result of such practices. For example, seven brothers who were arrested on 1 October 1980 from different locations in Baghdad are feared to have "disappeared". One was executed in 1983, but there has been no news of the others. Two of them, Wahab and Ahmad al-Hashimi, were secondary school students when they were arrested. No official reason was given for their detention, nor were their families notified of where they were being held or whether any legal proceedings were being followed. The Iraqi authorities have failed to answer numerous requests by Amnesty International for information about the brothers.

In Morocco/Western Sahara, long-term "disappearances" which were widespread until the late 1980s have ceased. Since 1991 hundreds of political prisoners and prisoners of conscience

[20] UN Doc. E/CN.4/1995/34, para. 926(d), pg 173

have been released by the Moroccan authorities, including over 300 Sahrawis and some 30 Moroccans who "disappeared" for up to 18 years. However, hundreds of Sahrawis and several Moroccans remain unaccounted for, and more than 50 political prisoners and prisoners of conscience, imprisoned after unfair trials, continue to be detained. People arrested on political or criminal charges are still frequently held for days beyond the maximum period of 48 hours of *garde à vue* detention, during which ill-treatment or torture continue to be reported.

In many countries in the region, people are held without charge or trial. Hundreds of people arrested arbitrarily are currently held without trial and possibly without charge in Saudi Arabia. Many were detained as a result of mass arrests carried out in the wake of the bombings of the Saudi Arabian National Guard training centre in Riyadh in November 1995 and of the US military complex at al-Khobar in June 1996. Other victims are religious figures detained as critics of the government. They include Dr Nasser-'Umr, a professor of religious studies at the University of Riyadh, who was arrested in March 1995 and is believed to be still in detention. Many are members of the Shi'a Muslim minority, some of whom have been arrested on numerous occasions. Among those who have been repeatedly arrested are Sheikh Ja'far 'Ali al-Mubarak and Shakir Hajlis, who were last arrested in 1996. They too are still detained without trial.

Hundreds of suspected government opponents in Libya, particularly those believed to be associated with Islamist groups, continue to suffer arbitrary arrest and detention. Most have been held incommunicado during the first months of detention, without access to lawyers, doctors, relatives or judges, and have been tortured under interrogation. Several have been held without charge or trial for years, some for at least 15 years.

In Algeria, Nadir Hammoudi was been detained for more than five years despite having been tried and acquitted three times. His family, lawyers and Amnesty International have raised his case on numerous occasions with the Algerian authorities, but in vain. He was arrested on 9 October 1992, at 2am, at his home in Algiers by armed policemen in civil clothes who did not present a warrant. He was held in incommunicado detention for 40 days, 28 days beyond the maximum period of incommunicado detention allowed by Algerian law. During this time his family and lawyers could not obtain any information about his whereabouts and legal status. He complained that during incommunicado detention in Bab el Oued police station and in another detention centre he was tortured and beaten. He was tried three times on charges of "terrorist" activities: in December 1996, in March 1997 and in April 1997. He was acquitted each time but remained detained until January 1998, when he was acquitted for the fourth time and released.

Hundreds, possibly thousands, of people arrested by the security forces in Algeria over the past five years have "disappeared" in secret detention. In some cases their relatives manage to obtain information through personal contacts and friends from high ranking officials who confirm to them that their loved ones are still alive and held in secret detention centres, but the authorities continue to deny all knowledge of them

The Palestinian Authority has held numerous political detainees for long periods without charge or trial and has frequently ignored instructions from its own High Court to release detainees. One such case involves 10 students of Birzeit University who were arrested without warrant after the suicide bombings of February and March 1996 and held for months without charge or trial. In August 1996, the High Court of Justice issued a unanimous decision declaring that the detention of the students was illegal and ordering their immediate release. However, the students were not released until several months after the judgement; the last two students were only released in January 1997. Shaykh Mahmud Muslah, a Hamas activist arrested in September 1997 after the suicide bomb in Israel and held without charge or trial, whose release ordered by the High Court in November 1997 after a test case, remains in prison (January 1998)

Arbitrary arrest and secret detention, as well as denial of prompt trial, have caused and continue to cause gross human rights violations in almost every country in the Middle East and North Africa. Governments should take immediate measures to put an end to this pattern of human rights violation by upholding international human rights standards.

Chapter 4: Denial of the right to a lawyer

It is a fundamental right of every detainee to have access to a lawyer of his or her own choosing promptly after arrest and at frequent intervals thereafter to prepare adequately for the defence and to protect their rights at all stages of the process. Yet in many countries in the Middle East and North Africa, this basic right is systematically denied.

The right to have access to a lawyer is an essential part of any impartial investigation, fair trial and just verdict. In practice, this right also acts as an important safeguard against torture. Several international instruments make clear the right to see a lawyer, including Principle 7 of the Basic Principles on the Role of Lawyers, and Article 14(d) of the ICCPR.

In Iran, which is a state party to the ICCPR, this provision has long been ignored in cases concerning political detainees. Political trials are often held secretly inside prisons, with summary proceedings and absolutely no possibility of the detainee's lawyer attending the hearing or consulting with his or her client. The routine violation of detainees' rights was confirmed by the UN Special Representative on Iran in 1992 after speaking with prisoners during a visit there. He found that: "*none of the persons interviewed had had the benefit of legal counsel...*" Such practices are also in breach of Iran's Constitution, which guarantees the defendant's right to legal counsel.

In Saudi Arabia, political prisoners sent to trial are routinely denied access to legal representation before and during trials, which are often held *in camera*. In fact in Saudi Arabia, there is no Bar Association. 'Uthman Bakhash, a Lebanese national, was arrested in March 1995 along with several others and charged with membership of an illegal organization, the Islamic Liberation Party. All were tried in April or May 1996 by the Grand Shari'a Court in al-Taif, following summary proceedings in which they were not allowed access to defence lawyers. 'Uthman Bakhash received a 30-month prison sentence, the others received prison sentences of between eight and 30 months.

Such practices erode the independence and impartiality of the legal process. They discourage lawyers from coming forward to defend the rights of others, and increase the danger that if they do they will be harassed or intimidated by the authorities. International standards are clear about the importance of freedom of expression and association for lawyers. Article 24 of the Basic Principles on the role of lawyers states:

"*Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.*"

Jordanian law does not guarantee detainees the right to prompt and regular visits by a lawyer. The law stipulates that public prosecutors may renew indefinitely the detention of "security" (i.e. political) suspects for up to 15 days. But serving officers of the GID also act as public prosecutors, so detainees held by the GID can have their detention legally renewed without access to the judiciary. Although denial of access to lawyers should only happen, according to Jordanian law, "as a matter of urgency", detainees held by the GID are frequently denied regular access to lawyers. Those suspected of common law offences can also be held incommunicado for long periods in administrative detention, renewable by the district governor.

Even if it happens infrequently, the fact that detention without access to lawyers or family can legally be renewed indefinitely is contrary to Article 15 of the Body of Principles, which says clearly that even in exceptional circumstances such access "*shall not be denied for more than a matter of days*". The Human Rights Committee, examining Jordan's report in 1994, expressed great concern about "*cases of administrative detention, denial of access of detainees to legal counsel and incommunicado detention*".[21]

Defendants facing trial before Lebanon's Justice Council have had access to lawyers restricted, contrary to Article 73 of Lebanon's Code of Criminal Procedure, and have suffered other violations of fair trial standards, including the lack of right to a judicial review of conviction and sentence. On 17 January 1997 Ahmad 'Abd al-Karim al-Sa'di, a Palestinian (*in absentia)* and 19 other defendants, most of them suspected members of *'Usbat al-Ansar*, League of Followers, an Islamist opposition group, were convicted of the murder of Sheikh Nizar al-Halabi, head of the Association for Islamic Charity Projects. During the trial, confessions and statements reportedly extracted under torture were retracted in court and defence lawyers protested that they were not given sufficient and unsupervised access to their clients. The Justice Council, however, accepted the confessions and did not order an independent inquiry into the allegations of torture. It also overruled protests relating to the illegality of the initial interrogations. Four of the defendants were sentenced to death, including Ahmad 'Abd al-Karim al-Sa'di *in absentia*. Mounir Salah 'Abboud, Khalid Muhammad Hamad and Ahmad Mundhir al-Kasm were executed by hanging on 24 March 1997. The scope of the death penalty in Lebanon was expanded in 1994, making it mandatory for intentional murder and introducing it in cases of political murder.

[21] CCPR/C/79/Add.35 Section E (16)

Samir Gea'gea', leader of the banned Lebanese Forces (LF), the main Christian militia during the civil war, has received three life sentences following a number of high-profile trials (three by the Justice Council) between 1994 and 1997.[22] He and other members of the LF were charged with a church bombing case, the killing of Dany Cham'oun and an attempted assassination in 1991 of the current Interior (former Defence) Minister Michel al-Murr. They were all denied prompt access to lawyers. The Justice Council is also scheduled to try Samir Gea'gea' and other LF members for the assassination in 1987 of former Prime Minister Rashid Karami.

In Israel's occupied territories, detainees may be denied access to a lawyer for a total of 90 days under Military Order No. 378 issued in 1970. In addition, according to Article 8(b) of the Emergency Powers (Detention) Law of 1979 Law - the law which authorizes the use of administrative detention - the Minister of Justice may limit the detainee's right of representation to persons "authorized by an unrestricted authorization", that is, lawyers who have a special security clearance. Two Lebanese nationals, Shaykh 'Abd al-Karim 'Ubayd and Mustafa Dirani, abducted from Lebanon in 1989 and 1994 respectively and held in secret incommunicado detention, were only given access to lawyers with security clearance in July and August 1997.

In Qatar, suspects detained in security cases are generally denied access to legal counsel and may be detained indefinitely while under investigation. For example, a group of people arrested in early 1996 following a coup attempt were held in prolonged incommunicado detention without trial and denied access to a lawyer for over 15 months. In Oman, police are required to obtain court orders to hold suspects in pre-trial detention, and must file charges within 24 hours of arrest or ask a magistrate judge to order continued detention. In practice, however, these safeguards are often ignored. In some cases detainees are held incommunicado and are vulnerable to torture or ill-treatment.

A further concern in the Middle East and North Africa is that in several countries lawyers themselves are at risk of intimidation, including arbitrary arrest and detention, if they represent political opponents of the government. As a result, lawyers may be unwilling to become involved in political cases, or withdraw from them in fear or to protest against intolerable conditions. In such circumstances, defendants are left either with no legal counsel, or with lawyers appointed for them by the state who may not act in their interests. Interference in the functioning of lawyers is prohibited by international standards. Article 16 of the UN Basic Principles on the Role of Lawyers states:

"*Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper*

[22] See *Lebanon: Human Rights Developments and Violations* (AI Index: MDE 18/19/97)

interference... and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics."

Without access to a lawyer of one's own choice, there is little chance that a trial will be fair. There is no possible justification for any state to deny detainees their right to be assisted by a lawyer -- unless to ensure that, regardless of the truth, the detainees will be locked away or executed illegally.

Chapter 5: Confessions extracted under torture

Torture is outlawed in almost all Middle East and North African states and is forbidden in all circumstances in every country of the world by international law. Yet it is still practised in virtually every country of the Middle East. Some governments encourage it. Some condone it. Almost none take concrete action to stop or prevent it. It is facilitated by authorities who allow security officials to hold people without access to lawyers, doctors and relatives, sometimes in secret places of detention, and do little or nothing to punish those who commit abuses. Torture is also made more likely by another widespread practice -- that of allowing people to be convicted solely on the basis of confessions extracted by torture.

