UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/34/Add.11
28 January 1999

Original: ENGLISH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Supplementary reports of States parties due in 1996

Addendum

EGYPT*

[Original: ARABIC]
[30 October 1998]

CONTENTS

* The initial report of Egypt is contained in document CAT/C/5/Add.5; for its consideration by the Committee, see documents CAT/C/SR.14 and 15 and Official Records of the General Assembly, forty-fourth session, Supplement No. 46 (A/44/46 (paras. 123-144)). See also document CAT/C/5/Add.23, containing written replies of the Government of Egypt to questions raised by the Committee. The second periodic report of Egypt is contained in document CAT/C/17/Add.11; for its consideration by the Committee, see documents CAT/C/SR.162, 163/Add.1 and Official Records of the General Assembly, forty-ninth session, Supplement No. 44 (A/49/44) (paras. 74-96).

GE.99-40293 (E)

CONTENTS (continued)

Introduction

1. Egypt has the honour to submit to the esteemed Committee its third periodic report pursuant to the provision of article 19, paragraph 1, of the Convention. In accordance with the Committee's guidelines concerning initial and periodic reports, this report will consist of a part which contains information of a general nature covering the legal framework for acts prohibited under the Convention, the legal status of the provisions of the Convention, the means of redress available under the provisions of the Egyptian legal system, efforts connected with promoting awareness of the Convention and difficulties relating to its application.

2. Part one will cover measures and developments relating to the implementation of the Convention in accordance with the sequence of articles 1 to 16 of the Convention, part two will cover the additional information requested by the Committee and part three will cover the conclusions and recommendations of the Committee.

3. At the request of the Committee, the general part and part one of this report will, as appropriate, fully encompass the oral account which Egypt gave during the Committee's discussion of its previous report, as well as the replies provided during that same discussion to the queries and questions of the members of the esteemed Committee.

4. The statistical data, contained in part one, on complaints, judicial processes and compensation awards were obtained from correspondence sent by the Department of Public Prosecutions and the Ministry of the Interior to the Ministry of Foreign Affairs and filed in the Department of Human Rights Affairs.

Information of a general nature

5. This part will discuss the following points:

A. The general legal framework pursuant to which torture is prohibited;

B. The legal status of human rights conventions in Egypt;

C. The responsible authorities and the available means of redress;

D. Promoting awareness of and disseminating the provisions of the international human rights conventions;

E. Problems and difficulties relating to implementation of the provisions of the Convention.

6. In order to avoid repetition, appropriate reference will be made to the contents of Egypt's two previous reports concerning the following points, which will be discussed in detail:

A. The general legal framework pursuant to which torture is prohibited

7. In its two previous reports, Egypt provided a detailed explanation of this general framework from both the legal and constitutional standpoints and during its discussion of Egypt's second report, the Committee expressed its satisfaction concerning the legislative situation. The features of this framework will come under further discussion in the commentary on article 1 of the Convention contained in part one of this report.

B. The legal status of human rights conventions in Egypt

8. In regard to the legal status of human rights conventions in Egypt, international conventions in general are governed by the rules laid down in article 151 of the Constitution, pursuant to which such conventions, following completion of the measures relating to them, perform the same function as a law of the country. Paragraph 1 of the aforesaid article stipulates that "The President of the Republic shall conclude treaties and submit them to the People's Assembly, together with an appropriate explanation. They shall have the force of law after their conclusion, ratification and publication in accordance with the prescribed procedures."

9. As a consequence of the above, following their ratification and publication, international conventions on human rights and freedoms are considered equivalent to a law promulgated by the legislative authority. Their provisions are thus equated with any Egyptian legal provisions which are applicable and enforceable before any legislative, executive or judicial authority of the State. Any person may also invoke the application of their provisions before any State authority.

10. In accordance with the said legal status of human rights conventions in Egypt, the principles of human rights and freedoms contained in international conventions enjoy the following constitutional and legal features:

1. The protection prescribed by the constitutional rule

11. Having been incorporated into the provisions of the Constitution, the principles of human rights and freedoms, including those within the concern of the Convention against Torture, enjoy the protection prescribed by the constitutional rule whereby any legal provision in force when the Constitution is promulgated which contravenes or conflicts with those principles is deemed unconstitutional. The same applies to any law which may be promulgated by the legislative authority following the entry into force of the Constitution. Accordingly, any interested party may, at any time and in the prescribed circumstances, have recourse to the Supreme Constitutional Court with a view to obtaining a ruling of the unconstitutionality of such provisions or laws. Published in the Official Gazette, the rulings pronounced by the Court are deemed final and enforceable against all authorities in the State.

12. As the Convention is a law of the country, all of its provisions are directly and immediately applicable and enforceable before all State authorities, which are bound to comply with such provisions and the principles stipulated therein. As such, any person who is injured by the failure to do

so has right of recourse to the competent judiciary based on the nature of the contravention and the circumstances prescribed for securing the rights accruing as a result.

2. The consideration of encroachment on fundamental freedoms or rights as an offence which is not subject to any statute of limitations

13. Article 57 of the Constitution stipulates that any encroachment on the personal freedom of citizens or on the other rights and public freedoms guaranteed by the Constitution and the law constitutes an offence, that criminal or civil proceedings in connection therewith are not subject to any statute of limitations and that the State guarantees fair compensation to any person who is a victim of such offence.

14. The legislator therefore has a duty to designate as an offence all the said acts of encroachment and to stipulate that criminal or civil proceedings in connection therewith are not subject to any statute of limitations with a view to ensuring that the victim secures his right and that the wrongdoer is punished, irrespective of the time which has elapsed. It is also his duty to oblige the State to provide compensation for such offences.

15. Accordingly, under the Egyptian legal system, torture is an offence in connection with which no criminal or civil proceedings are subject to any statute of limitations.

16. It should be mentioned that the Convention against Torture was promulgated by Republican Decision No. 154 of 1986 and published in the Arabic language in Official Gazette No. 1 of 7 January 1988, and that it took effect as an Egyptian law from 25 July 1986.

C. The responsible authorities and the available means of redress

17. It is clear from the above that, in accordance with the constitutional principles and legal rules on which the Egyptian legal system is based, all State authorities are bound by the constitutional and legal principles laid down in connection with human rights and freedoms and are accordingly liable in the performance of their work and the exercise of their jurisdictions. It is also clear that the independent judicial authority ensures through its various bodies that everyone has access to all means of redress on the basis of the type of dispute, the parties involved, the rights claimed and the occurring violations of those rights.

18. The judicial bodies which are charged with guaranteeing public rights and freedoms and which exemplify the means of redress available to individuals under the Egyptian judicial system are: the two branches of the judicial authority, the Supreme Constitutional Court, the civil and criminal judiciary and the State Council (the administrative judiciary). Individually, the details of these are as follows:

1. The Supreme Constitutional Court

19. The Supreme Constitutional Court is the judicial body which is competent to consider the constitutionality of laws and regulations and to interpret legislative provisions. In that it is vested with the sole competence to adjudicate in such matters, it is a specialized court which operates as an independent identity.

