

EGYPT

1. INTRODUCTION

1. The legal framework

1.1. The Constitution

Egypt has a population of 66 million people, composed of several ethnic groups and religious communities.¹

Egypt gained independence on 18 June 1954. According to its present Constitution, adopted on 11 September 1971, "the Arab Republic of Egypt is a democratic, socialist State based on the alliance of the working forces of the people."² The Constitution guarantees a range of social, economic, civil and political rights.³ It also guarantees the right to petition and a right of access to courts.⁴

The judiciary consists of: courts of first instance, all of which hear criminal and civil cases;⁵ courts of appeal, which hear appeals and have original jurisdiction to hear criminal cases that carry punishments of longer-term imprisonment or death; the High Supreme Court, which has jurisdiction to hear cases on appeal from the courts of appeal and the Supreme Constitutional Court, which decides on the constitutionality of laws.⁶ There are also separate administrative courts and special courts, such as the State Security Court⁷ and Military Courts.⁸ The Constitution guarantees the independence and immunity of the judiciary.⁹

¹ See for general information, the Combined third and fourth periodic reports of Egypt submitted to the Human Rights Committee, UN Doc. CCPR/EGY/2001/3, 15 August 2002, Section 1, paras.11 et seq.

² Article 1 of the Constitution.

³ See Part III, Articles 40-63 and Part IV, Articles 66-72 of the Constitution.

⁴ Articles 63 and 68 of the Constitution.

⁵ See Judicial Authority Act No.46 of 1972.

⁶ See on the Egyptian judicial system Supplementary reports of States parties due in 1996: Egypt, UN Doc. CAT/C/34/Add.11, 28 January 1999., paras.19-22; 26-30.

⁷ EOHR/OMCT, Comments on the Report of the State of Egypt Concerning the Implementation of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, November 2002, 4.3.

⁸ Supplementary reports of States parties due in 1996: Egypt, UN Doc. CAT/C/34/Add.11, 28 January 1999, para. 140. "As to the military judiciary, article 183 of the Constitution states that it is regulated by law and that its competences are framed by the principles embodied in the Constitution. It is therefore a specific judiciary and its judgments are regulated by Act No. 25 of 1966. It is also bound in its procedures by the fundamental safeguards stipulated in the Constitution and the law in regards to both suspects and victims. Military judges are specialized judges who are legally qualified and trained alongside the ordinary judiciary at the National Centre for Judicial Studies. The military judiciary is competent to try members of the military for military offences or public law offences that they commit. It is also competent to try civilians in circumstances where an offence is committed in military camps or against military supplies or equipment. Article 6, paragraph 2, of the aforementioned Military Sentences Act states that, while the provisions of the Emergency Act are in force, the President of the Republic may refer certain offences for examination by the military judiciary, which, in examining such cases, is bound by the provisions of the Code of Criminal Procedure. No punishments other than those contained in the Penal Code are applied to suspects and the judgments handed down in such cases are subject to ratification and may be challenged on the same grounds provided for appeals by cassation. It should be mentioned that, on the basis of the aforementioned provision, various cases of terrorism were referred by republican decision for examination by the military judiciary. A number of legal and constitutional pleas in connection with the provision were

1.2. Incorporation and status of international law in domestic law

Egypt has become party to the following relevant international human rights and humanitarian law treaties:¹⁰

- Genocide Convention (8 February 1952)
- Geneva Conventions (10 November 1952)
- CERD (1 May 1967)
- Refugee Convention (22 May 1981)
- CEDAW (18 September 1981)
- ICCPR (14 January 1982)
- ICESCR (14 January 1982)
- African Charter on Human and Peoples' Rights (3 April 1984)
- Convention against Torture (25 June 1986)
- Additional Protocols I and II to Geneva Conventions (9 October 1992)

Article 151 of the Constitution stipulates that: "The President of the Republic shall conclude treaties and communicate them to the People's Assembly, accompanied with suitable clarification. They shall have the force of law after their conclusion, ratification and publication according to the established procedure. However, peace treaties, alliance pacts, commercial and maritime treaties and all other treaties involving modifications in the territory of the State or having connection with the rights of sovereignty, or which lay upon the treasury of the State certain charges not included in the budget, must acquire the approval of the People's Assembly." Human rights treaties, which appear to require the approval of the People's Assembly since they are regarded as imposing limits on state sovereignty, have, if duly adopted and published, the force of law and their provisions are considered to be an integral part of national law.¹¹ While this indicates the direct applicability of international treaties in Egyptian law, some scholars have argued, in light of Egyptian law and practice, that enabling legislation would still be needed to enforce such treaty provisions.¹² The status of international treaties in the Egyptian legal system is not entirely clear but an earlier decision of the

raised and the Government turned to the Constitutional Court for an interpretation. The Court ruled that certain offences of a specific nature, once they had occurred, could be referred to the military judiciary pursuant to decisions issued by the President of the Republic (Application for Interpretation No. 1, judicial year 15, hearing of 30 January 1993)."

⁹ See Articles 65 and 165-168 of the Constitution.

¹⁰ Date of accession or receipt of instrument by UN.

¹¹ Supreme Security Court Case No.4190 (1986).

¹² See Adel Maged, *The International Criminal Court and National Sovereignty*, [in Arabic] Center for Political and Strategic Studies, Al-Ahram Foundation, Cairo, 2001 at 126.

High Court indicates that the Constitution is considered superior.¹³ Customary international law is considered to be part of the law of the land.¹⁴ The Convention against Torture was promulgated by Republican Decision No.154 of 1986 and published in Official Gazette No.1 of 7 January 1988. It came into force as an Egyptian law on 25 July 1986.

2. Practice of torture: Context, Occurrence, Responses

2.1. The practice of torture

The practice of torture has been and continues to be systematic in Egypt.¹⁵ It is often used against detainees under emergency law, which has been in place since 1981.¹⁶ Reportedly, the main perpetrators are State security investigators. Police routinely torture or ill-treat detainees and there have been several deaths in custody, allegedly as a result of torture.¹⁷ Torture is employed to extract confessions and obtain information as well as a means of revenge and punishment.¹⁸ The main victims of torture are criminal suspects and political opponents to the regime, particularly members of Islamic fundamentalist groups, including those suspected of having committed terrorist acts, who are often held in prolonged incommunicado detention, at the hands of the State Security Intelligence.¹⁹ Foreign nationals have also been subjected to torture.²⁰ There have also been several incidents where men were tortured and ill-treated for their

¹³ An earlier High Court judgment and scholarly views have implied that a treaty, after its publication, becomes subject to the rule that the later law prevails over a prior one (*lex posterior derogat lex priori*) which would give treaties an inferior rank vis-à-vis statutory legislation. See on the current debate on this issue, S. Amer, Public International Law, in: Nathalie Bernard-Maugiron and Baudoin Dupret (eds.), *Egypt and its laws*, London, The Hague, New York, 2002, 377-391, at 387 et seq.