The inhumanity and injustice of torture is compounded and the practice encouraged when courts ignore or dismiss torture allegations. Across the region, defence lawyers who raise allegations of torture in court often do so knowing that they risk punishment themselves or in the knowledge that their claims will be dismissed out of hand. All too often, judges do not call for medical examinations or investigations into allegations of torture, even when defendants appearing before them show signs of injuries. Such inaction blatantly violates Article 13 of the Convention against Torture and Article 9 of the Declaration against Torture. Even when judges do order investigations, they may never take place. Courts also continue to accept as the sole evidence against defendants confessions obtained under duress, breaching Article 15 of the Convention against Torture.[23]

The role of the judiciary in eradicating torture was spelled out in 1992 by the UN Special Rapporteur on torture. He stated:

"*... it is the judiciary which can provide in various ways immediate relief and redress in individual cases. If the judiciary takes upon it this responsibility it will actually make the use of torture unrewarding and will thereby effectively contribute to its disappearance.*"[24]

His report that year emphasized the judiciary's responsibility for upholding international law. It states that *"no member of the judiciary can be in doubt any longer as*

[23] See also Comment by Human Rights Committee on Article 7 of the ICCPR, cited in Chapter 1, Minimum requirements for fair trial - Non-admissibility of statements extracted under torture.

[24] Oral statement by the Special Rapporteur on torture to the Commission on Human Rights, 11 February 1992 - E/CN.4/1992/17

to the rights which a person in detention has under international law, and which consequently have to be ensured..."

It also states:

"*...it is evident that judicial bodies often believe that their impartiality forbids them from taking a stand whenever there is a deep rift between the authorities and part of their subjects who no longer feel protected, but rather threatened by these authorities... [T]he judiciary can make significant contributions towards reinforcing the prohibition of torture by refusing to admit evidence which, in its opinion, might have been obtained through torture and by ordering the release of anyone who has been arrested and detained in violation of national and international standards. If the judiciary takes such a position the use of torture becomes less worthwhile, and thereby less attractive*."[25]

Torture and ill-treatment are virtually guaranteed if they are sanctioned by the state. This is the position in Israel, the only country in the world in which torture during interrogation is expressly authorized by law. Secret guidelines, which were drawn up in 1987, allow the General Security Service (GSS) to use "moderate" physical and psychological pressure during interrogation. The methods "allowed" clearly constitute torture or cruel, inhuman or degrading treatment.

'Abed al-Rahman al-Ahmar, in administrative detention since November 1995, was tortured for two months by the Israeli GSS. He testified:

"One interrogator said to me, 'We know we will not get any results from interrogating you... we want you to be disabled or develop a chronic sickness...' In the first days of the interrogation, I suffered from circumstances that one's imagination cannot comprehend and could never accept. A person cannot imagine what it's like to sleep once for two to four hours in four to five days under blaring music and under surroundings of extreme cold and continuous rounds of interrogation, sometimes lasting for 30 continuous hours... There were many different methods - continuous body-hangings in so many different ways where each separately or all together cause exhaustion and pains in the body and in all the internal organs.

[25]Ibid

Sometimes the body-shaking/rattling technique was used... Sometimes they bound a person to a very small chair leaving half his body hanging in the air... And as to the pains that this position caused, no words can describe them adequately... I suffered from continuous vomiting..."

The guidelines, combined with a total lack of accountability for state officials who inflict torture or ill-treatment according to the guidelines, have meant that many thousands of Palestinians have suffered and continue to suffer systematic torture and ill-treatment in Israeli detention centres.

In theory, defendants can appeal against confessions taken under duress through a "mini-trial" or "trial within a trial". But this proceeding is now infrequently used for various reasons. Held *in camera*, it almost invariably finds against the accused, especially since the torture or ill-treatment described by the defendant is allowed under Israeli interrogation guidelines. It also delays the trial and may, for minor offences, mean that the defendant spends longer in detention than he or she would be expected to serve as sentence. In addition, many lawyers and defendants feel that an unsuccessful "trial within a trial" leads to heavier sentences. Therefore, the threat of a "trial within a trial" is often used to plea bargain.

In its conclusions and recommendations, the Committee against Torture found that "*the methods of interrogation, described by non-governmental organizations on the basis of accounts given to them by interrogatees, which appear to be applied systematically, were neither confirmed nor denied by Israel. The Committee, therefore, must assume them to be accurate. These methods include: (1) restraining in very painful conditions, (2) hooding under special conditions, (3) sounding of loud music for prolonged periods, (4) sleep deprivation for prolonged periods, (5) threats, including death threats, (6) violent shaking, and (7) using cold air to chill; and are in the Committee's view breaches of article 16 and also constitute torture as defined in article 1 of the convention. This conclusion is particularly evident where such methods of interrogation are used in combination, which appears to be the standard case.*"[26]

[26]Ibid

In Egypt, torture has been used systematically against political detainees for many years. It is a widely reported practice in the State Security Investigations Department (SSI) headquarters in Lazoghly Square in Cairo, other SSI centres and police stations, and it is also prevalent in detention centres run by *Firaq al-Amn*, the security brigades, where detainees are held incommunicado. Torture methods most frequently reported include electric shocks, beatings, suspension by the wrists or ankles, cigarette burns, threats of rape or sexual abuse of the detainee or of his female relatives, and other forms of psychological torture. In May 1996 the Committee against Torture concluded that torture was indeed systematically practised by the security forces in Egypt and noted with concern that no one had been brought to justice for committing such abuses.[27]

Torture usually occurs immediately following arrest and when detainees are secretly transferred to SSI branches or police stations pending their return to prison under new detention orders. In a statement typical of the experience of political detainees, one man described to Amnesty International what happened to him at the SSI headquarters in Lazoghly Square:

"*I was stripped of most of my clothes. They started beating me and they also used electric shocks on different parts of my body, including my private parts... They also put me on a table and suspended my arms from the door, and then pushed the table out from under me. I was left suspended for about 30 minutes. This torture was repeated many times...*"

Defendants in Egypt who have suffered such treatment have frequently been convicted solely on the basis of their confessions. However, in a number of cases Emergency Supreme State Security Courts have rejected such statements and acquitted defendants, although they are rarely released. Court judgments are subject to ratification by the President of the Republic (or his nominee) before they become final. In almost all recent cases in which courts acquitted defendants because their confessions were obtained under duress, the judgments have not been ratified and the defendants have remained detained.

The conditions of pre-trial detention in Jordan, which make it possible to detain suspects for long periods without access to lawyers or families, facilitate torture. In the well-publicized 1993 Mu’ta University case, eight detainees made “confessions” under interrogation by the GID while being held without access to lawyers or family. The State Security Court, which tried the defendants, found them guilty, but the Court of Cassation overturned the sentences, partly on the grounds that the confessions had been extracted by pre-trial torture.

[27] CAT/C/XVI/CRP.1/Add. 6, paras. 34 and 47 - 8 May 1996

By 1996, torture or ill-treatment of detainees held by the GID was rarely reported. However, six supporters of *Hamas* arrested in March and April 1996 who were released without charge after up to four months' incommunicado detention, stated that they were tortured by the GID. Medical certificates supported their testimonies. Torture or ill-treatment of common law detainees in order to obtain confessions was also reported. Mustafa Abu Hamid, accused of murdering a woman, was convicted and sentenced to death in February 1996 mainly on the basis of a confession made while he was held incommunicado for one month in police custody. He stated that he confessed after torture, including being hung upside-down from nails inserted in his ankles and beaten. His sentence was commuted in October 1996.

Acquitting detainees charged on the basis of confessions obtained under torture, as has happened on occasion in Egypt and Jordan, is an important first step towards eradicating torture in any country and gives an important signal to detaining and investigating authorities that torture is unacceptable.

In Bahrain, people are still being routinely convicted solely on the basis of confessions later retracted. Torture or ill-treatment is most frequently inflicted during the initial period of detention, when suspects are being interrogated. The most commonly reported methods include severe and sustained beatings using hosepipes, electric cables and other instruments; *falaqa* (beating on the soles of the feet); forcing detainees to beat each other; suspension from the limbs in contorted positions while being hit; enforced standing for several hours or days; sleep deprivation; preventing detainees from relieving themselves; immersion in water to the point of near drowning; and burning with cigarettes.

Female detainees in countries including Bahrain, Egypt, Iran, Lebanon, Syria and Tunisia are at times subjected to torture or ill-treatment, and are particularly vulnerable to certain methods such as rape and sexual abuse, to force them to confess. An Iranian woman, arrested in November 1995 in connection with organizing workers' demands for better pay, described her interrogation:

"Every day for a little over two weeks, I was taken to a room with no windows, beaten and threatened [to make me] divulge all information... The beatings got worse as time went on... One evening I was taken for interrogation with a Mullah... He would beat me and tell me that I was not going to get out of prison until I accepted him. He would hit my breasts, back and thighs. During this interrogation he told me that the only way out of prison was to sleep with him. I refused, and he ripped my blouse. I began to scream as loud as I could. The female guards of the prison came running in to see what was going on. He slapped me and told them I was not providing information and left the room. I was

sure he was going to rape me but he stopped because he did not want the guards to think less of him since he was of a high position...”

In Saudi Arabia, torture methods reported include beatings and *falaqa*. Dr 'Abdul Rahim Turan Gari Bai, for example, a consultant haematologist, was reportedly beaten regularly for six weeks in early 1995 while being interrogated about his alleged support of an illegal organization, the Islamic Liberation Party. He was convicted and sentenced to two and a half years in prison and released in December 1996. No investigation into his allegations was known to have been carried out.

Information on torture in Oman during pre-trial detention is scant but has been reported particularly during interrogation. Techniques include sleep deprivation, suspension in contorted positions and beatings. Judges have the right to order investigations into allegations of torture, but there is no evidence that anyone has been brought to justice for such abuses.

Many other states in the Middle East and North Africa not cited above allow torture to continue unchecked and the use of confessions extracted using torture. Such abuses are not only a grave violation of the most fundamental human rights. They also mean that there is little or no hope that people suspected of crimes, particularly those charged for political reasons, will ever receive a fair trial.

Chapter 6: Cruel, inhuman or degrading punishments

Safeguards against unfair trials are ignored in almost every country in the region, albeit to a varying degree, even when the consequence is an irreversible cruel punishment. This situation is particularly rife in countries which retain and use the death penalty and corporal punishments.

Death penalty

On 4 October 1997, four Jordanian nationals, Sa'id Yusuf 'Ali al-Dawji, his brother Salah Yusuf 'Ali al-Dawji, Walid Muhammad Tawfiq Nuseirat and Rizq Bishara Rizq, were sentenced to death by the special court at the Ministry of the Interior in Baghdad. They were found guilty of smuggling car spare parts. On 8 December 1997, all four were executed by strangulation in Abu Ghraib Prison in Baghdad.

The four defendants were first arrested in Baghdad on 6 January 1997 and charged under Article 194 of the Penal Code, which prescribes a fine for anyone found guilty of smuggling goods whose value does not exceed 500,000 Iraqi dinars (about $US 300). The smuggled car spare parts were evaluated at around 360,000 Iraqi dinars (about $200), three of the defendants were found guilty and on 24 March 1997 all four were released. However on 15 April 1997, the four were rearrested and charged again under Article 194 for the previous offence. The first trial session took place on 3 September 1997 before the special court at the Ministry of the Interior, and further sessions were held on 7 and 29 September 1997 respectively. The trial sessions were held in the absence of the four defendants and on 4 October 1997 they appeared before the court to be sentenced to death for the same offence. A defence lawyer was appointed by the court but the defendants are said to have had access to him for the first time on 4 October. The right to appeal the sentence was denied.

When the death penalty comes under discussion in the Middle East, some people argue that it is a sanction required by society or Islamic law. Others claim it is necessary to combat "terrorism" or other serious crimes. While an increasing number of countries worldwide have moved towards abolishing the use of the death penalty, several states in the Middle East and North Africa have increased its scope or use in recent years. They include Algeria, Bahrain, Egypt, Iraq, Iran, Jordan, Kuwait, Libya, Saudi Arabia and Yemen.