20. The Court was established pursuant to chapter V, part II, articles 174 to 178, of the 1971 Constitution to replace the Supreme Court that owed its existence to Act No. 81 of 1969, which was repealed pursuant to Supreme Constitutional Court Act No. 48 of 1979. An independent judicial body, it is self-existent and has its seat in Cairo. Its members cannot be removed from office and its rulings in constitutional proceedings are published in the Official Gazette, as are its renderings of interpretation. Its rulings are binding on every authority in the State, and following the pronouncement and publication of such rulings in the Official Gazette on the legally specified date, any provision which the Court has adjudged to be unconstitutional is annulled and may no longer be applied from the day following publication of the ruling. If the provision which is adjudged unconstitutional relates to a provision of criminal law, any convictions handed down on that basis are deemed null and void.

21. By law, applications connected with determining the competent enforcement agency are fee-exempt, as are disputes relating to execution, and a fixed fee of LE 25 is levied for constitutional proceedings, the aim being to facilitate the process of recourse to the Supreme Constitutional Court and ensure that judicial fees are neither excessive nor an impediment to the ability of individuals to avail themselves of such recourse.

22. The Supreme Constitutional Court has delivered a number of rulings relating to human rights in general and has adjudged as unconstitutional various legislative provisions which it deemed to be inconsistent with, contrary to or a restriction on those rights and freedoms.

2. The judicial authority

23. The judicial authority is dealt with in chapter V, part IV, articles 165 to 173, of the Constitution. In those articles, it is stipulated that the judicial authority is independent, that judges are also independent and are subject to no power other than the law, that there may be no interference in their activities and that they cannot be dismissed. Article 172 stipulates that the State Council is an independent judicial body that is competent to adjudicate in administrative disputes and disciplinary proceedings.

24. The judicial authority in Egypt is thus divided into civil and criminal courts of all levels, the administrative judiciary and the State Council, each of which will be discussed individually.

The civil and criminal judiciary

25. The civil and criminal branches of the courts adjudicate in every type of civil dispute and in criminal disputes relating to legally prescribed

offences. They perform this task in accordance with the law and within the framework of the disputes brought before them, guided by the established constitutional principles and in conformity with the rules and procedures prescribed in the Code of Civil Procedure and in the Code of Criminal Procedure applied in the criminal courts. Both Codes regulate the levels and kinds of court, the scope of their jurisdiction, the levels of appeal against judgements handed down, the means of recourse to the judiciary, procedures for the examination of proceedings and the prescribed guarantees for litigants and the defence. By law, the party injured by an offence is permitted to claim civil compensation in the criminal courts during the course of their examination of cases relating to legally prescribed offences, which, as a matter of course, include offences in connection with the violation of the public rights and freedoms of individuals.

The administrative judiciary and the State Council

26. In the context of exercising its jurisdictions and powers and executing any ensuing decisions and regulations in connection with individual and communal interests, such as services which it provides or procedures which it is required to undertake in regard to citizens, the executive authority must naturally comply with all the constitutional principles and legal rules in force in the country. In the measures within its discretion which it takes, it must pursue the public interest, as well as pure and objective criteria, and act in the interests of citizens in accordance with those criteria and the legal rules observed. The State Council and the administrative judiciary constitute the means of legal redress of which any person may avail himself in challenging both positive and negative decisions of the executive authority or the refusal to give a decision or carry out a required procedure. Any person who resorts to the expedient of the administrative judiciary may seek to have set aside decisions which are in breach of the law, jurisdiction or form, or which are flawed owing to the defective application or misinterpretation of the law or to abuse of power. Such person may also claim compensation.

27. The State Council is an independent judicial body (article 172 of the Constitution). The State Council Act No. 47 of 1972 defines the competence of the courts of the State Council as adjudicating in appeals against final decisions and in motions for the annulment of administrative decisions (in which connection, for the aforementioned reasons, the refusal to give a decision is in effect regarded as an administrative decision), as well as in related compensation claims and appeals against disciplinary decisions. The law also regulates the means and procedures of appeal against judgements, together with the level of such appeals, and regards rulings to set aside a judgement as universally conclusive. Any refusal to execute such rulings is designated as an offence under the Egyptian Penal Code (article 123).

28. It is clear from the above review of the legal status of human rights conventions in Egypt and the means of redress available under its judicial system that any interested party may have recourse to the two judiciary authorities (the ordinary judiciary or the State Council) in accordance with the nature and type of dispute and the rights accruing as a result or the rights claimed. The aim is that such party should be able to claim his rights or achieve the fulfilment of his demands, either before the ordinary judiciary by seeking punishment of the accused and compensation for damage inflicted on

him if the violation of his rights and freedoms constitutes an offence under the law, or, if not, by seeking compensation alone, or before the administrative courts by seeking the annulment of administrative decisions, together with appropriate compensation, on grounds that such decisions are flawed.

29. In both cases, the litigant may, where appropriate, invoke direct enforcement of the provisions of human rights conventions in as much as they are a valid Egyptian law pursuant to the provisions of the Constitution. If, during the stages of litigation, the litigant is precluded by legal provisions or regulations from realizing his intentions or legitimate claims on the basis of the rights and freedoms contained in the said conventions, he may appeal before the Supreme Constitutional Court by seeking a ruling to the effect that the legal provisions in question are unconstitutional on the grounds that they violate the constitutional principles encompassing all such rights and freedoms. In that event, the court examining his case must adjourn the proceedings until the Supreme Constitutional Court delivers its ruling. It must then comply with the conclusions contained in the given ruling, which, under the Constitution, is binding on every authority in the State.

30. In this connection, the two following matters should be pointed out:

(i) Equally applicable to the above means of redress is everything applicable to each of the rights and freedoms provided for in human rights instruments and the Constitution in connection with the validity of article 40 of the Constitution concerning the principle of equality before the law and non-discrimination on grounds of race, origin, language, religion, creed or any other form of distinction or differentiation.

(ii) In one of its rulings, the Supreme Constitutional Court stated that the right of litigation is guaranteed for all nationals and foreigners in Egypt with the same safeguards necessary to administration of justice. It also stated that, in accordance with article 68 of the Constitution, the State is responsible for ensuring that every national or foreign individual has access to its courts and for duly protecting all prescribed rights by respecting the fundamental safeguards needed to ensure an effective administration commensurate with the levels attained in the developed countries (ruling delivered in Case No. 8, judicial year 6, hearing of 7 March 1992).

D. Promoting awareness of and disseminating the provisions of the international human rights conventions

31. As already stated, international conventions are published in the country's Official Gazette on completion of the measures ratifying Egypt's accession to them. Published in the Arabic language, the Official Gazette disseminates all laws, republican decisions and international conventions, the significance of which is that it enables everyone to keep abreast of the laws and also determines the date of their effectiveness and entry into force in the country. Its issues are published in sequence or in special editions and are sold in places which sell government publications. Postal subscriptions

may also be taken out. Sold below cost at a nominal price to ensure that it is easily obtainable, the Official Gazette is regarded as an important periodical which public and private libraries endeavour to stock as part of their reference materials. It is also sought after by all those working in the legal field as a periodical devoted to the publication of laws in accordance with article 188 of the Constitution, which stipulates that laws must be published in the Official Gazette within two weeks of the date of their promulgation and enter into effect one month after the day following the date of their publication unless another date is specified. The provisions of laws may be applied only to matters which occur on or after the date of their entry into force. In non-criminal matters, however, it may be stipulated otherwise by a majority of two-thirds of the members of the People's Assembly (article 187 of the Constitution).