¹⁴ See *ibid.*, at 388. See Court of Cassation, Appeal No.1412 and 1495 of Judicial Year No.50.

¹⁵ See reports by Amnesty International, *Egypt: No protection-systematic torture continues*, November 2002, AI Index: MDE 12/031/2002, p.3 for further references and reports and press releases by the Egyptian Organisation for Human Rights (EOHR) (www.eohr.org) and the Human Rights Center for the Assistance of Prisoners (HRCAP) www.hrcap.org. A report on torture by the Nadim Centre for Psychological Healing and Rehabilitation is forthcoming.

¹⁶ In a recent report, *Torture in Egypt, A Judicial Reality*, 18 March 2001, the HRCAP monitored 1 124 cases of torture. A percentage of 99.37% of the monitored cases, 1,117 of 1,124 cases fell under the Emergency Law. Section III of the report provides a detailed analysis of the judgments concerning the places, perpetrators and victims of torture as well as the torture methods used.

¹⁷ The most common methods of torture are the use of electric shocks, beatings, hanging by the wrists and ankles, in addition to various forms of psychological torture including threatening detainees with murder, rape, physical or sexual harm against him or one of his female relatives. EOHR, *Annual Report, 1999-2000, The Right to Life*: "A relatively high percentage of documented cases torture results in death. In the period between 1999 and 2000, EOHR documented 37 deaths in custody. Investigations indicated that at least 22 of those were the result of severe torture. During that period EOHR also received reports of deaths of 15 political detainees due to denial of medical care in prison."

¹⁸ HRCAP, *Torture in Egypt*, *supra* and EOHR, "Victims without rights", *The EOHR's report on torture in Police Stations and Detention Centers in Egypt* 4 March 2002.

¹⁹ See Amnesty International, *Egypt: No protection-systematic torture continues*, November 2002, AI Index: MDE 12/031/2002.

²⁰ Such as four British citizens detained since 1 April 2002 on suspicion of being affiliated with the *Hiab al-Tahrir al-Islami* (Islamic Liberation Party, which is banned in Egypt). See *ibid.*, p.11.

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perceived or actual sexual orientation.²¹ In addition, several cases of rape and sexual harassment in custody have been reported.²²

2.2. Domestic Responses

In 1999, a Human Rights Committee was set up by Ministerial Ordinance No. 6181. It was established under the chairmanship of the Major-General, First Under-Secretary of State for Legal Affairs. Its competence mainly relates to providing advice and raising awareness about human rights issues but does not include investigative power or any express power to recommend prosecution of human rights violators or reparation for victims.²³ Moreover, several other bodies have been established recently, such as the Directorate-General for Human Rights Affairs at the Ministry of Justice and the Commission on Public Rights and Freedoms at the Council of State whose activities include the study of legislative aspects of the regulation and protection of human rights and the fulfilment of international obligations, preparation of reports and the provision of human rights training.²⁴ Egypt has undertaken several programmes of human rights training and education.²⁵

Egyptian officials have only admitted that there are "occasional cases of human rights abuses" and no thorough institutional reforms have been undertaken with a view to combat and eradicate torture.²⁶

2.3. International Responses

The Committee against Torture has on several occasions expressed its concern about the prevalence of torture in Egypt. In 1996, the Committee presented its conclusions of an inquiry under Article 20 of the Convention against Torture and found that the practice of torture is systematic.²⁷ In considering Egypt's fourth periodic report, the Committee

²¹ Ibid., pp. 17-19.

²² See OMCT, Violence against Women in Egypt, Report prepared for the Committee on the Elimination of Discrimination against Women, 24th session, 15 January-2 February 2001, 28-30.

²³ According to Article 2 of the Ordinance, the Committee shall be competent to: " Study and propose ways and means to ensure more thorough and effective protection of human rights in the dealings and contacts which the agencies of the Ministry have with citizens so as to safeguard those fundamental rights in accordance with the criteria followed in that connection; endeavour to deepen the belief among all personnel working for the agencies of the Ministry that human rights and fundamental freedoms must be protected and find channels of communication and cooperation with all the agencies and mechanisms concerned therewith; Explore all the potential obstacles to the enjoyment of human rights and fundamental freedoms and devise the best solution for the removal of such obstacles; study and examine any matters arising in connection with human rights and fundamental freedoms and take the necessary measures based on the findings of the study; propose the organization of seminars, conferences, training courses and research aimed at deepening and entrenching the concept of human rights."

²⁴ See Fourth CAT Report, paras. 42, 43. According to para.44 of the report "(p)reparations are currently being made for the establishment of a National Human Rights Commission within the framework of the obligation to implement the relevant international resolutions and the Paris principles."

²⁵ See Fourth periodic reports due in 2000, Addendum, Egypt, UN Doc. CAT/C/55/Add.6, 18 October 2001, paras. 11-28.

²⁶ See on this point, AI, Egypt, No protection, pp. 3, 4.