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment. There is no reliable evidence that the death penalty helps to deter crime more effectively than other punishments. The risk of error in all trials can never be eliminated, a risk which increases exponentially when trials are unfair, yet the penalty is irrevocable.

There is no legal system in the world that is perfect, and certainly none in which human error can be ruled out.

The right to life is proclaimed in several international instruments. The Universal Declaration of Human Rights states: "*Everyone has the right to life...*"(Article 3). Article 6 of the ICCPR states: "*Every human being has the inherent right to life. This right shall be protected by law...*" Paragraph 1 of the General Comment of the Human Rights Committee on Article 6 of the ICCPR states that the right to life "*is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation...*"[28]

While the death penalty should be abolished without delay, it remains absolutely crucial in countries that still retain the death penalty that scrupulous safeguards to ensure fair trial are respected in capital cases. Safeguard 4 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty states: "*Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts"*.[29]

Safeguard 5 states:

"*Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected or charged with a crime for which capital punishment maybe imposed to adequate legal assistance at all stages of the proceedings*"[30]

Safeguard 6 states:

"*Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory".*[31]

[28]General Comment 6; Art. 6 (Sixteenth session 1982); para, HRI/Gen/1 pg. 5

[29]ECOSOC Res. 1984/50 of 25 May 1984

[30]Ibid

[31]Ibid

In a statement in 1994, the UN Special Rapporteur reaffirmed the importance of compliance with these safeguards: " *In particular, proceedings leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries. All defendants in capital cases must benefit from the fullest guarantees for an adequate defence at all stages of the proceedings, including adequate provision for State-funded legal aid by competent defence lawyers. Defendants must be presumed innocent until their guilt has been proven without leaving any room for reasonable doubt, in application of the highest standards for the gathering and assessment of evidence. All mitigating factors must be taken into account. A procedure must be guaranteed in which both factual and legal aspects of the case may be reviewed by a higher tribunal, composed of judges other than those who dealt with the case at the first instance. In addition, the defendants' right to seek pardon or commutation of the death sentence must be ensured.*" [32]

More recently, the UN Commission on Human Rights stressed the importance of strict safeguards in capital cases in its 1997 resolution on the death penalty. It called on all states that have not yet abolished the death penalty to consider suspending executions, with a view to completely abolishing the penalty. It also called on them to make available to the public information about the imposition of the death penalty.[33]

In violation of the above standards, hundreds of people are executed every year in the Middle East and North Africa after unfair trials. In several countries the possibility of tragic miscarriages of justice is made even more likely by denying people condemned to death the right to appeal against conviction and sentence to a higher court. In some countries, the rate of executions has risen following political unrest. In others, the scope of the penalty has been widened, in some cases to cover crimes that cannot be defined as having "*lethal or other extremely grave consequences*" as specified in Safeguard 1, which states "*In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences".*[34]

In Saudi Arabia, the number of executions has escalated in recent years, all of them carried out following unfair trials. Among the victims have been political prisoners.

[32] E/CN.4/1994/7 page 155, para 679

[33] UN Commission on Human Rights resolution 1997/12 (E/CN 4.1997/L.11/Add.1).

[34]ECOSOC Res. 1984/50 of 25 May 1984

As far as Amnesty International knows, defendants in capital cases are almost routinely denied legal representation before and during their trials, which are invariably conducted in secret and follow summary procedures. Confessions extracted under torture are accepted by the court as evidence, and confessions may be the sole evidence on which a conviction is secured. The nature of such trials has contributed to the frequent use of the death penalty in Saudi Arabia, making it one of the states with the highest number of executions in the world. Most of the victims have been foreign workers from countries in Africa and Asia who appear to be more vulnerable to such punishment by virtue of their ethnic, religious and economic status. Foreign nationals who are not Arabic speakers are not always provided with adequate interpretation during all stages of their trial and appeal, as required by UN standards. They are invariably held incommunicado for months or even years with no one to assist them. In some cases such victims are kept in the dark about the progress of their cases. Some prisoners were reported to have been executed without being informed that they were under sentence of death.

James Rebenito, a Filipino, was arrested and charged with murder in September 1994 and held incommunicado until 6 May 1996, when he was allowed a visit by his wife. Two weeks later, on 2 June 1996, he was beheaded. A former prisoner of conscience held with him told Amnesty International that not only was James Rebenito unaware of his impending execution, but he was not even aware that he was under sentence of death.

> "*The night before James' execution, he was in the cell with me. We spent our evening in the usual way, talking. James had no idea that he was going to be executed the next day".*

Among those known to be under sentence of death at the time of writing is Sarah Dematera, a 24-year-old Filipina woman. She was convicted of the murder of her employer in 1992 following a trial whose proceedings remain shrouded in secrecy. She remains at risk of execution.

The majority of those executed in Saudi Arabia have been convicted of offences such as murder and drug-trafficking. However, in some cases people have been executed for crimes which did not appear to have "lethal or extremely grave consequences". For instance, 'Abd al-Karim Mar'i al-Naqshabandi, a Syrian national, was executed in December 1996 on conviction of practising witchcraft and owning several books promoting polytheism and superstition. The Ministry of the Interior defended the court's decisions because of what it considered the dangerous influence witchcraft could have on others.

In Algeria, 1,127 death sentences were imposed in the period between February 1993 and June 1994, after the state of emergency was declared in February 1992, most of these were in absentia. Hundreds more death sentences have been passed since. Twenty-six people were executed by firing-squad in 1993. Some were sentenced to death by military courts, but most by the special courts (see Chapter 9). Almost all the death sentences imposed by the special courts known to have come to the Supreme Court for review have been upheld, leaving as the only recourse a plea for clemency to the President of the Republic. Although prisoners remain under sentence of death, there have been no executions since 1993.

In Iran tens of thousands of suspected government opponents have been executed after unfair trials since the creation of the Islamic Republic in 1979. The death penalty is still widely used for offences such as espionage, undertaking "activities against the Islamic Republic of Iran", drug-trafficking, murder and adultery. Among the victims were three men and three women who were stoned to death after they were convicted of adultery. A fourth woman, Zoleykhah Kadhkoda, survived a stoning but remains at risk of execution. She was reportedly arrested in August 1997 and charged with having sexual relations outside marriage. Within 24 hours, she had been sentenced to death by stoning, buried up to her waist in a ditch and stoned. She was reportedly confirmed dead by doctors but she revived in the morgue and was taken to hospital. The outcome of Zoleykhah Kadhkoda's appeal for clemency is still unknown.

Other victims have included Hedayatollah Zendehdel and Abolghasem Majd-Abkahi, who were reportedly hanged in Qasr Prison on either 29 December 1996 or 1 January 1997. Both had been held for seven years before being tried. They were among a group of six men charged with gathering classified military information during the 1980 to 1988 Iran-Iraq war and passing it to foreign countries, in particular the USA and Israel. They were accused of economic sabotage, helping people out of the country by forging government documents, and of working to restore Iran's imperial family. Other accusations reportedly included adultery, drinking alcohol, taking drugs and attempting to smuggle arms into the country. They were sentenced to death in July 1996 for being "corrupt on earth". The UN Special Representative on Iran who attended part of a session of the trial stated in his subsequent report: "*The judge played a much more active role... than in any trial [I had] attended elsewhere. Indeed [I] was left with the impression that the judge was clearly not a neutral party between the prosecution and the defence*."

In his 1995 report, the UN Special Rapporteur on Extrajudicial, summary or arbitrary executions noted "*with deep concern the persistent allegations of violations of the right to life in the Islamic Republic of Iran*". Responding to replies he had received from the Iranian authorities, he said that none had addressed "*the specific issues of fair trial guarantees in proceedings before the Islamic Revolutionary Courts*". He reiterated

his "*call, expressed in numerous urgent appeals, to respect the rights of those facing the death penalty, as contained in the pertinent international instruments*".[35]

The use of the death penalty in Egypt has increased dramatically in recent years. Scores of people have been executed after manifestly unfair trials before military and criminal courts and the Supreme State Security Court. Since October 1992, when President Hosni Mubarak started issuing special decrees referring civilians to military courts, 83 death sentences have been passed by such courts and 58 executions have been carried out.

In Bahrain, 'Issa Ahmad Qambar, who was arrested in connection with anti-government protests, was sentenced to death in July 1995 after an unfair trial before the High Criminal Court. He was convicted of the premeditated murder of a police officer. In November that year an appeal court upheld his death sentence. The prosecution case was based on his written confession extracted during pre-trial detention. There was no forensic evidence linking the alleged murder weapon to him and there were a number of contradictions in police testimonies. He was executed on 26 March 1996. This was the first execution carried out in Bahrain for nearly 20 years.

Yemen retains the death penalty for a wide range of offences, including offences with no lethal consequences. Sabah ‘Ali Salih al-Difani, a 22-year-old divorced woman, was sentenced to death by stoning in December 1995. She was found guilty of murdering her child, who was born outside of marriage, in order to conceal her relationship with a man who was not her husband. Her case is pending appeal. Several political prisoners are currently under sentence of death in Yemen after unfair trials. Despite the clear violations of international fair trial standards in death penalty cases, the Yemeni authorities have increasingly carried out the penalty in recent years. In 1995, the last year figures were provided, 41 people were executed.

In Kuwait, ‘Abd al-Rahman Hassan Khafi, an Iraqi national, was tried by the State Security Court and sentenced to death in July 1992, following proceedings which failed to conform to international standards for fair trial. He was arrested following the withdrawal of Iraqi forces from Kuwait in February 1991, and was among about 150 defendants brought to trial before the State Security Court. All faced charges of “collaboration” with Iraqi forces during the occupation of Kuwait. He was executed on 5 May 1993.

[35] UN Doc. E/CN.4/1995/61, para. 182.

Such executions after unfair trials highlight the arguments for abolishing the death penalty altogether. As the UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated:

"*In view of the irreparability of loss of life, the impossibility of remedying judicial errors and, indeed, the well-founded doubts expressed by a wide range of experts in criminology, sociology, psychology, etc as to the deterrent effect of capital punishment, the Special Rapporteur once again calls on Governments of all countries where the death penalty still exists to review this situation and make every effort towards its abolition.*"[36]

Corporal punishments

"*I was tied to a bed and my outer ear was then cut off with a razor. The doctor who performed the amputation then took a pair of scissors and trimmed the site of amputation.*"

These chilling words by a prisoner in Iraq were describing a mutilation that until August 1996 was sanctioned by Iraqi law and carried out on those convicted of army desertion. Such punishments should never be allowed even following the fairest of trials. Moreover, Amnesty International has documented gross denials of the right to fair trial in such cases, examples of which are included below, to underscore the gravity of what is at stake in some unfair trials. The tragedy of miscarriages of justice is all the worse when harm is inflicted that is irreversible.

Amnesty International, while recognizing the right of states to punish those found guilty of criminal offences, opposes such corporal punishments in all circumstances because they amount to cruel, inhuman or degrading punishments or to torture, and as such are banned under international law. The UDHR as well as Article 7 of the ICCPR state: "*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*." Moreover, Article 4 of the ICCPR does not allow derogation from Article 7 at any time. The Human Rights Committee explained in its General Comment 20 that the Article 7 ban "*must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime...*" The UN Special Rapporteur on torture and the Commission on Human Rights both reiterated the incompatibility of corporal punishment with the ban on torture and cruel, inhuman or degrading punishment or treatment in international law in 1997.[37] Despite this, several states in the Middle East

[36] UN Doc. E/CN.4/1995/61, para. 384.

[37]Special Rapporteur: E/CN.4/1997/7 at pg. 5, para. 6 and UN Commission on Human Rights Resolution 1997/38 on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/1997/L.II/Add. 3, para 9)

and North Africa either sanction or carry such punishments out, including Iran, Iraq, Libya, Saudi Arabia, UAE and Yemen.