32. Notwithstanding that the effect of dissemination in the Official Gazette is to keep everyone abreast of the laws and to specify the date of their enforcement, the scope of their effectiveness and the field of their implementation, which is primarily the concern of legal practitioners, international human rights instruments arouse profound interest among all sectors of the people in Egypt. Accordingly, in compliance with the provisions which they contain, the Government endeavours to promote awareness of those instruments and increase insight into them by making efforts to ensure that they are enforced in a manner which exemplifies the cherished humanitarian values connected with human rights and freedoms. In that endeavour, the main link is with the process of social upbringing and education, as it is these alone which shape the behaviour of the next generations and ensure that they are instilled with such values and rights, conscious of their benefits and eager to reap their fruits.

33. Accordingly, all international human rights instruments are now studied in Egypt as core subjects in law faculties, in police colleges and in other colleges teaching in relevant fields such as economics, political science, education, arts, commerce, tourism and nursing, as well as in specialist research and scientific centres, the idea being that the students in such places of learning will be among the first to display commitment to the objectives of those instruments and implement their provisions. They will also be the most highly capable of defending others to that end and will undoubtedly be able to broaden the sphere of those working in the field by means of the activities which they will perform by virtue of their qualifications. In an attempt to achieve the above objectives, Egypt has furthermore devoted attention to developing education programmes at every stage to ensure that students are conversant with the international human rights instruments and with their objectives and the noble aims embodied in their provisions.

34. In addition, trade unions, white-collar unions and private associations, being legal entities with branches throughout the country, assume a leading role in promoting awareness of human rights and freedoms by ways and means befitting the circumstances and nature of each vocation, job or workplace. Government and private efforts to eradicate adult illiteracy and ensure country-wide access to information and cultural services are also instrumental

in broadening the base of knowledge among the various categories and groups of citizens and in strengthening their awareness of the international human rights instruments.

E. Problems and difficulties relating to implementation of the provisions of the Convention

35. No legal difficulties are entailed in the implementation of the Convention, which is consistent with the provisions of the Egyptian Constitution and the relevant legislation. It is also one of the country's laws and, as already stated, it is not at variance with any other legislative enactments.

36. The problem of illiteracy, however, presents a major difficulty in connection with applying the provisions of human rights conventions in general, including the Convention in implementation of which this report is submitted, since the illiteracy rate in Egypt is relatively high. All State agencies are therefore striving to eradicate adult illiteracy, which is a national duty under the Constitution.

37. As such, the efforts of the State to eradicate illiteracy play an important and effective role in helping to promote public awareness of human rights and freedoms, since those who achieve literacy will consequently be able to learn about such rights for themselves and invoke them on their own behalf. A steady increase in the number of individuals who are in a position to know, defend and secure their rights is therefore guaranteed.

38. In the context of the Convention against Torture, the repercussions of the illiteracy problem have an immediate impact on any measure relating to investigation or trial, whether in connection with the submission of complaints and the process of seeking information about suspects, victims or their places of domicile, or whether in connection with inspections and controls, the questioning and examination of witnesses or other measures which are integral to investigations. As a result, procedures are often slow and it is therefore difficult to ensure their completion within a reasonable period of time.

39. Given the difficulties generated by illiteracy, the Government, in conjunction with the international organizations concerned and sister States, is making every effort to develop and modernize the agencies involved in the administration of justice and shift them over to working with computers and electronic records, which will accelerate the completion of work and facilitate its control.

40. These plans are already in motion; databases of legislative acts and legal and judicial principles are in use at the Court of Cassation, with links to the courts of appeal, some courts of first instance and the Department of Public Prosecutions. A database on civil and personal status, criminal evidence and prisons is also up and running in the Ministry of the Interior.

41. In this context, it should be pointed out that, in all types of cases, the plea of torture is commonly used in the defence of suspects before the judiciary whenever the circumstances of the charge so permit. The purpose of

doing so is to escape punishment, have the charges resulting from the investigation dropped and the trial procedures adjourned, as the legal rules stipulate that such a defence must be investigated and settled; if it proves to be true, it must be admitted and confessions made under torture must be invalidated and an acquittal declared if the confession is the only documented evidence. On the other hand, if the claim made in the defence proves to be false, it must be dismissed and the accused must be punished for the charge levelled against him.

I. COMMENTARY ON THE ARTICLES OF THE CONVENTION

Article 1

The definition of torture in accordance with the provisions of Egyptian law

42. In its two previous reports, Egypt discussed the legal situation pertaining to offences of torture in Egypt, which is based on the two essential foundations of constitutional status and legal status. The Egyptian Constitution provides safeguards guaranteeing individual rights and freedoms and prohibits the subjection of individuals to physical or mental harm, having stipulated the following constitutional principles and precepts:

(a) Any person who is arrested or imprisoned or whose freedom is in any way restricted must be treated in a manner conducive to the preservation of his human dignity and no physical or mental harm must be inflicted on him (article 42);

(b) Criminal or civil proceedings in connection with offences of encroachment on the rights and freedoms guaranteed by the Constitution, including the offence of torture, are not subject to any statute of limitations (article 57);

(c) The State guarantees fair compensation to any person who is a victim of such an offence (article 57);

(d) Any statement which is proved to have been made under torture is deemed null and void (article 42).

43. These constitutional principles and precepts enjoy judicial protection in that the constitutionality of laws is subject to judicial control. Under the Constitution, the Supreme Constitutional Court is vested with that task, thus ensuring that the national legislator abides by those principles and precepts, which may not be breached. Any promulgated law which embodies a breach of that nature is unconstitutional and therefore defective.

44. As for legal status, torture has been an offence under the provisions of the Egyptian Penal Code since the end of the last century. In volume II of the current Penal Code No. 57 of 1937, a special chapter is devoted to coercion and ill-treatment of individuals by public officials, and acts relating to torture are designated as offences under articles 126 and 282 of the Code, as follows:

Article 126 of the Penal Code:

?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 3 to 10 years. If the victim dies, the penalty shall be that prescribed for premeditated murder.”

Article 282, paragraph 2, of the Penal Code:

?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.”

45. The general provisions stipulated in the Penal Code concerning attempted offences, which are punishable in accordance with articles 45 and 46, apply to these offences and to any of the forms of participation in them prescribed under article 40 of the Penal Code, namely instigation, consent or aiding and abetting. In accordance with article 41 of the Penal Code, any accomplice in such offences is to receive the same penalty as the principal author. Acquiescence to torture is punished as if it were an order to carry out torture.

46. In the same way, an order given by a superior officer does not legitimize torture and cannot be invoked as a justification of it in accordance with article 63 of the Penal Code, since the act for which any such order is given, namely torture, is regarded as an offence.

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.

48. Examples of judicial rulings will be cited in part two of this report.

49. The provisions of Egyptian law are broader and more general than those of the Convention, since article 1 of the latter defines torture as any act by which severe pain or suffering is inflicted, whereas Egyptian law imposes no prerequisites concerning the degree or extent of pain or suffering. As such, the offence of torture obtains whether the ensuing pain or suffering is severe or slight. Egyptian law also stipulates that civil or criminal proceedings in connection with torture are not subject to any statute of limitations.

