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**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Cairo Institute for Human Rights Studies, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2010]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Human Rights in Egypt: Issue of Counterterrorism

The Cairo Institute for Human Rights Studies, a non-governmental organization in special consultative status with ECOSOC; and the Arabic Network for Human Rights Information, the Land Center for Human Rights, the Egyptian Association for Community Participation Enhancement, the New Woman Foundation, the Arab Penal Reform Organization, the Andalus Institute for Tolerance and Anti-Violence Studies, and the Egyptian Initiative for Personal Rights, would like to express their concern over the repressive implications of The Emergency Law and other laws currently regulating the fight against terrorism.

Egypt has been under a State of Emergency since 1981 and this is one of the root causes of grave human rights violations in the country.¹ There are no legal grounds for the continuous application of the state of emergency; in fact, it constitutes a serious violation of Article 4 of the ICCPR. The Human Rights Committee, when reviewing Egypt's obligations under the ICCPR, has several times expressed its concern with regards to the seemingly permanent state of emergency that is in place in Egypt.² Under the state of emergency, Egyptian authorities are given the right to practice extra-constitutional acts against Egyptian citizens that constitute a violation of many of their rights, based both on the Egyptian constitution and on international treaties to which Egypt is a signatory. For example, it imposes restrictions on freedom of assembly, movement, and residence. It gives the authorities the power to arrest, detain, and search individuals and places without the need to follow the criminal procedure.³ Furthermore, monitoring and surveillance of the media is permitted as per article 3 of the Emergency Law.⁴

Law 162/1958 permits the declaration of a state of emergency.⁵ It was originally implemented to fight security threats such as those that were posed by terrorist groups such as Jihad al Islamy and Al Gama'a Al Islamiya. However, despite the dismantlement of these

¹ Act No. 50 of 1982 permits the proclamation of a state of emergency in conditions where there is a threat to public order and security. As per Article 1 of this Act, examples of such threats include: the outbreak of war, a situation which threatens to lead to such an outbreak, the existence of disturbances within the state, general disasters or the spread of an epidemic. None of these situations are present in Egypt to warrant a call for a state of emergency, yet the state of emergency was renewed in 2008, although the Egyptian President had repeatedly stated that the government would not prolong it beyond its expiration which was May 31, 2008.

² The Human Rights Committee has on numerous occasions expressed concern with regard to the ongoing state of emergency in Egypt. In 1993 is stated in its concluding remarks: The Committee notes that the state of emergency in force in Egypt without interruption since 1981 constitutes one of the main difficulties impeding the full implementation of the Covenant by the State party. In this connection, the Committee regrets that Egypt has not informed the other States parties to the Covenant, through the Secretary-General, of the provisions from which it has derogated and of the reasons by which it was actuated, as specifically required by article 4, paragraph 3, of the Covenant. See comments of the Human Rights Committee 1993 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G93/182/43/PDF/G9318243.pdf?OpenElement>. Also, see Concluding Observations of the Human Rights Committee, 2002, available at, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/460/72/PDF/G0246072.pdf?OpenElement>

³ Article 7(1) of the Emergency Law allows for the establishment of special courts and article 7(4) of the Emergency Law allows for inclusion of members of the military in the formation of courts.

⁴ This article gives the military ruler or his deputy the power to confiscate and stop circulating publications as he sees fit.

⁵ According to the provisions of its article 1: "a state of emergency may be declared whenever security, public order or the republic or an area of it is exposed to danger, whether this be through the outbreak of war or the occurrence of a situation which threatens the outbreak of war, internal disturbances, public disasters or the spread of an epidemic." See <http://www.icj.org/IMG/Egypt.pdf>

groups, and the fact that there does not appear to be a permanent threat of terrorism in Egypt today, the Emergency Law remains intact.⁶ In Egypt, the powers of emergency law are often applied in circumstances that have no clear link to any terrorist violence⁷