Amnesty International takes no position on the religious or legal systems under which corporal punishments are inflicted. Its work to end these punishments is worldwide, covering countries in Africa, Asia, the Middle East and North Africa, the former Soviet Union and the English-speaking Caribbean.

In some countries in the Middle East and North Africa, the use of corporal punishments has increased in recent years. For example, the judicial punishments of flogging and amputation, previously limited to the former Yemen Arab Republic, became applicable to the whole of unified Yemen in 1994 under its new Penal Code. Another form of bodily mutilation, gouging of eyes, has been given as a sentence by a court even though this punishment is not prescribed by the Penal Code. Defendants in cases facing such penalties are often tried in courts of first instance and flogged immediately afterwards in courts, public places or police stations, without any appeal to a higher court. In theory they can appeal, but they then risk spending long periods in prison while the appeal is heard and may still end up being flogged. If they forgo their right of appeal, they are released immediately after the flogging, although women may be held until they are collected by male relatives. The summary nature of these trials is sometimes aggravated by interference from the security forces, undermining the impartiality and independence of the courts. Reports suggest that in some cases the security forces circumvent the courts entirely and flog suspected offenders without trial.

Yemeni law also prescribes amputation for at least two offences. Theft is punishable by the severing of the right hand. For a second offence, the left foot is severed at the ankle. If theft is committed by several people, amputation applies to all of them equally, irrespective of their individual roles in the crime. Highway robbery is punishable by amputation of the right hand and the left foot.

At least five people have suffered amputation since 1990. All had their right hand amputated in 1991. The victims' amputated hands were then publicly displayed in Sana'a city centre. This apparently caused widespread public disquiet, and it appears that no further amputations have been carried out since then -- although courts are still sentencing people to the punishment.

Successive Special Rapporteurs on torture have raised cases of amputation and flogging with a number of governments in the Middle East and North Africa, including Yemen.[38] The use of such punishments clearly contravenes the human rights treaties

[38] UN Doc. E/CN.4/1990/17, pg 53, para. 167.

which Yemen has ratified. These punishments should therefore be abolished immediately and any outstanding sentences should be overturned.

In Iran, the State Prosecutor stated in public in July 1996 that amputations for theft were to resume. He said that a thief would have four fingers amputated on the right hand for a first offence, and the toes of the left foot for a second offence. The following month Iranian newspapers reported that six people convicted of repeated theft had had their fingers amputated. The UN Special Representative on Iran, in his report of October 1996, noted that he had sent a joint urgent appeal (along with the UN Special Rapporteur on torture) to the Iranian Minister of Foreign Affairs, "*appealing to the Iranian Government to ensure that no further amputations or other corporal punishments be carried out against persons convicted of criminal offences*."[39]

Sentences of flogging are regularly imposed in Iran and other judicial punishments amounting to torture or to cruel punishment may be imposed. In October 1995, for example, a 16-year-old girl in Najafabad was reportedly sentenced to life imprisonment and to have both of her eyes gouged out for the murder of family members. It is not known if the sentence was carried out. In August 1997 a man was sentenced to have his face burned with acid for having thrown acid in the face of two sisters. He had been hired by another man who had wished to marry one of the two sisters, but had been refused.

In Saudi Arabia, sentences of lashes are regularly imposed. Muhammad ‘Ali Sayyid, an Egyptian national convicted of robbery in 1990, was sentenced to 4,000 lashes. Former prisoners held with him told Amnesty International that he was flogged at the rate of 50 lashes every two weeks. Every fortnight, he was taken with his legs shackled from the prison to the marketplace where he was flogged in full view of shoppers and passers-by. The 50 lashes were carried out by a policeman using a bamboo cane of about a metre in length and about half a centimetre in diameter. Each time he was left with bruised or bleeding buttocks, unable to sleep or sit for three to four days afterwards. In 1996, 23 Filipino nationals received 200 lashes each, reportedly for "homosexual behaviour". The punishment was inflicted 50 lashes at a time over a period of four weeks.

In Libya, the judicial punishments of amputation of limbs and flogging were hailed as a new measure to "purify" the country in 1993 by Colonel al-Gaddafi. He

[39] UN Doc. A/51/479, para. 38.

announced: "*Henceforth no one will be sent to prison because he is a thief. The thief's hand will be cut off... If he steals again, the other hand will be cut off*." He went on to say that "*prostitution [and adultery] will be punished by a hundred lashes...*" In fact, Libyan legislation already provided for corporal punishments. For example, Law No. 148 of 1972 makes theft punishable by cutting off the right hand when certain conditions are met, including that the offender is sane, aged 18 and he or she steals the money with the intention of keeping it. Law No. 52 of 1974 stipulates that a person found guilty of fornication may be punished by 80 lashes. To date, however, Amnesty International knows of no instance of such punishments being carried out -- either before or after Colonel al-Gaddafi's statement.

The authorities in the UAE have extended the scope of offences punishable by corporal punishments. In 1997 the Emirate of Ras al-Khaima extended the punishment of flogging to traffic offences and reportedly also to begging. The announcement coincided with reports that an Indian national would receive 40 lashes in public after he had been caught begging. A month earlier there were reports that three men, all UAE nationals, had been convicted by a Shari'a court in Khawr Faqqan to six years' imprisonment and 680 lashes each for adultery, trespass, threatening to kill and consuming alcohol. In July 1997 five men received 80 lashes each in a packed Shari'a court in Ras al-Khaima after being found guilty of driving under the influence of alcohol. Reports were also received that two UAE nationals had been sentenced to amputation of the right hand and foot by the court in Fujairah on 6 April 1997 after conviction of robbery.

With corporal punishments amounting to cruel punishments or torture, there is no going back. Death and mutilation are irreversible. No one should be subjected to such punishments -- ever. They should be abolished immediately. It is a legal absurdity for a legal procedure - a trial - to result in an internationally unlawful penalty. Such a result is *per se* unfair and should be stopped immediately.

Chapter 7: Right to appeal

One of the fundamental guarantees for a fair trial is the right to appeal conviction and sentence before a higher court. This right is spelled out, for example, in Article 14(5) of the ICCPR. However, many courts in the Middle East and North Africa do not allow any appeal, including in countries that have ratified the ICCPR.

International standards state that an appeal should be allowed in all cases, not just those involving serious offences. The appeal should be a genuine review of the issues in the case. Reviews limited to questions of law do not satisfy this requirement. There should also be at least two levels of judicial scrutiny, the second of which should be by a higher tribunal than the first. The rights to a fair and public trial must be observed during all appeal hearings. It is a vital process in redressing miscarriages of justice which can and do occur in legal systems the world over.

The right to appeal is particularly important in cases involving capital offences, as has been recognized by the UN Safeguards. Safeguard 6 states:

"*Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory*."

Moreover, the court hearing the appeal must have the power to review both the factual and legal basis for the conviction. The accused also has the right to be represented by competent counsel of his or her choice. Once again, however, such rights are denied by courts across the Middle East and North Africa, often backed by domestic law.

In Algeria, Morocco and Tunisia, people convicted of "terrorism" or other political or criminal charges cannot fully exercise their right to appeal against conviction and sentence. In these countries, defendants may only petition their Supreme Court for a review of the case (*cassation*) on the basis of gross procedural irregularities or errors: the Supreme Court does not look at the facts of the case (it can overturn the verdict and send the case back to the court for retrial). The *cassation* procedure does not safeguard the accused's right to appeal, but the Supreme Court can, and should, overturn any conviction resulting from an unfair trial where there were breaches of procedures. However, in practice the Supreme Court simply upholds the verdicts. In Algeria, for example, not a single one of the thousands of convictions of "terrorism" is known to have been overturned by the Supreme Court in the past few years.

In Egypt, civilians for many years have faced mass trials before military courts which deny the right of appeal. Eighty-three people have been sentenced to death and 58

executed since 1992 after such trials. Their rights of defence have been severely curtailed and they have been denied the right to appeal against the ultimate sentence.

All death sentences issued by military courts in Egypt are subject only to review by the Military Appeals' Bureau, a non-judicial body headed by the President, and to ratification by the President. All death sentences issued so far have been confirmed by the Military Appeal's Bureau and ratified by the President.

The right to appeal is denied in virtually all of the special courts operating in the Middle East and North Africa (see Chapter 9). This is particularly disturbing in the light of the summary nature of some of the proceedings, the lack of safeguards for fair trial, and the severe and irreversible punishments they may impose.

In Saudi Arabia, all sentences of death and amputation in theory automatically go through judicial review by higher courts. In practice, such a review fails to meet the minimum requirements of an appeals process, as it invariably takes place behind closed doors without the presence of the accused or her/his lawyers. In addition, while this is taking place the defendant is kept in ignorance of the progress of the case. In many cases, defendants have no idea what is happening until they are suddenly taken out and executed.

Chapter 8: Other violations of fair trial procedures

Unfair trial practices are not limited to pre-trial detention and trial proceedings. They can extend to the post-trial period to include the retrial of defendants on the same charges after conviction or acquittal, detention despite acquittal, and detention beyond expiry of sentence.

Retrial for the same offence

A fundamental right that is violated in several countries in the Middle East and North Africa is the right not to be retried for the same offence. Often this happens when the prosecution appeals against acquittal, and the appeal effectively becomes a retrial. Regardless of the type of court in which a case has been tried or the seriousness of the charge, international standards prohibit people from being tried or punished more than once in the same country for an offence for which they have already been finally convicted or acquitted. This prohibition is known as *ne bis in idem*, or the principle of double jeopardy. It is set out in Article 14(7) of the ICCPR. The aim of the prohibition is to prevent someone being tried or punished twice for the same crime.

On 14 October 1995 an Emergency Supreme State Security Court (ESSSC) in Cairo acquitted Mohammad Fathi ‘Abd al-’Azim and Mahmoud Mostafa Sulayman (along with three other defendants) of the murder of a police officer, possession of weapons and membership of an illegal organization, the armed Islamist group *al-Gama’a al-Islamiya*, Islamic Group. The court ruled that, among other things, their confessions had been extracted under torture. Forensic medical reports produced at the trial found that the injuries the five men sustained were consistent with the torture methods they alleged they had suffered. However, none of the five men was released from detention following their acquittal, and on 16 February 1997 the Prime Minister ordered their retrial.

Under the State of Emergency in force in Egypt since 1981, the prime minister has the power to cancel acquittals passed by ESSSCs and order a retrial. This contravenes the ICCPR, to which Egypt is a state party. On 3 November, following a retrial, Mohammad Fathi ‘Abd al-’Azim and Mahmoud Mostafa Sulayman were sentenced to death by an ESSSC in Cairo. There is no right to appeal against sentences issued by the ESSSCs. On 1 December 1997, the Mufti of Egypt, the highest religious authority in the country, approved the death sentences. Two of the other defendants were sentenced to life imprisonment and the fifth, Bakhit ‘Abd al-Rahman Salem, died in custody, reportedly as a result of lack of medical care.

Imed Ebdelli, a 29-year-old philosophy student at Tunis University, was arrested on 23 March 1995 when he went to the Ministry of the Interior in response to a summons he had received. He was detained in illegally prolonged *garde à vue* (incommunicado)

detention until 18 April, 17 days beyond the maximum legal period of 10 days under Tunisian law. During this time he was beaten and ill-treated. He was tried and sentenced to three years' imprisonment on charges of belonging to an unauthorized association and participating in unauthorized meetings. The sentence was upheld on appeal on 15 July 1995. He had previously been imprisoned for the same offence (of "illegal" political activities relating to the same period). In November 1991 he was rearrested and held illegally for 50 days at the Ministry of the Interior, where he was tortured and beaten. He was sentenced in 1992 to two years' imprisonment and three years' administrative control on charges of supporting an unauthorized association, even though he had withdrawn his confession, saying he had been forced to sign it under torture. His sentence was upheld on appeal. After his release in January 1994 and until his arrest in March 1995 he had to report daily to his local police station, once a week to the police station in al-Gorjani district, and once a month to the Central Police Station in Bardo district and the National Guard Station in Ibn Khaldoun/Bardo district. He remains in prison serving his three-year sentence imposed in 1995.