Article 2

(a) Legislative, administrative and judicial measures for the prevention of acts of torture

50. Egyptian legislative, administrative and judicial measures for the prevention of acts of torture encompass various measures aimed at precluding the occurrence of acts of torture, punishing those responsible, ensuring that they do not escape with impunity and guaranteeing the rights of the victim to fair compensation through the constitutional principles referred to in the commentary on article 1. The details of these measures are as follows:

(i) Legislative measures

51. As previously stated in the commentary on article 1, acts or threats of torture are regarded as a punishable offence under the provisions of the Egyptian Penal Code. Irrespective of the form which it takes, any act of torture is a criminal offence, whoever the author or instigator may be and regardless of whether or not the victim is left with any physical, moral or psychological traces and whether or not a confession, true or false, is obtained.

52. The Egyptian penal legislator adopted a clear approach in determining the penalty for acts of torture, imposing harsh punishment for acts or threats of torture carried out by a public servant or on his orders, for which he prescribed the penalty of hard labour for a period of 15 years. If the torture results in the victim's death, the penalty of life hard labour, which is the same as that for premeditated murder, may be imposed. The legislator also prescribed the same penalty for threats of torture in accordance with article 282 of the Penal Code.

53. Acts involving coercion and ill-treatment by public officials are designated as criminal offences under article 129 of the Penal Code, as they constitute acts of infringement on and harm against others with intent to induce confession. Acts involving the ill-treatment of a citizen by a public official, whatever the position of the latter or the capacity of the former, are also designated as offences under the same article, which applies to all public officials, including those working in the agencies concerned with the administration of criminal justice. Any person involved in interaction with the public officials to which article 129 applies who is subjected to such acts enjoys the benefit of its provisions.

54. The application of this article does not preclude implementation of the articles of the Penal Code concerning deliberate injuries. These articles apply on the basis of the seriousness of the infringement, for which the penalty is progressively heavier according to specific aggravated circumstances, such as the duration of the exercise, premeditation, ambush, use of weapons or instruments, physical disablement, or beating at the hands of a gang or crowd (articles 240 to 243 of the Penal Code). This will be covered in further detail in the commentary on article 16 of the Convention.

55. It is worth pointing out that, pursuant to the provision of article 145 of the Penal Code, it is a punishable offence for a person to fail to report an offence which he knows or believes to have occurred. Concealing evidence, aiding the escape of the perpetrator and providing false information about the offence are also designated as criminal acts under the provisions of the Egyptian Penal Code.

56. The Egyptian Code of Criminal Procedure No. 150 of 1950 also contains provision for the aforementioned constitutional principles, as follows:

> Criminal proceedings in connection with the torture provided for in articles 126 and 282 of the Penal Code are not subject to any statute of limitations (article 15 of the Code of Criminal Procedure);
>
> Civil proceedings in connection with the said offences are not subject to any statute of limitations (article 259 of the Code of Criminal Procedure);
>
> Any statement made by a suspect or witness under duress or threat is considered null and void (article 302 of the Code of Criminal Procedure);
>
> 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).

(ii) Judicial measures

57. In accordance with the provisions of the Constitution, the judicial authority in Egypt enjoys complete independence. Members of the judiciary and the Department of Public Prosecutions in Egypt enjoy judicial immunity and cannot therefore be removed from office. The affairs of the judiciary are overseen by its own special commissions. The considerable importance attached by the legislator to acts of torture, whether by designating them as criminal offences or by prescribing safeguards for those subjected to them, is reflected in the judicial measures required by law in connection with cases of torture (these being felonies, which are serious offences carrying severe penalties). These measures can be summarized as follows:

(a) The members of the Department of Public Prosecutions are under obligation to conduct a preliminary investigation into all complaints received from police stations or submitted directly to the Department concerning such offences, these being felonies which the Department is required by law to

investigate. It is also required to seek and examine evidence, hear witnesses, conduct inspections and avail itself of assistance from doctors and other experts. Following completion of the investigation, the Department of Public Prosecutions may order that the case should be committed for trial or that there are no grounds for instituting proceedings if the evidence is false or insufficient, if the perpetrator is unknown or if proceedings are abated owing to the death of the suspect. The victim may lodge a complaint with the courts against such orders, of which he must be notified by law.

(b) Following their investigation, any cases referred to the judiciary by a decision of the Department of Public Prosecutions are examined before the criminal courts, which consist of divisions constituted of three justices at the highest level of the judiciary who are chosen by the general assemblies of the courts of appeal at the commencement of each judicial year. The court conducts the final investigation in public hearings unless it is decided otherwise and also hands down its judgements in public.

(c) The victim has the right to make a civil claim during the stages of the investigation or trial with a view to seeking compensation for the damage inflicted on him as a result of the offence.

(d) The courts are under obligation to investigate and respond to the defence of suspects concerning statements attributed to them as a result of torture or coercion, such being a material and legal defence. Any failure to do so is regarded as a justification for challenging a judgement.

(e) The court is required to explain the grounds for the convictions and acquittals which it gives and to adjudicate in civil proceedings brought with a view to seeking compensation for the victim of the offence.

(f) Judgements handed down by the criminal courts may be challenged before the Court of Cassation for the prescribed legal reasons, namely defective application of the law, the arrival at incorrect conclusions and prejudice to the right of defence.

58. The judicial inspection of prisons is a key judicial measure exacted by the legislator which must be carried out by members of the Department of Public Prosecutions in their areas of jurisdiction. They may inspect any prison site at any time with a view to ascertaining compliance with laws and regulations and taking the necessary action in connection with any breaches exposed as a consequence of the inspection. They are also under obligation to accept complaints from prisoners and inspect all prison documents and records.

59. Another of the judicial measures taken was to establish the Office of Human Rights in the Department of Public Prosecutions. Falling under the Office of the Attorney-General, the Office is competent to investigate complaints of torture and other human rights violations and is staffed by a considerable number of experts from the Department of Public Prosecutions who devote their time exclusively to the investigations concerned, which they endeavour to complete promptly. Further details will be provided in the commentary on article 12 of the Convention.

60. As to judicial applications, some of the judicial interpretations and principles pronounced in connection with torture cases will be cited in part two of this report.

(iii) Administrative measures

61. The varying administrative measures taken in this field by Egypt encompass all agencies working in the administration of criminal justice. The State's plans in that connection are built on the three key elements of development, training and education. In essence, these plans are based on introducing and promoting awareness of the human rights conventions, including the Convention which is the subject of this report, as well as on training those working in the different fields concerned with the administration of criminal justice, such as officers of justice, personnel from the Department of Public Prosecutions, members of the police and doctors. They are also based on developing the administrative personnel in those fields with a view to raising the standard of performance, which will make its impact felt in the ease with which information can be retrieved and checked and the timeliness with which the necessary case decisions are taken. Development-related matters will be discussed in some detail in connection with training and education in the commentary on article 10.