Arbitrary arrest and administrative detention has been applied systematically under this emergency law. Examples of these include, but are not limited to, the following: the consistent arrest of bloggers such as Hani Nazir, the proprietor of the blog Karz al-Hubb who was detained under emergency law on October 3rd 2008; this is one of many examples of such cases. Furthermore, the arrest of rights defenders such as Mosaad Abo Fagr who has been detained for over two years despite numerous court decisions ordering his immediate release; this is not an unusual example illustrating the power of emergency law to both detain people without charge, and to overlook court decisions. In addition, emergency law has been used to arrest and abuse peaceful protestors such as on May 4th 2009 where the security apparatus arrested nine political activists who had organized a protest in front of the State Council to demand an end to the export of natural gas to Israel. During the protest, police attacked journalists from the newspapers al-Kayan al-'Arabi and al-Ahali. Additionally, there has been a trend of mass detentions and mass arrests, especially after protests or riots, such as after the Public Strike that took place on April 6, 2008:⁸ those who are arrested in these circumstances are often subjected to trials before exceptional courts, the effects of which are mentioned below.

Emergency law in Egypt has created an exceptional judicial system. The judicial system created is an extra-constitutional mechanism that violates the basic expectation of judicial independence. Within this system the decisions of the Emergency State Security Courts cannot be appealed, and the president has the right to intervene to alter the verdict or sentence, or order a retrial. Additionally, military courts have been used repeatedly to try civilians, which is a violation of their right to be tried before their natural judge.⁹ For instance, on April 16, 2008, the Military Court ruled against 25 Brotherhood leaders sentences that ranged from 3 to 10 years imprisonment for being members in the legally banned group and for money laundering. Another such example is the case of the city of El-Mahala El-Kobra where hundreds of workers and inhabitants of Mahala were detained, in addition to a number of bloggers, correspondents and journalists who participated in covering the events. 47 people suspected of being involved in organizing the events in Mahala were referred to extraordinary courts.¹⁰ What is of utmost concern is the fact that civilians have been given the death penalty in hearings before these exceptional courts.

⁶ Scheinin, Martin, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Oct. 14, 2009.

⁷ Carr, Sarah, UN Expert Issues Damning Report on Egypt's Counter-Terrorism Measures, Daily News Egypt, October 29, 2009. Available at: <http://www.thedailynewsegypt.com/article.aspx?ArticleID=25502>

⁸ The call for a public strike on April 6, 2008, launched by some political activists and bloggers, was met with violence on the part of the government. Main roads and streets in the capital and governorates were barricaded. See the Cairo Institute for Human Rights Studies Annual Report: From Exporting Terrorism to Exporting Repression: Human Rights Situation in the Arab World, 2008. Available at: <http://www.cihrs.org/Images/ArticleFiles/Original/382.pdf>

⁹ See, Comments by the Coalition of Independent Human Rights NGOs on the Egyptian Government Report for the UN UPR, Human Rights in Egypt: A History of Oppression, Prevarication and Duplicity.

¹⁰ The city of El-Mahala El-Kobra was turned into a military compound where policemen detained workers who had started the strike. Security forces used excessive force, including tear gas and rubber bullets, to prevent people from assembling in front of the factories in Mahala, resulting in at least two deaths. Acts of violence by the police in the city increased for around three days. See, Cairo Institute for Human Rights Studies Annual Report, From Exporting Terrorism to Exporting Repression:

The proposed Anti-terrorism law only seems to exacerbate rights violations. The law proposes what is called a pre-charge detention where detainees in "exceptional cases" can be held in custody for up to 29 days without charge. The major problem in this regard is that there is no definition of what would constitute an exceptional case. Currently, Security Service Investigation (SSI) officers enjoy a *carte blanche* in deciding on whom to arrest. Suspects may be detained without receiving sufficiently detailed information, if any at all. Additionally, authorities often do not comply with court rulings on the release of prisoners. The lack of a clear indication in the law as to what constitutes a threat to public security plays an important role in facilitating this practice in particular.