Illegal detention after acquittal or beyond expiry of sentence

It is clearly a violation of both international and national law to detain prisoners once they have been acquitted by a court of the crime with which they were charged, or to keep people in prison once their sentence has expired. Yet in at least nine Middle East and North Africa states -- Algeria, Bahrain, Egypt, Israel, Kuwait, Libya, Syria, Tunisia and the UAE -- this is exactly what has happened.

Bilal 'Abd al-Husayn Dakrub was taken on 16 February 1986 from a cave where he was hiding near the village of Tibnin in the north of the Israeli-occupied "security zone" in south Lebanon by members of the South Lebanon Army (SLA, Israel's proxy militia in south Lebanon) and Israeli soldiers. He stated that he was interrogated by an Israeli officer at Bra'shit camp and beaten and kicked by soldiers from the SLA. He then spent 10 days in Centre 17 Camp, near Bint Jebeil, which is reportedly run by the SLA and Israeli security services. There he was allegedly tortured with electric shocks administered by the SLA security services in the presence of Israelis who gave the orders. He was then taken to Israel and held in a detention centre in Sarafand where he reportedly spent three months under interrogation in solitary confinement. He states that he was denied sleep for long periods while being made to stand for nights on end, hooded. Sometimes he spent hours with his hands above his head. He was then transferred to Kishon Prison. He was tried by the Military Court in Lod for membership

of an illegal organization and sentenced to two and a half years' imprisonment. His sentence expired on 16 August 1988 but he remains held under administrative detention nearly nine years beyond his release date.

Youssef Hassan al-Ahaywal, Najm al-Din Mohammad al-Naquzi and Ahmad 'Abd al-Qadir al-Thulthi were arrested in Libya in 1986. Among the charges they faced were membership of an illegal political organization, sabotage and possession of weapons. In early 1987 they were reported to have been acquitted by a Revolutionary Court in Tripoli owing to lack of evidence. Yet 10 years later, they are still being held in Abu Salim Prison, apparently facing no new charges.

In Syria, prisoners remain arbitrarily detained despite court orders for their release after they have served their prison sentence, or after they have been acquitted, or after the case against them has been dropped -- even though no further charges have been filed against them. Most of these detainees are believed to be held solely for refusing to sign a so-called "security undertaking" or "political undertaking". By signing the "security undertaking" the prisoner apparently is obliged to tell the relevant security force about any political opposition activities he or she may become aware of after release. The

"political undertaking" apparently requires the prisoner to undertake to cease all political opposition activities after release. While remaining in prison they are denied access to legal assistance and the opportunity to challenge their continued detention through a fair judicial process.

Among the political prisoners who remain in jail in Syria, despite having completed their sentences, is Khalil Brayez, a former army officer and writer in his sixties, who has been held for over 12 years beyond the expiry of a 15-year prison sentence imposed in 1970. Khalil Brayez was abducted from Lebanon by Syrian security forces in October or early November 1970. He had been dismissed from the Syrian army following two short periods of detention in 1962 and 1963 and had been living in Lebanon since 1964 as he feared rearrest. Shortly after the June 1967 war with Israel he wrote two books, *The Fall of the Golan* and *From the Golan Files*, which were published in Lebanon. Both books were highly critical of the Syrian army's performance during the 1967 war. He was preparing a third book on the same subject at the time of his abduction. He was allegedly tortured during the early period of his detention and his family only learned of his whereabouts in 1973. He is held in al-Mezze Military Prison where he has served a 15-year prison sentence. No information about his trial is available. He remains illegally detained over 12 years after the completion of his sentence. On 9 December 1992 the UN Working Group on arbitrary detention declared that the detention of Khalil Brayez was "arbitrary". It called on the Syrian Government "*to take the necessary steps to remedy the situation, so as to comply with the provision and principles incorporated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights"*[40]. The government has not done so. This case clearly illustrates the power of the security forces to act with impunity beyond any judicial control, in breach of international standards and Syria's own laws.

[40]E/CN.4/1994/27 Decision 53/1992

Chapter 9: Special courts and emergency legislation

The prolonged use of states of emergency, the integration of emergency procedures into permanent legislation, and the creation of special courts to replace ordinary courts in many Middle East and North African states are matters of grave concern. Principle 5 of the Basic Principles on the Independence of the Judiciary states:

"*Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.*"

In most cases observed and documented by Amnesty International in a range of countries over many years, trials in the special courts fall far short of international standards for fair trial. Crucially, they violate the right to a fair and public trial by a competent, independent and impartial tribunal, as those in charge of the courts are usually appointed, sometimes on an *ad hoc* basis, without fair procedure, are not legally qualified, and may be members of the military or political appointments. Other rights that such courts frequently call into question are:

- the right to be presumed innocent until proven guilty;
- the right to be able to present a legal defence;
- the right not to be compelled to testify against yourself or to confess guilt;
- the right to appeal.

In more than half of all countries in the Middle East and North Africa, special legal procedures or courts have been introduced at some stage to bypass the ordinary process of law. They include Algeria, Bahrain, Egypt, Iran, Iraq, Israel and the Occupied Territories, Jordan, Kuwait, Lebanon, Libya, Morocco and Syria. The Palestinian Authority and the authorities in Iraqi-Kurdistan have also set up special courts. The dangers of these courts were highlighted in 1994 by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions when he expressed concern at:

"*...the establishment of special jurisdictions to speed up proceedings leading to capital punishment in certain cases... Such special courts often lack independence, for example, because the judges are accountable to the executive, or because they are military officers on active duty within the chain-of-command structure of the army. Time-limits which are sometimes set for the conclusion of the different trial stages before such special jurisdictions gravely affect the defendants' right to an adequate defence.*" [41]

[41] UN Doc. E/CN.4/1994/7, para. 681.

Several governments in the Middle East and North Africa have defended their use of special courts, giving assurances that they comply with international fair trial standards but are necessary for speed or security reasons. However, these do not necessitate extraordinary courts. More resources can be put into the ordinary judicial system to ensure trials are not delayed, and international standards offer perfectly adequate provisions for cases that may threaten national security. The reality is that these special courts are often created to serve political ends, in total disregard for international human rights standards.

The need for independent and impartial courts

In many cases, special courts in the Middle East and North Africa are used by the authorities to silence or imprison their critics. Often, whole groups of people are tried and sentenced collectively, with little care taken about the merits of individual cases. Victims of such procedures rarely have recourse to appeal to a higher court. This is all the more disturbing given that in dozens of cases each year, the sentence handed down by special courts is death.

The Human Rights Committee has made several statements addressing its concerns about special or extraordinary courts. For example, it commented:

"*The Committee notes the existence, in many countries, of military or special courts which try civilians. This could present serious problems as far as the equitable, impartial and independent administration of justice is concerned... [t]he trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in article 14 [of the ICCPR]*."[42]

The authorities in the Middle East and North Africa should examine closely the nature and procedures followed by special courts. They should ensure that anyone who is suspected of a criminal offence, however serious, is brought to trial before courts that are independent and impartial, abide by international fair trial standards, and operate within the normal processes of law. Amnesty International has serious concerns about the very existence of such courts when they are created or used to try large numbers of civilian political opponents of the government, and do so in a way that consistently violates defendants' basic human rights. There is a strong presumption in international law against the use of special courts, which should be resorted to only in exceptional circumstances

[42] General Comment 13 on Article 14 of the Human Rights Committee, 21st session, 1984, HRI/GEN/1 p. 13, para 4.

and which must still conform to international standards for fair trial. Any special court that consistently breaches such basic rules should be abolished.

The Human Rights Committee has also addressed the issue of when and how states parties may derogate from the normal procedures required by the ICCPR in emergency situations, as stipulated by Article 4(1). In fact, derogations from states' obligations under Article 14 on fair trial guarantees "*may only last as long as the life of the nation concerned is threatened and....., in times of emergency, the protection of human rights become all the more important...*"[43] Derogations from fair trial guarantees should "*not exceed those strictly required by the exigencies of the actual situation, and respect the other conditions in paragraph 1 of article 14 [of the ICCPR]*."[44] States parties must notify the UN Secretary General of the derogations, the reasons for the derogations, and must ensure that non-derogable rights, such as the right not to be tortured and freedom of conscience, are always respected.[45] The provisions do not endorse governments maintaining states of emergency for years or decades, as is the case in Syria or Egypt, nor do they allow for governments to use states of emergency to circumvent ordinary law when the security of the nation is clearly not at risk.

[43]General Comment 5 on Article 4 by the Human Rights Committee, HRI/GEN/1 pg 5, para.3

[44] General Comment 13 (4) on Article 14 of the Human Rights Committee, 21st session, 1984, HRI/GEN/1 p. 14.

[45]Article 4 (2) and 4(13) of the ICCPR

Algeria

In December 1991 the first round of the first-ever multi-party legislative elections in Algeria took place, resulting in the *Front islamique du salut* (FIS) winning a large majority. In early 1992 the army intervened to cancel the second round of elections and a state of emergency was declared. In September that year an "anti-terrorist" decree "relating to the struggle against subversion and terrorism" was issued (Decree 92-03), under which three special courts were set up (in Algiers, Constantine and Oran) to try all those charged with "terrorist activities".[46] The decree increased the scope of the death penalty, lowered the age of criminal responsibility to 16 years, and extended the period of incommunicado detention from two to 12 days. It also gave a broad and vague definition of "terrorist or subversive" activities and offences liable to threaten state security, which included reproducing or distributing "subversive" literature, "justifying terrorism by whatever means" [47], or "being active in any terrorist or subversive association, group or organization abroad". Between February 1993 and June 1994, at least 10,194 people were tried by the special courts. Of these, 1,127 were sentenced to death (964 of them *in absentia*), 6,507 were given terms of imprisonment, and 2,560 were acquitted. Thousands of people convicted in unfair trials before these special courts remain in prison today. Although they can petition the Supreme Court for cassation procedure, this is not a full appeal and the Supreme Court routinely upholds verdicts.

Trials in the special courts were characterized by a pattern of systematic violations of procedures and disregard for the accused's right to defence and for international standards for fair trial. Judges in special courts invariably failed to investigate torture allegations or to order investigations and medical examinations, even when detainees appeared in court with visible injuries.

Mouloud Salah and Mohamed Aouissi are serving prison terms of life imprisonment and 20 years respectively and Khaled Cherichi and Mohamed Rahmani both received eight years, after a grossly unfair trial before the special courts in Algiers in January 1995. They were tried and convicted of complicity in the kidnapping, in October 1993, of two men and a woman, all French nationals. Several of the accused were held in prolonged secret detention after their arrest and were reportedly tortured. The court did not act upon complaints of torture and prolonged secret detention raised by the lawyers and the accused, nor upon requests for medical examination and investigations into the allegations. Witnesses requested by the defence were not called by the court. Moreover,

[46] *Décret législatif No 92-03 relaif à la lutte contre la subversion et le terrorisme*

[47] *"faire l'apologie du terrorisme par quelque moyen que ce soit*"

the hostages had reportedly been shown photographs of the accused and did not recognize them. The defence lawyers petitioned the Supreme Court in January 1995 for a review of the case, but to date the Supreme Court has not replied.

In 1995 the Algerian authorities announced that the "anti-terrorist" decree had been scrapped and that the three special courts had been disbanded. In fact, the "anti-terrorist" decree was incorporated virtually in its entirety into the Penal Code and the Code of Penal Procedures (*Code Pénal* and *Code de Procédure Penale*) in February 1995. Thus what had been an emergency decree was made into permanent legislation.