²⁷ Activities of the Committee against Torture pursuant to article 20 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Egypt, UN Doc. A/51/44, paras.180-222. (Inquiry under Article 20), 3 May 1996, para. 220: "Torture is systematically practised by the security forces in Egypt, in particular the State Security Intelligence, since in spite of the denials of the government, the allegations of torture submitted by reliable, non-

expressed concern about “ the many consistent reports received concerning the persistence of the phenomenon of torture and ill-treatment of detainees by law enforcement officials, and the absence of measures ensuring effective protection and prompt and impartial investigations. Many of these reports relate to numerous cases of deaths in custody.²⁸”

In 2001, the UN Special Rapporteur on Torture cited 35 cases of torture and 32 cases of death in custody reportedly caused by torture or medical negligence, that were transmitted to the government between 1997 and 1999, to which the government replied in March and October 2000. He expressed particular concern at “the persistence of the explanation of death in many of the cases as being a sharp drop in blood pressure”, and stated that the government's responses reinforced rather than alleviated his concerns. The Special Rapporteur also criticized the government's continuing failure to permit him access to the country.²⁹

The Human Rights Committee stated recently that: “(w)hile noting the creation of institutional machinery and the introduction of measures to punish any violations of human rights by employees of the State, the Committee notes with concern the persistence of torture and cruel, inhuman or degrading treatment at the hands of law-enforcement personnel, in particular the security services, whose recourse to such practices appears to display a systematic pattern. It is equally concerned at the general lack of investigations into such practices, punishment of those responsible, and reparation for the victims. It is also concerned at the absence of any independent body to investigate such complaints (articles 6 and 7 of the Covenant).”³⁰

II. PROHIBITION OF TORTURE UNDER DOMESTIC LAW

The Egyptian Constitution contains no express prohibition of torture though Article 42 provides that “any citizen arrested, detained or whose freedom is restricted shall be

governmental organizations consistently indicate that reported cases of torture are seen to be habitual, widespread and deliberate in at least a considerable part of the country.”

²⁸ Consideration of Reports submitted by State Parties under Article 19 of the Convention, Concluding Observations: Egypt, UN Doc. CAT/C/XXIX/Misc.4, 20 November 2002, para. 5 (b). It also expressed its concern about the following: “(d) the many reports of abuse of under-age detainees, especially sexual harassment of girls, committed by law enforcement officials, the lack of monitoring machinery to investigate such abuse and prosecute those responsible, and the fact that minors are kept in places of detention in contact with adult detainees; (e) The reports received concerning ill-treatment inflicted on men because of their real or alleged homosexual inclinations, apparently encouraged by the lack of adequate clarity in penal legislation; (f) The continued use of administrative detention in Egypt; (g) The fact that victims of torture and ill-treatment have no direct access to the courts to lodge complaints against law enforcement officials; (h) The excessive length of many of the proceedings initiated in cases of torture and ill-treatment, and the fact that many court decisions for the release of detainees are not enforced in practice; (h) The excessive length of many of the proceedings initiated in cases of torture and ill-treatment, and the fact that many court decisions for the release of detainees are not enforced in practice; (i) The legal and practical restrictions on the activities of non-governmental organizations engaged in upholding human rights; (j) The significant disparities in compensation granted to the victims of torture and ill-treatment.”

²⁹ Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 200/43, UN Doc. E/CN.4/ 2001/66, 25 January 2001, paras. 415-476.

³⁰ Concluding Observations of the Human Rights Committee: Egypt, UN Doc. CCPR/CO/76/EGY, 28 November 2002, para. 13.

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treated in a manner concomitant with the preservation of his dignity. No physical or moral harm is to be inflicted upon him. He may not be detained or imprisoned except in places defined by laws organizing prisons. If a confession is proved to have been made by a person under any of the aforementioned forms of duress or coercion, it shall be considered invalid and futile." There is no express provision preventing the derogation from the prohibition of torture in times of emergency.³¹ However, according to the Government, existing emergency laws do not permit derogation from the prohibition of torture, which in any case is not permitted by virtue of Article 4 (2) of the ICCPR.³²

Article 126 of the Penal Code penalises torture, though the characterisation of the offence is not in line with the definition in Article 1 of the Convention against Torture: "Any public servant or official who orders, or participates in, the torture of an accused person with a view to inducing the said person to make a confession shall be punished by hard labour or imprisonment for a period of three to ten years. If the victim dies, the penalty shall be that prescribed for premeditated murder." The Criminal Procedure Code prohibits both physical and psychological torture and declares that statements made under duress or threat are to be considered null and void.³³

There is no specific definition of torture in Egyptian legislation and it is thus for the Egyptian Courts to determine what acts constitute torture. In the ruling on felony 3856 of 1986, the Court held that: "torture is an assault against, or physical or moral harm inflicted upon, the defendant. Accordingly, torture is a form of violence or coercion. Physical violence includes beating, injuring, tying the limbs, detention, humiliation, deprivation of food or sleep, etc. For an act to be termed as physical torture it does not require any degree of intensity or gravity. Moral torture, however, aims to humiliate a person to force a confession..."³⁴ The Court of Cassation affirmed that torture may be implicit or explicit. It pointed out that: "when torture becomes an usual act, such as when a superior refrains from prohibiting his subordinates the torture of defendants to forcibly extract a confession, it shall be considered in itself an order to torture defendants."³⁵

III. CRIMINAL ACCOUNTABILITY OF PERPETRATORS OF TORTURE

1. The substantive law: Criminal Offences and Punishment

As mentioned above, the scope of the offence of torture specified in Article 126 of the Penal Code is narrower than the one provided under Article 1 of the Torture

³¹ See, on the declaration of a state of emergency, Article 148 of the Constitution.

³² See Egypt's combined third and fourth report to the Human Rights Committee, *supra*, paras. 252, 253 and 279.

³³ Article 40 CCP: "The illegality of arresting any person without an order from the concerned authority and according to law. The detainee should be treated humanely and with respect for his inherent dignity and should be not physically or psychologically abused" See also Article 302 CCP.

³⁴ Registered under no. 988 of 1986, Zagazig felonies, session of 17/03/1987. Mentioned in "Comments on the Penal Code", Mustafa Magdy Herga, without date, p. 1048.

³⁵ Challenge 2460 of 49 Judicial Year, session of 13/11/1980, and 294 of 50 Judicial Year, session of 29/05/1980.