As the unjustified length of the state emergency provoked much substantial criticism, an amendment to Article 179 of the Egyptian constitution took place in 2007 to provide a constitutional framework for the state of emergency. However, the new article undermines the practice of fundamental constitutional rights. Furthermore, it normalizes the state of emergency in the context of counter-terrorism. Amended article 179 allows the president to refer any terrorist charge to any judicial body established by the constitution or the law. This practice is of utmost concern when it comes to human rights violations because the creation of exceptional courts and the referral of civilians to military courts can thus be included. Furthermore, amended article 179 stipulates that it would be permissible to bypass protections against arbitrary arrest, search without warrant, and violation of privacy contained in Articles 41, 44, and 45, and makes it very difficult to dispute these practices through legal means; especially if a new anti-terrorism legislation is also passed.¹¹

It is worth noting, that the current draft counter-terrorism law is not the first law to be passed in this context. Law number 97 was also passed in 1992. This law was very broad and had no interpretation or specific definition as to what constitutes a terrorist act.¹² This law essentially "gives more power to security forces, reduces the legal and judicial guarantees, imposes more restrictions over freedom of opinion and expression and diminishes the legacy of the political and partial performances."¹³

Human Rights Situation in the Arab World, 2008, Available at, <http://www.cihrs.org/Images/ArticleFiles/Original/382.pdf>

¹¹ Carnegie Endowment for International Peace, Egypt's Controversial Constitutional Amendments, March 23, 2007. Available at, http://www.carnegieendowment.org/files/egypt_constitution_webcommentary01.pdf

¹² The purpose of emergency law is to fight terrorism and as the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism stated, this would be very difficult due to the lack of a definition of the word terrorism. The report written by the Special Rapporteur suggests that the domestic system should endorse three criteria to be able to tell whether a crime is actually a terrorist crime or not. In order to be classified as terrorist a crime must have been:

- committed against members of the general population, or segments of it, with the intention of causing death or serious bodily injury, or the taking of hostages;
- committed for the purpose of provoking a state of terror, intimidating a population, or compelling a government or international organization to do or abstain from doing any act;
- Correspond to all elements of a serious crime as defined by the law

This approach to the definition of what is a terrorist crime is also reflected in Security Council Resolution 1566. See Scheinin, Martin, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Oct. 14, 2009.

¹³ The Egyptian Organization for Human Rights, EOHR Condemns the Sharm el Sheikh Bombings, July 24, 2005, available at <http://www.eohr.org/press/2005/pr0724.htm>

With regards to the proposed anti-terrorism legislation, there is little doubt that this new law will not be properly confined to countering terrorism and as stated by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, this would "ultimately prove to be counter-productive".¹⁴

The Cairo Institute for Human Rights Studies, the Arabic Network for Human Rights Information, the Land Center for Human Rights, the Egyptian Association for Community Participation Enhancement, the New Woman Foundation, the Arab Penal Reform Organization, the Andalus Institute for Tolerance and Anti-Violence Studies, and the Egyptian Initiative for Personal Rights, call on the Egyptian Government to carry out the following steps as required by international legal standards, and urges the United Nations Human Rights Council and all UN member states to call on the Egyptian authorities to:

- Lift the present State of Emergency in order to ensure the re-instatement of rights of citizens and ensure that they are not replaced by a more repressive anti-terrorism legislation. Citizens Rights as stipulated in the ICCPR should be respected. As the SR stated, the enactment and consistent implementation of explicit legal safeguards against abuse must be put in place in order to prevent any deliberate use of counter-terrorism measures aiming at negatively affecting open dialogue and criticism, including against the government. Until the emergency law is lifted, its application should be prohibited against all forms of peaceful expression, particularly against journalists and bloggers, and the Interior Ministry must be held accountable for every violation of this interdiction.
- Refrain from issuing any new law that further entrenches the absolute authority of the security apparatus on the pretext of combating terrorism. Not only has a counterterrorism law been in effect for 18 years (Law 97/1992), but also it is inconsistent with international human rights norms and should be reassessed. In particular, its expansive definitions of terrorism and terrorist crimes are used to harass and criminalize some forms of peaceful expression and opposition. The law should be amended to make all police measures taken to combat terrorism subject to judicial oversight.
- Ensure that all cases involving terrorism, whether they are prosecuted in an ordinary court or a special court, are tried in strict compliance with each of the guarantees spelled out in article 14 of the ICCPR.
- Abolish any legal provisions allowing for administrative detention. Detention without charge or trial should be prohibited.
- Adopt a mechanism that provides for the mandatory conduct of independent, unrestricted and unannounced inspections at all places of detention, including SSI premises and military institutions.
- Ratify the optional protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹⁴ Scheinin, Martin, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, October 14, 2009.