The extreme vagueness of the amendments to the Penal Code means it is unclear what exactly is prohibited. This increases the risk that people may be tried and imprisoned for peacefully exercising their right to freedom of expression and association. These amendments also increase the risk of unfair trial by reducing important safeguards against human rights violations. For example, given that detainees are routinely tortured and ill-treated during incommunicado (*garde à vue*) detention, the extension of this period to 12 days leaves detainees at greater risk of torture.

Despite the abolition of special courts, unfair trials are continuing unabated in Algeria. People accused of "terrorism" are systematically held in secret detention, very often beyond the maximum 12-day period permitted by the new law. In all the thousands of cases brought to Amnesty International's attention in the past few years, not a single family was able to obtain any information from the security forces or from the authorities about their detained relative's whereabouts and legal status until the detainees were brought before the examining magistrate (*juge d'instruction*) and transferred to a recognized prison.

Requests for medical examinations and investigations into allegations of torture made by defendants and their lawyers are routinely ignored by the judiciary, even if the accused bear visible marks of torture when appearing in court. Similarly, allegations and evidence of illegally prolonged and secret detention by the security forces are never acted upon by judges and magistrates. Confessions alleged to have been extracted under torture and retracted by the accused in court are routinely accepted by the judges, who often convict defendants solely on the basis of their confessions, or of confessions of others who also retract them because they were obtained by torture. To date, not a single case of torture or illegal prolonged and secret detention is known to have been investigated by the courts. The authorities have stated that some members of the security forces have been tried and convicted of "abuses", but they have so far refused to provide any details of such cases.

The injustices resulting from the unfair trial procedures allowed by Algerian law are compounded by the restrictions on the right to appeal.

Bahrain

The procedures followed by Bahrain's Supreme Civil Court of Appeal, in its capacity as a State Security Court, have resulted in manifestly unfair trials. This special court routinely violates provisions of Article 14 of the ICCPR, as well as provisions of Bahrain's Constitution.

When facing trial before the State Security Court, detainees are denied access to legal counsel from the moment of arrest until they are brought to court. This means that although defendants may appoint lawyers of their own choosing, the first contact can only happen on the first day of trial, just moments before the opening session. This violates Principles 15 and 18 of the UN Body of Principles.

Clearly, inadequate time is given for the preparation of the defence. Moreover, defence lawyers are not granted access to court documents before trial, so they can not familiarize themselves with the facts of the case before meeting their clients for the first time in court. Even after the first session, defence lawyers have only limited access to their clients. Trial hearings are often held *in camera*.

During trial, the State Security Court is not required to summon witnesses to give evidence or for cross examination. Such evidence may be submitted in writing. Defendants can be convicted solely on the basis of uncorroborated confessions given to police or security officials, even in cases involving the death penalty, and even when there appears to be evidence that such "confessions" were extracted under torture. To date, it appears that no thorough and independent investigations into allegations of torture, which have been both frequent and consistent, brought by defendants has ever been carried out.

Under Bahraini law, there is no right to appeal to a higher tribunal against conviction and sentencing by the State Security Court.

Egypt

There are two types of special courts in Egypt, the Emergency Supreme State Security Courts (ESSSC) and military courts, which deny prisoners of conscience and political prisoners basic fair trial safeguards guaranteed to ordinary criminal offenders in civilian courts throughout the country. An ESSSC generally follows ordinary procedures, but defendants have no right to appeal against its verdict and sentences. Military courts follow procedures which grossly violate the rights of defendants and have in recent years clearly become an arm of the state to silence political opponents.

In October 1992 President Hosni Mubarak began issuing special decrees ordering that groups of civilians charged with offences related to "terrorism" be tried by military courts. Since then hundreds of people have been tried by these courts: 83 have been sentenced to death and 58 executions have taken place.

Mass trials before these courts violate some of the most fundamental requirements of international law: the right to be tried before a competent, independent and impartial law court, the right to have adequate time to prepare a defence, the right to be defended by a lawyer of one's choice and the right to appeal to a higher court. Egypt's civilian judges are appointed for life by a high judicial council. Military judges, on the other hand, are serving military officers appointed by the Minister of Defence for a two-year term, which can be renewed for additional two-year terms at the discretion of the Minister of Defence. This does not provide sufficient guarantees of independence.

In July 1993 the UN Human Rights Committee reviewed Egypt's record of implementing the ICCPR and expressed deep concern about military courts trying civilians, concluding that "*military courts should not have the faculty to try cases which do not refer to offences committed by members of the armed forces in the course of their duties*".[48]

In several mass trials of civilians before military courts attended by Amnesty International delegates, defence lawyers consistently complained that they were denied sufficient time to prepare their cases, usually receiving thousands of pages of case files only days before the start of a trial. This is particularly disturbing given the complexity and seriousness of these cases, and the fact that many defendants face the death penalty. In several cases defence lawyers withdrew from the cases in protest at the fact that their specific requests were refused by the judges. In these situations the president of the military court appoints former military judges to be defence lawyers, against the wishes of the defendants.

Those convicted by military courts have no right to appeal to a higher court. All sentences passed by military courts are subject only to review by the Military Appeals' Bureau, a body composed of military judges which is not a court, and ratification by the President. All death sentences passed by military courts since the end of 1992 have been confirmed by the Bureau and ratified by the President.

[48]Comments of the Human Rights Committee, 48th session, - CCPR/C/79/Add.23, pg. 3, para.9

Iran

For many years trials held before Islamic Revolutionary Courts, which were set up after the establishment of the Islamic Republic of Iran in 1979, were grossly unfair. They were usually held in secret, with summary proceedings and no right of appeal. Many defendants said they were tortured to force them to confess, and at no stage in the legal proceedings were they allowed contact with lawyers. In many cases, defendants were charged with espionage or with vaguely-worded "activities against the Islamic Republic" which appeared designed solely to silence critics of the government. In 1988 thousands of prisoners were secretly executed in a wave of mass executions, although many had been previously sentenced to prison terms by the Islamic courts.

Recent amendments to legislation in Iran have done little to improve the situation, as political prisoners in particular continue to be denied access either to any legal counsel or to a lawyer of their choice. Such amendments include a 1993 law on appeals, which allows a limited right of review, including in cases involving the death penalty and corporal or *hadd* [*divinely ordained*] punishments; and legislation on Public and Revolutionary Courts, which came into effect in 1995 and passed responsibility for prosecution to judges.

Other special courts in Iran, such as the Special Court for the Clergy, appear to be inherently incapable of providing fair trial guarantees. This court was established to "investigate crimes such as counter-revolution, corruption, fornication, unlawful acts, accusations which are incompatible with the status of the clergy. The Regulations governing these courts were published in October 1990, which meant the court operated for over three years before becoming established in law.

The Regulations contain many provisions that contravene international fair trial standards. Under Article 25, the Prosecutor's Office can take independent action to execute the verdicts and sentences of the court. This may explain why the Special Court for the Clergy has its own prisons. The court also has its own security forces who carry out arrests and interrogate prisoners and who act outside the ordinary law enforcement framework. Article 34 appears to allow for detention warrants to be issued that cannot be challenged by the defendant or be subjected to any kind of judicial review. This raises the possibility of long-term pre-trial detention or detention without trial without any recourse to safeguards such as *habeas corpus* or similar mechanisms, in clear violation of the most basic provisions of international human rights standards.

The Regulations also appear to allow for the imprisonment of prisoners of conscience under broadly defined offences (Article 18). It is not clear whether there is a right to appeal. Moreover, defendants before the Special Court for the Clergy can be represented only by people chosen from "a number of competent clergymen" designated

by the court. In practice, defendants are rarely if ever granted access to a lawyer of their own choice. The court is empowered to pass death sentences as well as punishments amounting to cruel, inhuman and degrading punishment or torture, such as flogging.

Iraq

Special courts are frequently set up by decision of the Revolutionary Command Council (RCC) to try particular groups of prisoners or to deal with certain offences. For example, RCC Decree 39 of 2 April 1994 stipulates that defendants accused of some economic offences, which constitute sabotage of the national economy, are referred to "the special court of the Ministry of Interior on the basis of an order issued by the competent investigating judge". Similarly, RCC Decree 111 of 23 August 1994 provides for the setting up of a special court in the Ministry of Defence for trying military personnel charged with certain offences which carry the death penalty, such as theft or embezzlement of money or other property belonging to the armed forces and forgery of military service documents. Decree 111 stipulates that the decisions of this court are final, with the exception of death sentences which are subject only to ratification by the Minister of Defence.

Accurate monitoring of such courts is made difficult by the lack of public access to their verdicts and sentences. The majority of trials conducted before these special courts fall far short of internationally recognised standards for fair trial. The courts' benches usually consist of appointed military officers or civil servants, who lack adequate training and independence. Access to a government-appointed lawyer is severely restricted and occasionally confined to the day of the trial, which is conducted *in camera*. The role of the defence counsel is said to be often restricted to pleading for clemency or reduction of sentence. Defendants charged with capital offences are frequently denied their legal right to call witnesses on their behalf or to submit evidence refuting the charges. Confessions, even if extracted under torture, are often used as the sole basis for conviction.

In areas of Iraqi Kurdistan under the control of Kurdish authorities, a new judicial system was introduced after the withdrawal of Iraqi troops in the early 1990s. Between March and October 1991, judicial authority in the region was formally exercised by the Iraqi Kurdistan Front (IKF). It quickly established special courts, which heard both criminal and security cases. Sentences were said to have been ratified by the IKF representatives in the area. There was no right to appeal to a higher court. Reports suggested that corruption and political interference at a high level influenced some of the courts' decisions.

In May 1991 the special IKF courts were abandoned. Six months later another special court was set up, the Supreme Special Court for the Revolution. It reportedly

heard cases of a "special" or "dangerous" nature, including espionage, sabotage and other political offences. Trials were said to be summary in the extreme and the court's decisions were widely seen as based on political rather than legal considerations. Numerous death sentences were reportedly handed down by the court. This court, having reportedly convicted about 80 prisoners who were serving prison terms ranging from one year to life for both security and ordinary crimes, was abolished at the end of February 1992.

Within a few days, however, the IKF established a Special Court for the Revolution, with almost identical procedures and remit as its predecessor. Trial documents showed that in some cases proceedings had been summary and that some defendants had been tried and convicted without any legal representation. Trials were said to have been held *in camera*. Torture and ill-treatment of detainees during pre-trial detention were said to be routine, and "confessions" extracted under such circumstances were used to secure convictions. The court was abolished in November 1992. It was then announced that all criminal cases settled by the court would be referred for review to the Court of Cassation for the Kurdistan Region. Such reviews began six months later.

Israel and the Occupied Territories

Palestinians from the Occupied Territories who are tried by Israel for “security offences” are brought before military courts. These courts are regulated by Israeli military orders and are composed of judges appointed by the Israeli Defence Force (IDF) military commanders. Offences punishable by less than five years are tried by single-judge courts while offences punishable by more than five years are tried by three-judge courts, which can include two officers not trained in law. Before 1989 verdicts handed out by these military courts were not subject to appeal. Since then appeals by both prosecution and defence against verdicts of these courts can be made to the Military Appeals Court.

Amnesty International has frequently voiced serious concerns relating to the use of these courts. The independence and impartiality of military judges, who have no security of tenure and serve in the same military unit as prosecutors, must be questioned. Confessions obtained under interrogation during incommunicado detention accompanied almost invariably by torture or ill-treatment are often the primary evidence against detainees. Since torture is effectively legalized in Israel’s occupied territories, challenges that torture was used to obtain a confession are never in practice successful. In addition, Amnesty International delegates studying military trials in 1990 commented on the numerous improper pressures exerted on defendants to plead guilty and enter into a plea-bargain. Such pressures include longer sentences for those who contest cases and lengthy delays before contested trials are held.