Convention.³⁶ There are several other offences, which can be applied to punish those accused of acts constituting torture. For example, Article 127 of the Penal Code prohibits the use of torture on a convicted prisoner to extract information and Article 129 of the Penal Code provides that: "A civil servant, public employee or any person in charge of public office who, relying on his position, uses cruelty with people and causes dishonour to them or physical pain, shall receive an imprisonment sentence of no more than one year and a fine of no more than LE 200." In addition, Article 282 (2) of the Penal Code provides that: "In all cases, anyone who unlawfully arrests a person and threatens to kill him or subjects him to physical torture shall be sentenced to hard labour." Perpetrators of torture could also be prosecuted for common crimes such as assault, battery, murder and rape.³⁷

Also punishable are attempts and participation.³⁸

Article 63 of the Code of Criminal Procedure allows officers to invoke superior orders as a justification. It stipulates that it is not an offence for a public official to commit an act in execution of an order issued by a superior officer whom he is duty-bound to obey, nor is it an offence for a public official to commit an act, in good faith, in compliance with the stipulation of the law or in the belief that the said act was within his/her competence. However, according to jurisprudence and statements of the Government, this provision cannot be invoked as a justification for acts of torture or violence that are offences under Egyptian law.³⁹

Disciplinary punishments may be imposed in accordance with Law 109 of 1971 concerning the Police Authority. They range from a warning and a deduction not exceeding two months' salary to possible suspension and dismissal with a potential deprivation of part of the pension or bonus.⁴⁰ The Interior Minister, the relevant assistant to the Minister, and the head of the authority where the concerned officer works are all entitled to impose such penalties.⁴¹ There are three disciplinary councils

³⁶ The restricted scope has repeatedly been criticised by national NGOs, such as in the alternative reports and comments by EOHR and HRCAP on Egypt's 2002 CAT report, *supra*. The Committee against Torture has also called on Egypt to bring the definition of torture in line with Article 1 of the Convention against Torture. See Concluding observations of the Committee against Torture: Egypt, UN Doc. A/49/44, paras.74-96, 12 June 1994, para.90. See also, on the scope of Article 126, Egypt's 1999 report to the CAT, *supra*, para. 47: "The judicial application of the penal provisions mentioned has evolved a number of legal principles which have become established practice in accordance with the jurisprudence of the Supreme Court: (a) The Egyptian Penal Code punishes torture carried out by a member of a public authority or by an individual, whether during the arrest, confinement or imprisonment of a person in the legally prescribed circumstances or otherwise; (b) Since the Egyptian Penal Code does not specifically describe or define the acts or actions which occasion torture, any act or action which results in physical, psychological or moral torture is a punishable act in accordance with the provision of article 126; (c) In order for the offence of torture to obtain, Egyptian law does not stipulate that a specific degree of severe pain or suffering from torture should occur or that the torture should leave marks. As such, the offence of torture obtains however slight or negligible the pain may be and whether or not the torture leaves marks; (d) Confessions extracted under torture or duress, even if they are true, are deemed null and void."

³⁷ See Articles 240 to 243 (inflicting bodily harm), murder (carrying the death penalty) as well as articles 268 (rape, punishable by three to seven years imprisonment) and 290 (abduction and rape subject to the death penalty) of the Penal Code respectively.

³⁸ See Articles 40, 41 and 45,46 Penal Code.

³⁹ See fourth CAT report, *supra*, paras.49-52.

⁴⁰ Article 48 Law 109.

⁴¹ Articles 49 and 51 Law 109.

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and courts for disciplinary trials of police officers, namely, the Disciplinary Court, the Appeals Disciplinary Council and the Supreme Disciplinary Council.⁴²

2. The procedural law

2.1. Immunities

There are no express amnesty provisions or immunity laws that cover acts of torture.

2.2. Statutes of Limitations

The Constitution provides that there shall be no statutes of limitation for acts of torture and other ill-treatment. Article 57 of the Constitution stipulates that: "Any assault on individual freedom or on the inviolability of private life of citizens and any other public rights and liberties guaranteed by the Constitution and the law shall be considered a crime, whose criminal and civil lawsuit is not liable to prescription." This general rule is confirmed in the Criminal Procedure Code with regard to the criminal offences set out in Articles 126, 127 and 282 of the Penal Code.⁴³

2.3. Investigations into Torture

A victim of any crime has the right to complain to a criminal investigation officer.⁴⁴ Detainees also have the right to lodge complaints to prison officials.⁴⁵ Complaints are in both cases to be transmitted immediately to the Department of Public Prosecutions (DPP).

The DPP is competent and obliged to investigate and prosecute felonies,⁴⁶ including torture-related offences, whereas misdemeanours may be investigated by the police only. The DPP might assign an investigation to criminal investigation officers or to an investigating magistrate. There is no special body charged with investigating and prosecuting cases of torture but an office of human rights was established in the DPP which is competent to investigate complaints of torture.⁴⁷

In carrying out an investigation, the investigating body has to establish whether the victim has any apparent injuries, take victims' and witnesses' statements, examine the

⁴² Articles 57, 61 and 62 *ibid*.

⁴³ Article 15 CCP.

⁴⁴ Article 24 CCP. According to articles 25 and 26, any person, including a public official, who knows that an offence has taken place is under an obligation to report it to the competent authorities.

⁴⁵ Article 43 CCP. Article 80 Prisons Act No.396 of 1956. However, under Article 3 (2) of the Emergency Law, detainees may file a complaint against their arrest or detention (torture) only 30 days after the arrest order is issued.

⁴⁶ Felonies are offences that carry a penalty of imprisonment, a term of penal servitude, hard labour for life or capital punishment. See fourth CAT report, *supra*, para.83.

⁴⁷ See 1999 CAT report, *supra*, para. 59.

alleged place where torture was committed⁴⁸ and refer the victim for a forensic examination.⁴⁹ Medical reports may be obtained following the medical examination of torture survivors. While detainees and others do not have an express statutory right to be medically examined, the relevant act provides that prisoners shall be given periodic health check-ups.⁵⁰ In case of the death of a patient, doctors are to report to the competent DPP and to request the counsel of a forensic doctor.⁵¹ While there are no specific provisions on the suspension and arrest of officials suspected of having committed torture, such officials may be arrested according to generally applicable provisions.⁵²

The DPP may close investigations for lack of sufficient evidence or failure to identify the perpetrators. While the law grants victims of a crime the right to appeal against such a decision to the superior prosecutor, appeals against decisions made in relation to investigations into offences committed by officials in the course of their duty are expressly excluded from the scope of this right.⁵³

There is no specific legislation granting victims procedural rights or protections. However, threatening a victim or witnesses and coercing a witness to refrain from giving testimony constitute criminal offences.⁵⁴ Victims have no right to bring a private prosecution.⁵⁵

2.4. Trials

In case of an indictment by the Public Attorney, the case will be heard by the competent criminal court.⁵⁶ Members of the military are subject to the jurisdiction of the Military

⁴⁸ The Department of Public Prosecutions, examining magistrates and attorneys of the courts of first instance, appeal and cassation have the right to enter and inspect prisons (article 42 of the Code of Criminal Procedure and articles 85 and 86 of the Prisons Act No.396 of 1956).