62. The plans for development are based on updating and mechanizing administrative work in the agencies concerned with the administration of criminal justice by equipping them with computers and machine memory systems. Included in this move forward are the courts, the Department of Public Prosecutions, the Department of Forensic Medicine at the Ministry of Justice and the agencies concerned with criminal investigation, prisons and civil status at the Ministry of the Interior. These plans were begun in tandem five years ago in all of the agencies mentioned, the idea being that they should form part of the Government's five-year plan and receive the necessary financial allocations. Simultaneous coordination is also ongoing with the relevant bodies of the United Nations and with friendly States with a view to reaping the benefit of their expertise in this field. The aim of the development is both to provide a scientific environment that is conducive to furthering the administrative performance of the agencies concerned with the administration of criminal justice and to have personnel who are trained in the use of modern equipment in order to facilitate the accomplishment of work and ensure the accuracy and speedy retrieval of data and information. This will have its impact in that much less time will be needed for completion of the required legal procedures and investigations, thereby resulting in the prompt adjudication of cases and equally prompt legal decision-making by the competent authorities.

63. In the context of Egypt's growing interest in human rights issues in general, it is worth noting that, in September 1992, a permanent mechanism was established to deal with such issues at the internal and external levels in the form of a specialist human rights department in the Ministry of the Interior to serve as a link between the concerned agencies. It is staffed by representatives from those agencies and is able to seek expert assistance in all fields. In addition to preparing periodic reports for submission to the committees of the United Nations, it replies to United Nations agencies and

rapporteurs and provides international experts to local agencies. The department is headed by a deputy assistant emissary of the Minister for Foreign Affairs.

(b) Exceptional situations and states of emergency

64. Article 148 of Egypt's Permanent Constitution, promulgated in 1971, deals with matters relating to exceptional situations and states of emergency, in which respect the Egyptian legislator adopted the approach of pre-emergency legislation, since the Constitution provides that a state of emergency should be proclaimed by the President of the Republic in the manner prescribed by law.

65. The Emergency Act No. 162 of 1958 regulates the circumstances and measures relating to public emergencies with the proclamation of a state of emergency (the details of these provisions were cited in Egypt's previous report to the Committee). The law contains no indication that the provisions of the Penal Code concerning offences of torture, wrongful imprisonment or use of force should be suspended and does not provide that any party should be accorded the right to suspend the provisions of the Penal Code or authorize acts which are designated as an offence under the Code. Consequently, torture and other offences continue to apply, even in situations in which a state of emergency is proclaimed.

66. Anyone arrested under the provisions of the Emergency Act is detained in the prisons specified by law. Such detainees receive the same treatment as persons held in preventive custody and they enjoy all the rights specified for prison detainees. They may not be harmed in any way and their detention is subject to periodic review in that, every 30 days, any concerned person may lodge a complaint with the judiciary. Consequently, acts whereby such persons are tortured, harmed or detained anywhere other than in the legally specified prisons are offences punishable by law in accordance with the above.

67. In this respect, it should be pointed out that while the provisions of the Emergency Act are in force, the President of the Republic is permitted under the Military Sentences Act to refer certain offences for examination by the military judiciary, a specific judiciary whose judgements are regulated by law. It is also bound by the principles of the Constitution in accordance with the provision of article 183 thereof and examines cases referred to it in the above manner in accordance with the provisions of the Penal Code and the Code of Criminal Procedure. It is subject to the Military Sentences Act and the judgements which it hands down may be challenged before the Office of Military Appeals on the same legal grounds as an appeal by cassation. Its judgements are also subject to ratification, a legal phase through which they must pass for review by expert judges of the military judiciary itself with the aim of ascertaining that they fulfil the legal conditions and meet the safeguards as to defence.

68. Part two of the report contains detailed examples of judgements pronounced by the military judiciary in that context.

69. In this connection, it should be stated that the provisions of the Convention concerning this matter are now a valid law in Egypt, the entire

Convention having become law following its publication in accordance with article 151 of the Constitution. Consequently, any person has the right to invoke its provisions before any type of judiciary and the failure of judicial rulings to apply the provisions of the law provides grounds whereby such rulings may be challenged on the basis of breach of the law and failure to apply its provisions.

(c) The invocation of orders from superior officers as a justification of torture

70. Concerning the general principles for permissible causes in Egyptian law, article 63 of the Code of Criminal Procedure stipulates that it is not an offence for an act to be committed by a public official in execution of an order issued by a superior officer whom he is duty-bound to obey or if, in good faith, he committed an act in execution of an order directed by laws or in the belief that the act was within his competence. Pursuant to that article, a public official is required in all cases to prove that he committed the act only after scrutiny and questioning, that he believed it to be legitimate and that such belief was based on reasonable grounds.

71. Since torture is an offence punishable under Egyptian law and since ignorance of the law cannot be invoked as a justification, in accordance with the above, under no circumstances can acting on the orders of superior officers be invoked as a justification for committing acts of torture, using force or carrying out other acts which are designated as offences.

72. The Egyptian legislator therefore deals specifically with the offence of torture stipulated in article 126 of the Penal Code, pursuant to which torture committed on the order of or by a public official is designated as a criminal offence. Since acquiescence to torture is regarded as an order to commit torture, under the provisions of Egyptian law, any person who orders torture and any person who engages in torture on orders have both committed torture, which is designated as an offence under the provisions of the Penal Code, and the prescribed penalties mentioned above apply to them.

73. In this matter, the Court of Cassation has ruled as follows:

(a) It is an established principle that a subordinate should not obey an order given by his superior officer to commit an act which he knows to be punishable by law. Under no circumstances should obedience to a superior officer extend to the perpetration of offences (Appeal No. 936 of judicial year 16, hearing of 13 May 1946; Appeal No. 1913 of judicial year 38, hearing of 6 January 1969, record 20, section 6, page 24; and Appeal No. 869 of judicial year 44, hearing of 4 November 1974, record 25, section 163, page 756);

(b) A person who does not have the capacity of a public official is not served by the provisions contained in article 63 of the Penal Code concerning public officials, even if the relationship between him and the person giving the order requires his obedience to the latter (Appeal No. 13 of judicial year 32, hearing of 21 January 1973, record 24, section 18, page 78 and Appeal No. 742 of judicial year 49, hearing of 22 November 1979, record 30, section 176, page 821).

Article 3

74. Following Egypt's accession to the Convention and publication of the Convention within the country, the obligations arising out of the provisions of this article, which are directed at the State Party and its competent authorities, are regarded as legal obligations with which the authorities must comply and which they may not contravene. Any party damaged by any decisions which contravene the provisions of this article has recourse to the judiciary in order to claim his rights in that connection as stated in paragraph 3 of the general part of this report.

Article 4

75. All the general principles prescribed in Egyptian law for attempting or participating in the offence of torture by way of consent, instigation or aiding and abetting in accordance with articles 40 and 45 of the Penal Code apply to the offence of torture. The penalty prescribed for the principal author of the offence equally applies to the accomplice pursuant to the provision of article 41 of the Penal Code. The penalties specified in article 46 of the Penal Code also apply to attempted torture.

76. In accordance with the above, the legislator stipulated the penalty of hard labour, a harsh penalty which is prescribed for serious crimes and which may be increased to match the penalty for premeditated murder, namely life hard labour, if the torture results in the victim's death.