Palestinian Authority

The State Security Court in Gaza was hastily set up by the Palestinian Authority under a special decree issued on 7 February 1995. It is not part of the ordinary criminal court system in Gaza, nor is it part of the established military court system which tries offences committed by members of the security forces. The court became operational on 9 April 1995 and deals solely with people accused of security offences such as transporting explosives, recruiting suicide bombers, and weapons training without a permit. The court's procedures are grossly unfair and the presiding officers are members of the security forces, appointed on an *ad hoc* basis for each trial, who have never before served as judges. Such failings are particularly worrying given the power of the court to sentence civilians to long prison sentences or even death.

The establishment of the State Security Court followed pressure by the Israeli and US authorities on the Palestinian Authority to act against those believed to be carrying out or supporting acts of violence against Israelis. In this context the independence and functioning of the judiciary has been compromised in the interest of political expediency.

Trials before the State Security Court are held in secret. This contravenes the right to a public trial as stipulated in international standards such as Article 10 of the UDHR and Article 14 of the ICCPR. This right is intended to protect a defendant from abuse in the criminal process and to allow the public to assess whether justice is being done. When Amnesty International has asked to see charge sheets, transcripts or other basic information about particular trials, its requests have been denied.

The court's hearings are summary, some reportedly lasting only a matter of minutes and all finishing within the night they begin. Some of those who have appeared before the court were tried, convicted and sentenced within a day of their arrest.

The authorities give no advance warning of these trials. People tried by the court have said they did not know they were going to be tried until they were taken from their cells, or even until they were led into the courtroom. Families too are kept in the dark. Many only find out their relative has been charged when they hear on the radio the next morning reports of the trial and verdict. This system violates two fundamental, interrelated safeguards for a fair trial: the right to be informed promptly and in detail of the charges one faces, and the right to have adequate time to prepare one's defence.

Defendants are represented by court-appointed lawyers, some of whom are reported to be employees of the security forces. Only after months of protests have some had a lawyer of their choice. Those convicted by the State Security Court have no right to appeal to a higher court. The court's decisions are subject only to ratification by Yasser Arafat, President of the Palestinian Authority.

Trials by the State Security Court also contravene international fair trial standards included in the provisions of the agreement between Israel and the Palestine Liberation Organization of 4 May 1994. Article XIV states:

"*Israel and the Palestinian Authority shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally accepted norms and principles of human rights and the rule of law.*"

Article VI states that the "*Palestinian Authority... will administer justice through an independent judiciary*", a provision that is clearly breached.

Syria

The Supreme State Security Court (SSSC) was set up as an institution of the State of Emergency by Legislative Decree 47 of 28 March 1968. Since 1992, more than 500 political prisoners, including prisoners of conscience, have been tried before the SSSC.

The SSSC is neither impartial nor independent, contrary to Syria's obligations under the ICCPR and the UN Basic Principles on the Independence of the Judiciary. Its procedures also violate provisions of the Syrian Constitution.

The sole statutory right guaranteed to defendants appearing before the SSSC is the right to defence. Yet even this right is severely limited. A detainee must first provide their lawyer with a *wakala* (authorization) before the lawyer will be recognized as their representative counsel. This depends on relatives knowing where the detainee is being held and finding a lawyer willing to take up the case. If a lawyer is found, he or she must seek a representative from the Bar Association to visit the detainee to obtain a signature on the *wakala*. The detainee must also pay a fee.

Political prisoners cannot possibly fulfil these conditions. They are held in secret, incommunicado detention and many lawyers are terrified of reprisals if they represent government opponents. Moreover, political defendants standing trial before the SSSC cannot choose or have a lawyer appointed for them until their first appearance in court. Once the trial begins, the freedom of the defence lawyer is further restricted by the discretionary power of the judges. For instance, lawyers are not allowed to meet their clients in detention without written permission from the president of the court, which is often withheld.

In many cases evidence produced before the SSSC has allegedly been extracted under duress, yet the court rarely if ever tries to establish whether confessions were the result of torture. There is no right to appeal against conviction and sentence.

Other states

The State Security Court in Jordan, established in 1991, tries both military personnel and civilians in cases such as those related to the external or internal security of the state and drugs offences. With only one exception, the court's judges have been military appointed on an *ad hoc* basis by the executive authorities. The very nature of the court means it fails to satisfy the requirements of Article 14(1) of the ICCPR and the UN Basic Principles on the Independence of the Judiciary. The Jordanian authorities have justified the use of this court by saying they need speedy investigations and trials for the offences within the court's jurisdiction. However, speedy justice can be achieved perfectly well by adding resources to the ordinary judiciary: it does not require an exceptional court.

Neighbouring Lebanon also has a special court for particular types of offences. The Justice Council, comprising five senior judges from the Court of Cassation, hears cases covering crimes such as state security offences, terrorism, unlawful association and other "political" crimes. Cases are referred to it at the discretion of the Cabinet of Ministers, rather than as a result of normal judicial procedures. There is no right of judicial review of the sentences passed, including the death penalty. Political detainees in Lebanon are invariably brought before special courts. Civilians should not be tried before military courts but, according to Lebanese law, if any act or offence has been interpreted as posing a "threat" to national security or "incitement to conflict", the case may be placed under the jurisdiction of the military court. Acts interpreted as a "threat" to national security whose cases were referred to the military courts included demonstrations against the Lebanese Government or non-violent leaflets criticizing the Syrian presence in Lebanon. Judges in military courts are nearly always military men, sometimes without proper qualifications. The heavy caseload means that defence lawyers may get insufficient time to plead properly, and there is no right to appeal to a civilian court against the verdict of what may have been a summary trial. The military court of appeal functions in the same manner as the lower military court.

The Justice Council, which has heard the most important political cases in Lebanon, is also flawed. There is no right to appeal, although both courts may impose death sentences. Judges in the Justice Council are distinguished judges, but often because of their heavy caseload elsewhere they have no time to hear cases which may drag on for years. The Justice Council holds its sessions intermittently once a week or at the weekend. They, as with military courts, have shown a readiness to accept confessions allegedly extracted after torture and an unwillingness to order proper independent medical examinations of such allegations. The Human Rights Committee which examined Lebanon's report in April 1997 noted that "decisions passed by the Justice

Council are not subject to appeal".[49] The Committee also expressed concern "about the broad scope of the jurisdiction of military courts in Lebanon, especially its extension beyond disciplinary matters and its application on civilians.".[50]

In Kuwait, following the withdrawal of Iraqi forces in February 1991, trials before the Martial Law Court and the State Security Court, both special courts, mostly of those suspected of "collaboration" with the Iraqi occupation authorities, were manifestly unfair. The Martial Law Court was dissolved in June 1991, and cases before it were transferred to the State Security Court, itself dissolved in September 1995. Flaws included denial of prompt access to families, lawyers, judges and independent medical attention. The courts were not independent and impartial, charges were vaguely worded, and there were inadequate opportunities to prepare a defence. Judges failed to investigate allegations of torture adequately, and those convicted were denied the right of full appeal against their conviction and sentence. One person was executed and at least eight other political prisoners remain under sentence of death after conviction by the State Security Court. Over 120 prisoners, including prisoners of conscience, are still believed to be serving sentences.

In a welcome move, the Kuwaiti authorities abolished the State Security Court in September 1995. All cases were transferred to ordinary courts. However, the authorities have yet to set up a judicial review of the cases of political prisoners sentenced after manifestly unfair trials by special courts in previous years.

In Libya, as part of a series of legal reforms, Colonel al-Gaddafi abolished all extraordinary courts in 1988 except for two, the Permanent Revolutionary Court and the People's Court. His action ended the *ad hoc* courts set up by Revolutionary Committees to try political opponents of the government. The Permanent Revolutionary Court, which, according to the authorities, deals solely with disciplinary cases against members of the Revolutionary Committees, does not abide by the Libyan Code of Criminal Procedures or any other publicly known judicial procedures. Moreover, the independence and impartiality of the court is undermined by the criteria for members of the court who must be members of the Revolutionary Committee which has been responsible for gross human rights violations. The People's Court tries political cases as well as cases involving human rights violations by state officials. Again, the independence and impartiality of the court are undermined by the fact that its members are not explicitly required to be members of the judiciary and they are checked by the General People's Congress, Libya's highest legislative body, on a periodic basis.

[49]Comments of the Human Rights Committee, 59th session, para. 9 (CCPR/C/79/Add.77)

[50]Ibid, para. 13

Chapter 10: Administrative detention

"*By the end of the sixth renewal on 26 February 1997, I will have spent a total of 33 months continuously in administrative detention. During this time, I have not once been able to answer the innocent and persistent question of my two little girls, `When are you coming home?*"'

These words come from a letter written to Amnesty International by Samir Shalalda, one of thousands of Palestinians who have been administratively detained in Israel and the Occupied Territories over the years. Many of them, including prisoners of conscience, have been detained under repeated administrative detention orders. In practice, this means that they spend months and sometimes years in prison without charge or trial, outside the normal judicial process, and without knowing why they are held. It also results in torment, as hopes of release are shattered when detention orders are renewed on expiry. The process can be repeated indefinitely, so detainees' lives and those of their families are dominated by despair. Victims describe the use of such orders as "another form of torture".

Administrative detention refers to detention without charge or trial, usually imposed by a non-judicial authority, where there is no intention of charging or trying the individual. It may be imposed either under a special law or under no law at all. International standards allow for limited use of such a practice. However, as the Human Rights Committee has noted about one form of administrative detention, "*if so-called preventive detention is used, for reasons of public security... it must not be arbitrary, and must be based on grounds and procedures established by law... information of the reasons must be given... and court control of the detention must be available... as well as compensation in the case of a breach*."[51]

Most fair trial rights under international law should apply to people administratively detained. In practice, however, administrative detention is often used in a way that violates each and every one of these rights. Given the likelihood of administrative detention leading to such abuse, Amnesty International urges that governments ensure that political detainees are charged with a recognizable criminal offence and promptly tried in accordance with international standards or released. In the face of the systematic use of administrative detention to violate human rights in particular countries, Amnesty International has called for its abolition in that context.

[51] General Comment 8, Article 9 (16th Session, 1982)

In the Middle East and North Africa many states have turned administrative detention into a tool of silencing political opponents and used it as a back door way of disregarding the most basic human rights, such as the right not to be arbitrarily arrested and detained and the right to prompt fair trial or release.

In Israel, when the authorities issue administrative detention orders, they have no intention of charging the detainees or bringing them to trial. In the Occupied Territories, detainees are not given a judicial hearing unless the detention order is for longer than six months -- at which time there is a judicial review.

In theory, a detainee has the right to appeal against every detention order, with legal counsel of their choice. In practice, however, in the vast majority of cases neither the lawyer nor the detainee is informed of the details of the evidence since the court is authorized to choose how much information to disclose based on grounds of "security". Ribhi Qatamesh has been in administrative detention since March 1994. In a letter he describes his experience in appealing his administrative detention order "After looking at the file and listening to the prosecution and defence lawyer, if the [defence] lawyer demands an explanation of the reasons for detention, the detainee and his lawyer must go outside the hall while the *Shabak*[52] person explains what is known as the secret file. The Public Prosecutor will refuse to explain or give information in the presence of the detainee or his representative on the pretext of infringing the 'sacred cows' of security and sources of information. With these little words 'Security' and 'Secret File', the detainee can be turned into a criminal, dangerous to the future of the public and to the future of Israel."

In Egypt, thousands of people, the vast majority of them sympathizers, members and suspected members of unauthorized Islamist groups have been administratively detained without charge or trial, some for as long as eight years. They have been held under Article 3 of the Emergency Law, which has been in force without interruption since 1981. The Article allows for the arrest and detention of "suspected persons or those who endanger public order or security". Although detainees may petition against their detention after 30 days, in practice even when a court orders their release, detainees are usually transferred secretly to local police stations or branches of the State Security

[52]General Security Service - Israel's intelligence service specializing in the interrogation of political prisoners

Investigations (SSI) Department. They are held for a few days and then issued with new detention orders and taken back to prison.