⁴⁹ See 1999 CAT report, *supra*, para.107.

⁵⁰ Article 33 of Act No.396 of 1956. The Minister of the Interior's Decision 97 of 1961 on the internal regulation of prisons provides that prison doctors must examine each new prisoner upon his or her arrival; visit incommunicado cells weekly; and write a medical report on any injury suffered. See, specifically: *Doctors Indicted*, A report by the Human Rights Center for the Assistance of Prisoners, 21 February 1998, pp.13 et seq.

⁵¹ See the Code of Ethics and the Charter of Doctors in Egypt, issued by the Minister of Health's Decree 234 of 1974, *ibid.*, p.12.

⁵² See Articles 34 et seq. CCP.

⁵³ Article 162 CCP: "the plaintiff under civil law may appeal the investigating judge's order that there is no basis for a lawsuit – unless the order was issued for charges against a civil servant, public service employee or law-enforcement officer for any offence that took place in performance of duty or was caused by it (...)." While such an appeal could nevertheless succeed on the grounds that torture cannot be considered to constitute the performance of duty, it is not known whether there have been any rulings to this effect. In its 1999 report to the CAT, *supra*, the government does not refer to this limitation but states instead, in para.104: "The law also permits complaints to be lodged against judicial decisions of the Department of Public Prosecutions to place cases on file and thus requires the Department to notify the victim and the civil plaintiff or, in the event of the death of either, their heirs, of any decision to place a case on file (article 62 of the Code of Criminal Procedure)."

⁵⁴ See Articles 294-300 and 327 of the Penal Code.

⁵⁵ See Article 63 CCP. The EOHR, *Victims*, *supra*, Section III, and the HRCAP, 1999 Annual Report, have repeatedly called for this article to be repealed to allow private prosecutions.

⁵⁶ Articles 216, 217 CCP. Territorial jurisdiction is determined either by the place where the crime was committed, the place of residence of the accused, or the place of arrest.

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Courts.⁵⁷ Proceedings combine inquisitorial and adversarial elements whereby the victim of a crime has the right to question witnesses.⁵⁸ The President of the Republic has the power to pardon convicts and to commute sentences. Amnesties may only be granted by law.⁵⁹

3. The Practice

There are no official statistics on the overall number of complaints about torture to the relevant authorities.⁶⁰ The Human Rights Centre for the Assistance of Prisoners (HRCAP), an Egyptian NGO, alone submitted 2000 complaints of torture to the prosecution service in the period from 1997 to 2001. While a considerable number of complaints have therefore been lodged, many victims of torture apparently refrain from complaining out of ignorance about existing procedures or because they fear retribution, a fear borne out by threats and harassment of victims and witnesses.⁶¹ Torture survivors also lack trust in the effectiveness of the system to deliver justice. These factors apply in particular to prisoners as the low number of officially registered complaints show.⁶² The fact that NGOs have been refused the right to register officially and that human rights defenders have been targeted and suffer various forms of harassment for their activities has made it even more difficult for torture survivors to obtain assistance.⁶³

The DPP has apparently opened investigations into several torture cases. However, in a number of cases it is still unknown what investigations have been conducted, if any, since no information has been publicly released. Investigators rarely follow stipulated procedures.⁶⁴ This applies in particular to the procedures for referral to the forensic department. In most cases, torture survivors are referred a long time after the injuries were inflicted.⁶⁵ This makes it difficult to prove that any injuries resulted from torture and were inflicted during a specific period, especially during detention. Reportedly, doctors have not filled in medical reports accurately and have themselves committed torture, in particular official doctors.⁶⁶ In addition, investigations often last indefinitely without a conclusive outcome, apparently due to inadequate investigation methods and a lack of vigour on the part of the DPP. Even when a forensic report confirms the

⁵⁷ *Supra* I, 1.1.

⁵⁸ See Articles 271-275 and 293 CCP.

⁵⁹ See Article 149 of the Constitution.

⁶⁰ According to Egypt, fourth CAT report, *supra*, para.135, there have been three complaints of torture by prisoners in 1997, 12 in 1998 and five in 1999.

⁶¹ See for concrete examples Amnesty International, Egypt: Torture remains rife as cries for justice go unheeded, February 2001, AI Index: MDE 12/001/2001, pp.12, 13.

⁶² See fourth CAT report, para.136

⁶³ See on this point EOHR, Nothing new but restrictions- the issuance of Executive Regulations for the NGOs Law, 28 November 2002.

⁶⁴ See on procedures for investigations, *supra*, III, 2.3.

⁶⁵ See EOHR, "Torture in Egypt ...between Police Excesses and the difficulty of obtaining evidence", 15/4/1999.

⁶⁶ See HRCAP, Doctors Indicted, *supra*.

victim's statements about the torture, the DPP has closed several cases on other grounds, citing a lack of evidence.

Courts have also not always taken a vigorous stance when defendants alleged that confessions have been extracted by means of torture, even though such confessions are inadmissible by law.⁶⁷ Judges have often dismissed torture allegations even where such claims are credible, and have not transferred such cases to the DPP for further investigations.⁶⁸ In a 1998 case, the Alexandria Criminal Court, after acquitting a defendant who had been charged with manslaughter on the grounds that his confession had been extracted by torture, referred the investigation into the torture to the DPP. However, it appears that no further investigations have been carried out subsequently.⁶⁹ This is part of a broader structural problem as the executive has repeatedly failed to comply with and implement judgments and judicial orders.⁷⁰

According to official statistics, the following action was taken in relation to complaints about torture⁷¹ against officers and members of the police: 17, 22 and 13 administrative sanctions in the years 1998, 1999 and 2001 (1 January to 1 October 2000) respectively;⁷² 3, 1 and 7 disciplinary trials; and 29, 29 and 20 criminal trials in the same period. The statistics do not provide any information on the number of convictions and punishments imposed.⁷³

When compared with the large number of complaints, these figures confirm that most cases do not result in a trial, let alone the conviction and punishment of alleged perpetrators. In several cases, courts acquitted police officers, on the grounds that the perpetrators could not be identified since the victims had been blindfolded, and, in a case where the officers were charged with torturing a detainee to death, due to the lack of eye-witnesses and the fact the forensic examination had not identified the accused as

⁶⁷ Article 42 of the Constitution provides that: "If a confession is proved to have been made by a person under any of the aforementioned forms of duress or coercion, it shall be considered invalid and futile." Article 302 of the Code of Criminal Procedure also provides for the invalidity of statements made under threat or coercion. The State Security Court held that "The main objective of criminal procedures is not to disclose the truth without regard to the defendant's freedom. Thus, all procedures should take this into consideration when dealing with defendants. Defendants' freedom should be respected and guaranteed, and thus any truth disclosed by slaying freedom is worthless." The court also affirmed that: "[It] disregards the evidence obtained from the statement of the assaulted defendant as stated in arrest reports, including confessions to certain acts. The said confessions were obtained by physical and moral coercion rather than free will." See Ruling concerning Al-Jihad case, felony no. 48/1982 issued on 30/09/1984.