Article 5

77. The Egyptian Penal Code applies to any person who commits in Egyptian territory or on board Egyptian ships or aircraft any act regarded as an offence under the provisions of Egyptian law, irrespective of whether the offender is an Egyptian or a foreigner (article 1 of the Penal Code). Consequently, the jurisdiction of the Egyptian judiciary stands in respect of torture offences occurring in Egyptian territory and the suspect is tried and punished for such offences in accordance with the provisions of Egyptian law.

78. Article 3 of the Penal Code also stipulates the any Egyptian suspected of perpetrating abroad an act that is regarded as a felony or a misdemeanour under the Penal Code must be punished if he returns to Egyptian territory and the act is punishable pursuant to the law of the country in which the act of torture was perpetrated.

79. Accordingly, any Egyptian who perpetrates the offence of torture provided for in the Penal Code when he is outside Egyptian territory must, whatever the nationality of the victim, be tried in Egypt for that offence if he returns there, provided that the torture offence is punishable in the country where it was perpetrated. In that case, jurisdiction passes to the Egyptian judiciary for the trial and punishment of any Egyptian citizen who, when abroad, perpetrates the offence of torture in the above manner. Egyptian law does not adopt the nationality of the victim as a criterion whereby jurisdiction passes to the Egyptian jurisdiction for the trial and punishment of a foreigner who is suspected of committing an offence which took place

outside Egyptian territory. Consequently, if the victim is Egyptian, jurisdiction passes to the Egyptian judiciary in both cases of where the offence is committed in Egypt, irrespective of the nationality of the perpetrator, and where the offence is committed abroad by an Egyptian suspect who then returns to Egypt and the act is regarded as an offence in accordance with the law of the country in which the offence was committed.

80. The circumstances relating to the establishment of jurisdiction for offences in respect of which the perpetrator is in Egyptian territory and is not extradited are covered under article 8, paragraph 4, of the Convention, which stipulates that the legal basis for addressing this matter is that, for the purpose of extradition between States Parties, extraditable offences are to be treated as if they had been committed in the territories of the States required to establish their jurisdiction. Such jurisdiction passes to the judiciary in the State so required in accordance with the provisions of this paragraph, as following Egypt's accession to the Convention, it became an Egyptian law and must therefore be applied in the situations mentioned.

81. The provisions of the Convention do not exclude any jurisdiction of the Egyptian judiciary in accordance with the provisions of Egyptian law.

Articles 6-9

82. The provisions of articles 6 to 9 are deemed to be directly enforceable. As such, they constitute the legal and legislative basis for the measures prescribed therein in accordance with the Egyptian legal system. Hence, following Egypt's accession to the Convention, they constitute legislative principles which are directly enforceable in Egypt and binding on all the authorities to which they apply.

83. In the context of international judicial assistance in criminal matters, throughout the course of its history, Egypt has constantly strived to accede to international treaties which combat crime and has also concluded a number of bilateral agreements on cooperation in the criminal field. In the absence of any such agreement, the general directives of the Department of Public Prosecutions allow for cooperation in that field on the basis of international courtesy and reciprocity and in accordance with the provisions of Egyptian law in a manner that does not conflict with the Constitution, the law or public order.

Article 10

84. The State's plans concerning measures to combat the acts prohibited under the Convention and ensure their effective implementation are based on the key elements of development, training and education. As reference has already been made to the State's efforts to develop and modernize the agencies involved in the administration of criminal justice, the commentary on this article will discuss training, education and information.

Training

85. The State's plans for training personnel in the different specialized agencies involved in the administration of criminal justice are carried out

through intensive in-house and external training programmes in coordination with the ministries concerned and with scientific organizations, international organizations and friendly States.

86. A component of the training programmes is to introduce and provide information on all international human rights instruments, including the Convention against Torture. The training programmes which have been completed will be discussed in part two of this report.

Education

87. The State's plans, policies and programmes are based on introducing and providing information on human rights conventions in general during the primary, secondary and university stages of education, which is the best way of imbuing human rights principles and values in young people throughout the stages of their social upbringing. This will be automatically reflected in the behaviour of the next generations and the knowledge which they hold.

88. As part of this commitment, human rights principles and freedoms are being gradually introduced into the teaching syllabuses, which, in Egypt, are comprehensively reviewed to that end by education experts so that they can be developed with a view to implanting human rights principles.

89. In higher education, human rights conventions are studied as core subjects in the Police College, in the relevant scientific institutes and in the faculties of law, economics, political science and arts, as well as in colleges where business, tourism, teacher training and nursing are studied.

Information

90. In the context of introducing and promoting awareness of human rights conventions, specialist associations, such as the Egyptian Association of Criminal Law, the Egyptian Association of International Law, the Egyptian Association for Social Defence and the Egyptian Association for the Welfare of Prisoners, together with similar international specialist organizations worldwide, run awareness-raising programmes, conferences and seminars on the relevant human rights conventions.

91. The efforts of the associations in that area are viewed as significant activities which draw widespread interest from their members, as well as interest and participation from representatives of government, parliaments and the judiciary.

92. Similarly important are the efforts of political parties, opposition newspapers and the white-collar trade unions in all sectors, whose objectives are notably based on promoting awareness of the general rights and freedoms of all citizens.

93. Media and cultural bodies also play a major role in promoting awareness of human rights conventions through their specialized and arts programmes, inter alia, which address the people at all levels using appropriate information materials.

94. In the light of compliance with the Constitution and the objectives of the press as stipulated in the Press Act, the press is the leading effective mechanism in introducing human rights through its role in disseminating culture and following up news reports and important issues which capture the public attention.

95. The above-mentioned Egyptian laws prohibit the acts within the concern of the Convention, which has valid effect and by which all citizens and public officials are bound.

Article 11

96. All legal measures relating to interrogation rules, requirements and methods and to arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment are subject to various forms of control and follow-up with a view to ascertaining, on the one hand, compliance with the provisions of the law and, on the other, that those who break the law are questioned by law enforcement officers, as such measures constitute the main guarantees for safeguarding the freedoms and rights of citizens. The control and follow-up of those measures with a view to preventing the occurrence of any cases of torture or abuse of authority is based on the three key elements of judicial, administrative and scientific follow-up.

Judicial follow-up

97. The judicial follow-up in this field includes the following:

(a) Any person who knows that an offence has occurred is under obligation to report it, an obligation which applies to public officials pursuant to articles 25 and 26 of the Code of Criminal Procedure. This measure constitutes an important safeguard in respect of the offences pertaining to this report, which the victim or his relatives may be prevented from reporting as a result of the trauma to which they may have been subjected. This obligation makes it possible for the said offences to come to light and for the perpetrators to be questioned in accordance with the law.

(b) The Department of Public Prosecutions and the courts are required to conduct a mandatory review of all procedures carried out in connection with the investigation of cases submitted to them and ascertain the validity and soundness of the measures taken. They are also required to investigate the defence of the suspects in the case and to process the cases accordingly in the light of the outcome, whether involving invalidation of the procedure or nullification of the evidence ensuing from it. This obligation constitutes an important safeguard in uncovering any legal breach of the procedures followed entailing the judiciary and the defence for the suspects. The Department of Public Prosecutions is responsible for investigating such breaches and punishing whoever is responsible for them.