Hassan al-Gharbawi Shahhata, a 37-year-old lawyer who is married with one child, was arrested on 11 January 1989 and charged in connection with two cases relating to disturbances in ‘Ain Shams, a densely populated district in Cairo. He was tried and acquitted on 29 May 1990, but has remained in administrative detention. Since then, the Egyptian authorities have reportedly ignored 25 court orders for his release by transferring him from his place of detention to 'Ain Shams police station or to the offices of the SSI in Shubra al-Kheima for a few days, then returning him under a new detention order. He is a possible prisoner of conscience and is currently held in al-Wadi al-Gadid Prison where he is reportedly suffering from ill-health.

The vast majority of those detained in Bahrain in recent years are believed to be held under the 1974 Decree Law on State Security Measures. Article 1 of this law provides for the administrative detention without charge or trial for up to three years of people suspected of endangering state security. Detainees held under the provisions of this article have the right to submit a complaint against their arrest order three months after it has been issued**.** However, Amnesty International knows of no case where a detainee has actually been allowed to submit a complaint. Moreover, the three-month period denies detainees their right to be brought promptly before a judge, as required by Principles 32(1) and 37 of the Body of Principles.

If detainees are held under administrative detention orders, they face the torment of not knowing when they may be released and are usually denied any chance of challenging their detention. If detainees are not told why they are being detained, there are increased chances that false charges will be brought later, particularly against political suspects. If detainees are denied access to lawyers, the likelihood that they may incriminate themselves or be denied other rights is similarly increased. For all these reasons and more, it is essential that the authorities in the Middle East and North Africa ensure that all detainees are accorded the full range of their rights from the moment they are arrested.

Conclusion

The preceding chapters illustrate clearly how the right to fair trial is grossly violated throughout the Middle East and North Africa. They also illustrate how the violation of this right has been and continues to be a key contributory factor in facilitating and perpetuating other gross human rights violations.

States in the Middle East and North Africa, despite the difference between their judicial systems and stances on international human rights law, all violate the right to fair trial. Some violate aspects of this right even though it is protected by international human treaties which they have acceded to or ratified. Others are not party to any international human rights treaties and continue to deny detainees the most basic fair trial standards. The result is that there is not a single fair trial safeguard which has not been breached by one state or another.

The patterns of violations of the right to fair trial in the region range from those which take place within the judicial systems to those which are extrajudicial. Those within the judicial system include arbitrary arrest and incommunicado detention as well as long-term detention without charge or trial of prisoners of conscience and political prisoners. They also include trials where the presumption of innocence is denied from the start, where defendants are denied the right to adequate defence, where confessions are accepted as evidence even when obtained under duress, and where those convicted are denied the opportunity of appeal. In many countries such trials are held before special courts whose sole purpose appears to be to convict rather than to seek the truth and establish justice.

Extrajudicial fair trial violations most often involve administrative detention, whereby individuals are held with no intention of charging or trying them. This measure is being used by a number of countries to bypass ordinary legal procedures and as a back door way of silencing political opponents.

Unfair trial practices have been a key factor behind the gross human rights violations prevailing in the region. Arbitrary arrest and detention coupled with the lack of independent and impartial trial hearings contribute to making deprivation of individual liberty a simple process, claiming thousands if not millions of victims over the years. Incommunicado detention combined with impunity have made torture an institutionalized practice and contributed to “disappearances”. The lack of adequate defence and appeal in many countries have made the passing of death sentences, amputations and flogging an easy exercise.

If international standards for fair trials had been fully incorporated into domestic laws and strictly observed, then the fate of the overwhelming majority of the victims of human rights violations cited in this report, as well as hundreds of thousands of others over the years, would have been very different. The violation of basic human rights standards is also an abuse of the person causing untold suffering for countless individuals and their families in the Middle East and North Africa. Amnesty International is calling on all governments in the region to take immediate steps to implement the recommendations set out in this report.

Recommendations

Amnesty International urges all governments in the Middle East and North Africa to implement fully -- in law and practice -- all internationally recognized human rights safeguards for fair trial as this would significantly contribute to protecting the lives and security of detainees. Furthermore, it calls on them to comply fully with international standards in law and practice. In particular, it calls on the governments to take the following steps where appropriate:

- **Ratify international human rights standards**

All states in the Middle East and North Africa that have not done so should ratify key international human rights treaties which protect the right to a fair trial, in particular the International Covenant on Civil and Political Rights (ICCPR), together with its (First) Optional Protocol, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without limiting reservations (see Appendix 1). Those states which have ratified these conventions with limiting reservations, should lift their reservations.

- **Release all prisoners of conscience**

All prisoners held solely for the non-violent expression of their conscientiously held beliefs, or solely on the basis of their ethnic origin, sex, colour, language or any other discriminatory basis should be immediately and unconditionally released.

- **Repeal or amend all legislation that allows for the imprisonment of prisoners of conscience**

All laws that allow for the detention of people solely for peaceful expression of their views should be repealed or amended to bring them into line with Articles 19(1 and 2), 21 and 22 of the ICCPR and other international human rights standards.

- **End arbitrary arrests**

All arresting authorities should immediately inform anyone they arrest of the reasons for the arrest and promptly inform them of any criminal charges. The authorities should also provide anyone who has been arrested with access to records concerning their arrest as required by Principle 12 of the Body of Principles.

- **End secret detention**

No one should be secretly detained. All detainees should be held only in publicly recognized legal places of detention. Up-to-date registers of all prisoners should be maintained in every place of detention and centrally. This information should be made available to relatives, lawyers, judges, official bodies trying to trace people who have been detained, and others with a legitimate interest.

- **End administrative detention**

Administrative detention denies the detainee the right to a fair trial. All detainees held under administrative detention should be immediately released if they are not to be charged with a recognizably criminal offence and tried promptly and fairly.

- **Ensure prompt access to lawyers, doctors and relatives**

All detainees must be allowed prompt, regular and confidential access to lawyers and doctors of their choice, at all stages of the proceedings, as well as access to relatives. Prompt access to lawyers is required by Principles 15 and 18 of the Body of Principles and Principle 7 of the Basic Principles on the Role of Lawyers. In any case, no one should be denied access to lawyers for more than 48 hours after arrest and detention. All detainees should have prompt access to independent medical attention as required by Rules 22 to 26 and 91 of the Standard Minimum Rules, and Principles 24 to 26 of the Body of Principles. The authorities should immediately notify relatives of those arrested of the arrest and place of custody, as well as of all transfers from one place of custody to another, as required by Rule 92 of the Standard Minimum Rules, and Principle 16(1) of the Body of Principles. Detainees should also have prompt access to their families as required by Principles 15, 16 and 19 of the Body of Principles and Rule 92 of the Standard Minimum Rules.

- **Ensure prompt access to judges**

All detainees should automatically be brought before a court without delay and with their lawyers. The court should be empowered to assess the legality and necessity of their detention, as well as their treatment. At any time, detainees should retain the right to seek a judicial review of their detention and of any orders by public prosecutors preventing access to lawyers, doctors or relatives. These safeguards are spelled out in Article 9(3) of the ICCPR and Principles 11 and 37 of the Body of Principles. Judges who extend detention orders should be independent of police or the prosecutor's office.

- **Ensure separation of the detention and interrogation functions**

As a safeguard against torture and ill-treatment, the agency responsible for the custody of detainees should be different from the one engaged in interrogating them. The supervision of any detention centre should be effectively carried out by officials other than those of the detention centre.

- **Prompt trial or release**

All political detainees should be charged with a recognizably criminal offence and given a prompt and fair trial, or else released.

- **End torture and investigate allegations of torture**

Proper safeguards should be enforced to stop torture and ill-treatment of detainees and prisoners. Anyone found responsible for such abuses should be brought to justice and the victims compensated. Prompt and impartial investigations of allegations of torture should take place. No statement made as a result of torture shall be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

- **Ensure independence and impartiality of courts**

All courts should be fully competent, independent and impartial. In countries where special courts have been established, the authorities should examine closely the nature and procedures followed by them to ensure that they comply with international fair trial standards. They should note the strong presumption in international law against the use of special courts, which should be resorted to only in exceptional circumstances. Any special court that consistently breaches international fair trial standards should be abolished.

- **End discriminatory procedures**

Everyone must be granted, without discrimination of any kind, equal access to a court. Fair trial guarantees required by international standards must be equally available to all. All states should accord to women equality with men before the law.

- **Release all people held illegally**

All those being held for long periods without charge or trial, and all those being held beyond the expiry of their sentence or after acquittal should be released immediately.

- **Review the death penalty and commute all death sentences**

Legislation should be reviewed to reduce the number of capital offences with a view to abolishing the death penalty. Governments should recommend the commutation of all death sentences, particularly those imposed after unfair trials or in courts that allow no right of appeal. Amnesty International appeals to all governments and heads of state to exercise clemency in all cases.

- **End the use of corporal punishment**

Corporal punishments amounting to cruel, inhuman or degrading punishment or to torture, such as amputation and flogging, should be abolished. In countries where such punishments are prescribed, the authorities should ensure that none is carried out, pending abolition.

- **Guarantee the right to appeal**

All courts, whatever their nature, should allow the right to appeal against conviction and sentence to a higher tribunal. This right should apply in all cases, and must apply in cases involving the death penalty. Procedures before review tribunals must be in accordance with international fair trial standards.

- **Compensation for unlawful arrest or detention**

Every person who has been the victim of unlawful arrest or detention has an enforceable right to compensation. Article 9 (5) of the ICCPR sets out this right expressly and it is implicit in Principle 35 of the Body of Principles.

- **Training in human rights standards**

In the training of judicial officials clear emphasis should be given to the obligations and requirements under international human rights treaties and other human rights standards. Training for all law enforcement officials should include human rights standards guaranteeing the rights it is their duty to protect. It is the responsibility of governments to ensure that training in international human rights standards is provided and performance monitored.

APPENDIX I: Ratifications of selected international human rights treaties by states in the Middle East and North Africa (accurate as of September 1997)

States which have ratified a convention are party to the treaty and are legally bound to observe its provisions.

State	International Covenant on Civil and Political Rights (ICCPR)	Optional Protocol to the ICCPR	Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Algeria	x	x		x (22)
Bahrain				
Egypt	x			x
Iran	x			
Iraq	x			
Israel	x			x (28)
Jordan	x			x
Kuwait	x			x
Lebanon	x			
Libya	x	x		x
Morocco	x			x (28)
Oman				
Qatar				
Saudi Arabia				x*
Syria	x			
Tunisia	x			x (22)
United Arab Emirates				
Yemen	x			x

x - denotes that country is a party

* In September 1997, Saudi Arabia acceded to CAT with two limiting reservations. The reservations related to Article 3(1) which prohibits the forcible return of anyone to another state where she/he would be at risk of being subjected to torture. The other reservation was a refusal by the government to recognize the authority of the Committee against Torture, as stipulated in Article 20, to investigate allegations of systematic torture.

(22) - denotes Declaration under Article 22 recognizing the competence of the Committee against Torture to consider individual complaints of violations of the Convention.

(28) - denotes that the country has made a reservation under Article 28 that it does not recognize the competence of the Committee against Torture to examine reliable information which appears to indicate that torture is being systematically practised, and to undertake a confidential inquiry if warranted - as provided for in Article 20.

Palestinian Authority - Although the Palestinian Authority can not ratify international human rights treaties, Chairman Yasser Arafat told Amnesty International delegates in 1993 that the PLO was committed to recognizing all internationally recognized standards.

Appendix II: Articles 9 and 14 of the International Covenant on Civil and Political Rights

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. 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.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order *(ordre public*) or national security in a democratic society or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit of law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
   (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
   (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
   (c) To be tried without undue delay;
   (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
   (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
   (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court:
   (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. 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.