⁶⁸ See e.g. in this respect the recent case of British nationals who raised allegations of torture. Their allegations were neither investigated nor did the Court call for such an investigation and Amnesty International was denied access to the detainees. See Amnesty International, Egypt: Opening of trial of three Britons and 23 Egyptians raises unfair trial and torture concerns, October 2002, AI Index: MDE 12/036/2002 (Public) as well as Alexis Akgwagiram and Owen Bowcott, Egyptian judge dismisses Briton's torture claim, Guardian, 30 October 2002.

⁶⁹ See AI, Torture remains rife, supra, p.3.

⁷⁰ See HRCAP, The Human Rights Center for the Assistance of Prisoners (HRCAP) Official Response to the Government of Egypt's Report to the UN the Committee against Torture, (11 to 22 November 2002), Part I and EOHR/OMCT, Comments, supra, 7.2.

⁷¹ Articles 126, 127, 129, 240, 241 and 242 of the Penal Code.

⁷² The number of disciplinary sanctions imposed on officers has been 19, 12, 12 and 26 for the years 1997, 1998, 1999 and 2000.

⁷³ See Egypt's fourth CAT report, supra, paras. 124-128. Egypt did not provide statistics concerning torture-related complaints of which there have been 2,000 for the period in question according to the Egyptian Organisation for Human Rights, supra.

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being responsible.⁷⁴ However, in a recent development, several police officers have been charged, tried and convicted in cases where torture had led to the death of the victim(s).⁷⁵

On 7 February 2001, the Shibin al-Kom criminal court sentenced the director of the Wadi Natroun maximum security prison to ten years, a Major to seven years and four sergeants to a five year term of imprisonment. In addition, the Court ordered all of them to be dismissed from their posts.⁷⁶ In another case, the three police officers convicted of torturing the victim to death received sentences of five years imprisonment with hard labour each.⁷⁷ In May 2002, the Cairo Criminal Court sentenced in absentia a police officer and police assistant for ten years imprisonment with hard labour and three years with labour respectively for torturing a woman for three days with electric shocks and whipping her legs using a hose.⁷⁸ In a recent case, two Egyptian courts issued two verdicts against three police officers and four police assistants, sentencing them to terms of imprisonment ranging from three to seven years for torturing their victims to death.⁷⁹

While the punishments imposed in these cases do not reflect the gravity of torture, punishments in other cases are to an even greater degree disproportionately low. Thus, in four cases in which the victims were tortured to death by means of lashings, severe beatings and electric shocks, the guilty officers received sentences ranging from one-year imprisonment with labour, which was suspended in one case, to a maximum sentence of three years imprisonment.⁸⁰ This sentencing practice has been attributed to, *inter alia*, the relatively mild punishments provided for torture in the Penal Code.⁸¹

IV. CLAIMING REPARATION FOR TORTURE

1. Available Remedies

1.1. The Constitution

Article 57 of the Egyptian Constitution states that "Any assault on individual freedom or on the inviolability of the private life of citizens and any other public rights and liberties

⁷⁴ See AI, Torture remains rife, *supra*, pp.13, 14.

⁷⁵ See AI, Egypt, No protection, *supra*, p.4 and for an update on recent cases the annual reports and press releases of the EOHR and HRCAP.

⁷⁶ See Human Rights Watch World Report, 2002, Egypt.

⁷⁷ EOHR, Press Release, 15/7/2002.

⁷⁸ See HRCAP, Press Release, 19/5/2002.

⁷⁹ See for further details EOHR, Press Release, 8/10/2002; EOHR, Press Release, 19/12/2002 and HRCAP, Press Release 19/12/2002.

⁸⁰ See e.g. Case 246/2000, no. 3707 of 2000, felonies, Cairo, and case no. 8803 of 1999, Munsha'at Nasser, registered under no. 1246 of 1999, Cairo felonies, and issued on 10/12/2000 referred to in HRCAP, Torture in Egypt, *supra*.

⁸¹ HRCAP, Press Release 19/12/2002.

guaranteed by the Constitution and the law shall be considered a crime, whose criminal and civil lawsuit is not liable to prescription. The State shall grant a fair compensation to the victim of such an assault."⁸² Thus, the Constitution provides for a right to compensation for acts of torture as recognised in Egyptian law and jurisprudence, as well as other forms of ill-treatment. Moreover, the Constitution stipulates a right to access to justice, the scope of which has been elaborated upon by the Supreme Constitutional Court.⁸³

1.2. Civil Law

The right to compensation is set out in Article 163 of the Civil Code. According to this Article, a person who commits a tort resulting in injury to another is obliged to provide compensation to the injured person. However, a public official is not responsible for "an act by which he or she causes injury to another person, if he or she acted pursuant to an order by a superior, which he had to obey or thought he had, and if the public official shows that he or she believed that the act performed was lawful, that there were reasonable grounds for such belief and that he or she acted with care."⁸⁴ Article 78 of the State Civil Servants Law restricts liability of a civil servant "who shall not be accountable except for his personal mistakes."

The State is vicariously liable for damage caused by the unlawful actions of its officials.⁸⁵ The authority concerned, such as the Ministry of the Interior, incurs civil responsibility for the illegitimate acts of subordinates where these acts cause harm to victims. Superior responsibility is established if there is: 1) a subordinate/superior relationship, and 2) the subordinate commits the error in the performance of his or her duties.⁸⁶ Responsibility is determined by the presence of elements of actual authority, control and

⁸² See wording of first part of Article 57, *supra*.