(c) The failure of the investigating authorities or the courts of first instance to fulfil the above obligation and investigate the defence of the persons concerned in this respect provides grounds for a challenge to the judgement, which may be set aside as a result.

(d) The Department of Public Prosecutions and examining magistrates, together with presiding officers and attorneys of the courts of first instance, appeal and cassation, have the right to enter and inspect prisons, record any infringements which come to light and take the necessary action accordingly. They must also ascertain compliance with the law and regulations and check the records and documents of the prisons under inspection.

Administrative follow-up

98. As part of the administrative follow-up, senior officials at all levels are required to follow up, oversee and inspect their subordinates and the work which they perform, subject them to administrative questioning about any professional, administrative or organizational breaches on their part in connection with their work and report any action of theirs which constitutes an offence under the law to the Department of Public Prosecutions. Another part of the follow-up involves appraising the work results of the departments concerned with conducting financial, administrative and professional inquiries and issuing the instructions needed to implement their recommendations.

Scientific follow-up

99. Scientific centres, research centres and universities assume an important ongoing role in keeping under constant review all measures which constitute essential safeguards for citizens. The National Centre for Judicial Studies and the National Centre for Social and Criminal Research both carry out scientific research and hold seminars and conferences attended by members of the judiciary and the Department of Public Prosecutions, university professors, the military judiciary, the police, doctors and personnel working in the administration of criminal justice, the aim being to learn about the practical side of penal provisions and measures by conducting scientific and statistical analyses in order to uncover any failings or legal loopholes which prevent them from being applied in the optimum manner.

100. The results of any judicial and administrative follow-up and the findings of scientific research receive the attention of the official authorities, as do the recommendations of the above scientific conferences and seminars, which, in so far as they reflect a specialist view, the Government endeavours to implement by issuing instructions or directives or, where necessary, by amending legislation.

Article 12

101. The Permanent Egyptian Constitution, promulgated in 1971, guarantees the sovereignty of the law as the basis of government in the State and also stipulates that the State is subject to the law. The independence and immunity of the judiciary are also two fundamental safeguards for the protection of rights and freedoms (articles 64 and 65).

102. Under article 70 of the Constitution, criminal proceedings may be instituted only by order of a judicial authority, except where otherwise provided by law.

103. The Code of Criminal Procedure is consistent with that provision, having vested the Department of Public Prosecutions with the competence to investigate and prosecute in criminal proceedings. The Department is regarded as a judicial authority and its members enjoy judicial immunity in accordance with the Judicial Authority Act.

104. Under the law, the Department of Public Prosecutions is permitted to refer cases to the judiciary, police investigations alone being sufficient in cases of misdemeanour, which are offences for which the penalty is imprisonment or a fine. It is also required by law to investigate cases of felony, which are offences for which the prescribed penalty is imprisonment, hard labour, lifelong hard labour or death. Following investigation, the Department of Public Prosecutions has the right to place cases on file for the legally specified reasons or to refer them to the judiciary. 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).

105. The investigation procedures of the police and the Department of Public Prosecutions are carried out in accordance with the measures and guarantees prescribed in law and were previously discussed in detail in Egypt's earlier periodic reports.

106. On the basis of the above, the torture offences stipulated in articles 126 and 282 of the Penal Code are regarded as felonies for which the penalty may be hard labour or life hard labour in accordance with Egyptian law. They must therefore be investigated by the Department of Public Prosecutions itself as soon as they are reported to it.

107. In such situations and depending on the circumstances surrounding each communication, the first requirement of the investigation is to confront the victim, establish whether he has any apparent injuries and hear his statements concerning any torture to which he was subjected. The place where the torture allegedly took place must then be examined, statements heard from the witnesses for the prosecution and the defence and forensic tests carried out in order to ascertain the authenticity of the complaint as depicted by the victim. Based on the findings of the forensic report, witness statements and the examination conducted, the cases must then either be committed for trial to the judiciary or placed on file owing to false or insufficient evidence, failure to identify the perpetrator or legal reasons, such as the death of the suspect or the absence of any offence. In torture offences, the statute of limitations cannot be invoked as grounds for the abatement of criminal proceedings. As already stated, the Department of Public Prosecutions is required to notify the victim and the civil plaintiff or their heirs of any decisions to place a case on file, as the victim has the right to lodge a complaint against such decisions before the judiciary.

108. In the light of the above, Egyptian law guarantees to the victim in torture cases that an investigation will be immediately conducted by an independent judicial authority that enjoys immunity, namely the Department of Public Prosecutions, which is required under the law to complete the

investigation in accordance with the legally prescribed safeguards for the defence of suspects and victims and to proceed with it in accordance with the law and within the limits of its legal authority.

Article 13

109. Under the Egyptian law system, the right to complain is a constitutional right, as the Constitution provides that everyone has right of recourse to the judiciary. It is also forbidden for laws to provide that any act or administrative decision is immune from the control of the judiciary pursuant to article 68 of the Constitution. The right to complain to the competent authorities is guaranteed to everyone under the Constitution and is covered by the Code of Criminal Procedure No. 150 of 1950, which places investigation officers under obligation to accept communications and complaints which they receive concerning offences of any type and immediately transmit them to the Department of Public Prosecutions (article 24). By law, the victim's complaint is a prerequisite for the instigation of criminal proceedings in certain offences such as libel, blasphemy and theft among close family relatives.

110. The law provides that a person who is deprived of his freedom has the right to submit a written or verbal complaint at any time and request that it should be reported to the Department of Public Prosecutions. The prison warden is under obligation to accept the complaint, enter it in the complaints register and report it immediately to the Department of Public Prosecutions (article 80 of the Prisons Act No. 396 of 1956).

111. The complaints register is an official register which prisons are required to keep and which is subject to checking during judicial or administrative inspections of the prison.

112. In addition to the above, the law imposes a duty on any person, including public officials, who knows that an offence has been committed to notify the Department of Public Prosecutions or an investigation officer (article 45 of the Code of Criminal Procedure).

113. In the context of these provisions and general rules regulating the right of complaint, the victim in offences of torture or use of force has the right to complain to the police or the Department of Public Prosecutions. Similarly, any person, including public officials, who knows that such offences have occurred has the right to report them. The victim's complaint is not essential to the instigation of criminal proceedings.

114. The police provide the necessary protection for the victim or witnesses at their request and their subjection to threat constitutes the offence provided for in article 327 of the Penal Code. The law also punishes false testimony by witnesses and the act of forcing a witness to refrain from giving testimony in accordance with the provisions of articles 294 to 300 of the Penal Code.

115. In this connection, it should be pointed out that the right of complaint is not subject to any statute of limitations in regard to the acts of torture which are designated as offences under articles 126 and 282 of the Penal Code,

since, as already stated, in accordance with the provisions of the Constitution, criminal and civil proceedings in connection with such offences are not subject to any statute of limitations. This safeguard, which is dealt with separately under the Egyptian Constitution, affords the right to prosecute the suspect in torture offences after any length of time and seek his punishment, as well as compensation for the victim for the damage and pain inflicted on him accordingly.