⁸³ Ruling delivered in Case No.8, judicial year 6, hearing of 7 March 1992, referred to in the 1999 CAT report, *supra*, para.30 (ii), and Case No.81, judicial year 19, session of 6 February 1999. See Egypt's third and fourth report to the Human Rights Committee, *supra*, para.417 (d): "The right to litigation consists of three components, the first requiring that every person seeking legal redress has easy access to the courts unfettered by financial or procedural difficulties. To this are added two further elements which are vital and indispensable for the assertion and enforcement of this right. The first refers to the impartiality and independence of the judiciary, the immunity of its members and the objective principles underpinning its practical guarantees, whereby it must ensure every person the full and equal right to a fair trial according to contemporary criteria. The courts must be independent and legally constituted and must deliver their verdict, within a reasonable period of time, in respect of a person's civil rights and obligations or the criminal charges brought against him. Litigants must be able to plead their cases before the courts, subject their defence to examination and challenge the evidence submitted by opposing parties in keeping with the principle of equality of opportunity with due regard for the fact that the composition of the courts, the principles governing their regulation and the nature of the objective procedural rules applied therein and thereby all form intrinsic elements of the second component of the right of litigation. The final component entails an obligation on the part of the State to render justice to litigants in the form of judicial compensation claimed for the infringement of their rights. This compensation, which must be lawful and consistent with the terms of the Constitution, constitutes the final component of the right of litigation."

⁸⁴ Article 167 Civil Code.

⁸⁵ Article 174 Civil Code: "Superiors are responsible for damages caused by their subordinates through illegal action, provided the damage happened during the performance or because of the subordinate's job. This relation is valid even if the superior did not freely choose the subordinate, as long as he has actual authority to control and direct the subordinate."

⁸⁶ Criminal Cassation on 7 June 1955, set of Cassation Rulings, year 6, no. 316, p. 1075: "Article 174 of the Civil Code states that 'the superior shall be responsible for any harm inflicted through illegitimate action committed by his subordinate, provided the latter committed the said action in the course of performing his job or because of it.'"

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direction.⁸⁷ The responsibility of the state for unlawful acts committed by its subordinates is firmly established, even if the identity of the officer who committed the torture is unknown. Such responsibility is joint and several.⁸⁸

Courts may award pecuniary and non-pecuniary damages.⁸⁹ The quantum of damages will depend on the circumstances as considered by the Court.⁹⁰ Besides monetary compensation, a court may, upon the request of the victim, order restitution or restoration. If the victim dies, his or her dependants are entitled to claim compensation for material and immaterial damages as well as for material damage suffered by the victim him/herself. With regard to material harm resulting from torture, the Court of Cassation has ruled that: "The cause for establishing material damage on grounds of torture is that the alleged torture causes physical or mental injury that prevents the victim from making a living or imposes treatment expenses on the said victim."⁹¹ Therefore, the heirs not supported by a deceased victim are not entitled to compensation as affirmed by the Court of Cassation⁹²

Claims are to be brought before the competent first instance civil courts by filing the pleadings and depositing court fees in full.⁹³ While there is a general time limit of three years to bring an action in damages, this time limit does not apply to cases of torture and other ill-treatment that constitutes a criminal offence.⁹⁴ The plaintiff must prove the causal connection between the unlawful act and the damages inflicted as well as the amount of pecuniary damages claimed by presenting supporting documents and witness statements. If the plaintiff invokes Article 174 of the Civil Code, he or she needs to prove, in addition to the unlawful action of a subordinate, that there was a superior-subordinate relationship and that the superior had actual authority and command. As a general rule, a civil action will be suspended until a final decision is rendered in any pending criminal case.⁹⁵ The civil court is bound by the judgment of the criminal court only in respect of the underlying facts that were proved.⁹⁶

1.3. Criminal Law

⁸⁷ Abdel-Razek el-Sanhuri, "Intermediary in Explaining the Civil Code", 1981, p. 422.

⁸⁸ Article 169 Civil Code.

⁸⁹ Article 170 Civil Code.

⁹⁰ Ibid. and Articles 221 and 222 Civil Code.

⁹¹ See Civil cassation on challenge # 1666 of 56 Judicial Year, 16/04/1992 session.

⁹² On compensation for material harm and conditioning and the existence of material (financial) interests, see Challenge # 634 of 45 Judicial Year, 27/3/1979 session. Published in the "Golden Encyclopedia for the Court of Civil Cassation Rulings", Hassan el-Fakahani and Abdel-Moneim Hosni, p. 686, ruling 1292. See also: Cassation # 528 of 50 Judicial Year, 29/04/1984 session, Set of Legal Rulings in Five Years, volume II on Civil Articles and Evidence, p. 1036. And on failing to provide compensation for heirs, see Challenge # 634 of 45 Judicial Year, 27/03/1979 session, *ibid*.

⁹³ Article 63 Code of Procedure.

⁹⁴ Article 57 of the Constitution and Article 172 Civil Code.

⁹⁵ Article 26 CCP.

⁹⁶ See Article 102 of the Law of Evidence, No.25 of 1986 and Article 406 Civil Code. According to Article 456 CCP, a judgment in a criminal court, in respect of the legal characterisation of the crime and its attribution to the perpetrator, shall be conclusive before the civil courts hearing the same case is allowed to proceed.

A survivor of a crime or, in case of his/her death, the heirs, may also file a civil suit as part of the criminal proceedings either against the offender him/herself or the persons who are liable under civil law for the acts of the accused.⁹⁷ The court has discretion to award compensation and take into account the effects of torture and the particular circumstances of the case.

2. The Practice

Torture survivors and relatives of torture victims have brought hundreds of cases before the Egyptian courts. While some of these cases have been successful, a review of compensation cases has shown that the difficulty to prove and document torture represents one of the most significant obstacles to obtaining compensation in civil cases. Torture survivors have in some instances also refrained from taking legal action out of fear of adverse repercussions. The Egyptian NGO HRCAP has undertaken a major study in which it reviewed 1,130 claims brought by torture victims before Egyptian courts between 1981 and 1999.⁹⁸ In its analysis of 90 unsuccessful compensation cases, HRCAP identified the failure to present the required supporting evidence and the absence of medical reports or witness statements as the main reasons for the lack of success.⁹⁹ In the more than one thousand cases in which the courts had awarded material and moral damages, the amounts were often relatively small but in some cases courts awarded larger amounts up to LE60,000 (\$10,656). From a close reading of the minimum and maximum amounts provided, HRCAP noticed the following: out of the 1,124 cases, 14 persons obtained LE500 (\$88.3)¹⁰⁰ each in compensation; 71 obtained LE1,000 (\$177.6); 204 obtained LE2,000 (\$355.2); and 229 obtained LE3,000 (\$532.8). Consequently, about 734 victims, over 65% of the total number of cases, obtained amounts less than LE10,000 (\$1,776). Two victims received LE14,000 (\$2,486.4); eight received LE15,000 (\$2,664); one LE17,000 (\$3,019.2); two received LE20,000 and the highest amount awarded to one torture survivor was LE 60,000 (\$10,656). In the cases reviewed, the State has paid a total of LE4,766,550 (\$846,539.28).¹⁰¹ The cases referred to by the Government in its latest report to the CAT also fall within this range.¹⁰² This trend has been reflected in recent compensation awards in criminal cases against police officers.¹⁰³

The above figures show that courts have only awarded monetary compensation but not other forms of reparation. According to a ruling by the Court of Cassation, the

⁹⁷ See Article 76 as well as Articles 251 and 259 CCP.

⁹⁸ HRCAP, *Torture in Egypt*, *supra*.

⁹⁹ *Ibid.*, Section II.

¹⁰⁰ \$ value at the time of writing.

¹⁰¹ *Ibid.*, Introduction.

¹⁰² See fourth CAT report, *supra*, para.128, Table 3: Final civil compensation awards made to victims for the period 1997-2000 = Two in 1997, four in 1998, eight in 1999 and 3 in 2000. See table 4 for details of 2000 cases (awards ranging from 2, 000LE to 10, 000 LE. According to the 1999 CAT report, *supra*, para.159 d), in the period between January 1983 and September 1998, the civil courts have awarded compensation to torture victims in 648 cases whereby the amount of compensation ranged from 500 to 50,000 LE.

¹⁰³ See *supra*, III, 3, criminal cases referred to in EOHR Press Releases.

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jurisdiction of the court empowers the judge to stipulate as compensation an amount deemed suitable for the damage, provided the assessment is justified by acceptable reasons.¹⁰⁴ The law does not provide any particular criteria within this context. The total amount of compensation awarded by the courts in considering the material and moral damage resulting from torture is viewed as comparatively small. In addition, courts have in some cases refrained from awarding compensation for moral damage altogether. While torture survivors and relatives of torture victims have received compensation in numerous cases, such awards have not been complemented by adequate investigations.

V. GOVERNMENT REPARATION MEASURES

There is no government reparation scheme for victims of serious human rights violations nor is there a general compensation board for crime victims. Independent treatment centres provide treatment to torture victims.¹⁰⁵

VI. LEGAL REMEDIES IN CASES OF TORTURE COMMITTED IN THIRD COUNTRIES

1. Prosecution of Acts of Torture committed in a third country

The Penal Code recognises the active personality principle as well as the protective principle, i.e. jurisdiction for crimes committed abroad that constitute felonies against government security or crimes related to forgery.¹⁰⁶ The Penal Code does not recognise the passive personality principle. It also makes no express provision for the exercise of universal jurisdiction.¹⁰⁷ Universal jurisdiction may be exercised on the basis of the provisions of the CAT, which is directly applicable in Egypt, but there appears to have been no jurisprudence or other practice to this effect. Proceedings can only be instituted by the DPP.¹⁰⁸

Diplomatic immunity is granted in accordance with the Vienna Convention on Diplomatic Relations of 1961, which has been incorporated into Egyptian law.¹⁰⁹

There is no specific law on extradition. According to the Government, Articles 6-9 of the Convention against Torture constitute the applicable law as they are directly enforceable.¹¹⁰

¹⁰⁴ Cassation 64 of 53 Judicial Year, issued on 17/06/1986, set of Court of Cassation Rulings, volume II, p. 364, rule 12. See: Cassation # 334 of 36 Judicial Year, on 8/4/1972, published in el-Fakahani, supra, p. 706, rule 1342, and Cassation # 218 of 38 Judicial Year on 21/2/1974, published *ibid.*, p. 707, rule 1345.

¹⁰⁵ Such as the Nadim Centre for Psychological Healing and Rehabilitation in Cairo.

¹⁰⁶ See Articles 3 and 2 (b) and (c) Penal Code.

¹⁰⁷ See for more detailed information, Country Summary: Egypt, available at the website of the Universal Jurisdiction Information Network, www.universaljurisdiction.info, forthcoming.

¹⁰⁸ See Article 4 Penal Code.

¹⁰⁹ Court of Cassation, Session of 17 January 1979, Challenge No.450 of judicial year 45.

¹¹⁰ See fourth CAT report, supra, para.61.

There are no known cases in which perpetrators of torture committed abroad have been either prosecuted and tried in Egypt or extradited to a country requesting such extradition.

2. Claiming reparation for acts of torture committed in a third country

Egyptian courts have jurisdiction to adjudicate a case at the place of the residence of the defendant.¹¹¹ Thus, jurisdiction will only be established in a case of torture committed abroad if the alleged perpetrator of torture resides in Egypt. If a civil court has jurisdiction on this ground, it is to apply the law of the State in whose territory the act that gave rise to the obligation took place, unless the act is considered lawful in Egypt.¹¹²

A survivor of torture committed abroad could theoretically file a complementary civil suit as part of criminal proceedings in which the courts exercise universal jurisdiction on the basis of the direct applicability of the Convention against Torture. However, there are no such precedents.

Diplomats are granted immunity from civil proceedings in line with the Vienna Convention on Diplomatic Relations. The Court of Cassation has recognised restrictive state immunity in interpreting customary international law.¹¹³ There is no jurisprudence on whether torture constitutes an act that falls under the scope of 'official acts' for which immunity is to be granted.

There are no known cases in which survivors of torture or relatives of victims of torture committed abroad have sought and obtained reparation before Egyptian courts.

¹¹¹ Article 49 (1) Code of Procedure.

¹¹² Article 21 Civil Code.

¹¹³ Appeal No.1412 and 1495 of the judicial year no.50 heard on 24/4/1995.