Article 14

116. The right of all persons to engage in litigation is safeguarded and guaranteed in accordance with article 68 of the Constitution. The judicial authority is also independent and is exercised by courts of various kinds and levels which pass judgement in accordance with the law (article 165 of the Constitution). Judges are also independent and subject to no authority other than the law, and there can be no interference in matters of justice (article 66 of the Constitution). Judgements are handed down and executed in the name of the people and any refusal on the part of public officials to execute them is an offence punishable by law. The successful plaintiff has the right to institute criminal proceedings directly before the competent court in accordance with article 72 of the Constitution. Article 123 of the Penal Code stipulates the penalty of imprisonment and dismissal for any public servant who refrains from executing a judgement, while article 63, paragraph 2, of the Code of Criminal Procedure stipulates that the successful plaintiff may institute proceedings directly against a public official or officer of law in respect of the said offence. The Egyptian legal system therefore provides means of obtaining redress through the independent judicial authority and designates as an offence punishable by law any refusal to execute judgements handed down. As to the offences which are the subject of this report, article 57 of the Constitution stipulates that any encroachment on the personal freedoms or privacy of citizens or on the other rights and public freedoms guaranteed by the Constitution and the law constitute an offence in connection with which criminal or civil proceedings are not subject to any statute of limitations. It also stipulates that the State guarantees fair compensation to any person who is the victim of such an offence. This constitutional rule constitutes an important safeguard of the principles of human rights and freedoms in Egypt and it applies to torture offences in that they are an encroachment on the rights and freedoms guaranteed by the Constitution, as stated by the legislator in article 259 of the Code of Criminal Procedure.

117. In accordance with general principles, Egyptian law affords victims and any person damaged by an offence the right to institute civil proceedings, a right which passes to the victim's heirs. Similar proceedings may also be instituted against those with civil liability for the action of the accused (articles 251 and 259 of the Code of Criminal Procedure). Compensation is at the discretion of the judges, who, in making their assessment, take into account all the effects of the torture, including rehabilitation costs, where necessary.

118. The State guarantees fair compensation for any person who has suffered an infringement of his public rights or freedoms or who has been subjected to torture in the above manner in accordance with article 57 of the Constitution.

Similarly, the right to compensation for torture offences is not subject to any statute of limitations and compensation may be rightly claimed after any length of time.

119. The right to compensation passes to victim's heirs on his death. If his death ensues from the act of torture, they are entitled to claim two types of compensation, namely compensation for any foreseen or unforeseen damage, material or moral, which they have suffered and compensation for material damage inflicted on their testator.

120. Preliminary compensation awards made for cases of torture and abuse of authority will be cited in part two.

Article 15

121. Under the Egyptian legal system, it is a constitutional and legal principle that statements which are established to have been made as a result of torture should not be invoked as evidence, as article 42 of the Constitution states as follows:

> "Any citizen who is arrested or imprisoned or whose freedom is restricted in any way must be treated in a manner conducive to the preservation of his human dignity. No physical or mental harm shall be inflicted on him, nor shall he be detained or imprisoned in places other than those which are subject to the legal provisions governing prisons. Any statement which is established to have been made under the influence or threat of anything of the above-mentioned nature shall be considered null and void."

122. Article 302 of the Code of Criminal Procedure contains the same principle, as it provides that any statement by a suspect or witnesses which is established to have been made under coercion or threat is considered null and void.

123. In accordance with the above, under the Egyptian legal system, this is an important constitutional and legal principle which constitutes a fundamental safeguard for citizens and which all types of civil and military courts are required to apply. This principle must also be implemented both in ordinary situations and in situations where the Emergency Act is in force.

124. Just as the Egyptian penal legislator specified no particular amount or degree of pain or torture which the victim should suffer in order for the offence of torture to apply, he extended the provision whereby statements cannot be adduced as evidence to cover all forms or threats of duress, physical or mental harm or imprisonment in places other than the designated locations which are subject to the laws governing prisons.

125. The failure of the court to apply this principle and respond to the defence of the person concerned provides legal justification for a challenge against the judgement.

126. It should be stated that the implementation of this principle in accordance with circumstances and legal rules concerns statements which are

proved to the court to have been made in the situations mentioned. Naturally, this does not prevent the court from convicting the suspect of the charges against him if it is furnished with evidence of another conviction that is sufficient to pronounce judgement against him. If such evidence is not furnished, the court must deem the statements attributed to the suspect to be null and void and declare his acquittal.

Article 16

127. The Egyptian penal legislator designates as an offence all forms of inhuman or degrading treatment committed by a public official, as article 129 of the Penal Code designates as an offence the use of force on the basis of official position in a manner which is detrimental to human dignity or conducive to physical pain.

128. The provision of this article applies to all public officials, whether they work in the agencies concerned with the administration of criminal justice or elsewhere, and all individuals, whatever their capacity, enjoy the protection prescribed by this article whether they are under arrest, in detention or in other circumstances.

129. Anything which is detrimental to the dignity of the victim is also designated as an offence, as are inflicting simple trauma and beating to the extent of causing injury or wounding. Needless to say, the intent to extract a confession, which, as already stated, must exist in respect of the offence of torture stipulated in the Egyptian Penal Code, is not a prerequisite for implementation of the provisions of this article.

130. Concerning individuals who are deprived of their freedom as a result of legal measures taken in their regard, the penal legislator affords them special protection in addition to the above; under article 127 of the Penal Code, it is designated as an offence if a public official imposes on such persons either a punishment which is more severe than the punishment to which they were sentenced or a punishment to which they were not sentenced. Article 91 bis of the Prisons Act No. 396 of 1956 also provides that it is an offence for a public official to confine a person in any way deprived of his liberty in a location other than one of the prisons or places subject to legal control.

131. The forms of participation prescribed in accordance with general principles in the Penal Code, namely instigation, consent and aiding and abetting, also apply to the above offences, which cannot be vindicated by the argument that they were perpetrated on the orders of superior officers, as such acts are an offence and their perpetrator cannot invoke his ignorance of that fact as a justification for his action. The perpetrators of such offences, as well as those who order them or acquiesce to them, are therefore liable to punishment in accordance with the prescribed legal controls for participating in an offence.

132. It should be pointed out that the offences of assault and battery which are punishable under articles 240 to 243 of the Penal Code overlap with the offence where a public official inflicts harm on a victim by beating him, which is designated as an offence under article 126 of the Penal Code.

133. In this case, the penalty prescribed for the most serious offence applies pursuant to the provision of article 32 of the Penal Code. If the assault causes permanent disfigurement or death, the penalties prescribed for the felonies stipulated in articles 234 and 240 of the Penal Code apply.

134. It should be stated that the exact same obligations contained in articles 10, 11, 12 and 13 of the Convention apply to those to whom article 16 applies.

135. Application of the provisions of the Convention do not prejudice the provisions of Egyptian law which designate the use of force as a criminal offence.

136. In part two, judgements pronounced by the Court of Cassation which comprise some of the principles and judicial applications in respect to offences involving the use of force will be cited.

II. INFORMATION IN CONNECTION WITH THE PREVIOUS QUERIES OF THE COMMITTEE

137. During the discussion of Egypt's previous report, the distinguished members of the Committee posed questions and queries concerning the definition of torture under Egyptian law, the extent to which it included the forms of torture covered by the Convention and to which the provisions of the Emergency Act complied with the provisions of the Convention, the military judiciary, statistical information and practical aspects in relation to the offences which are the subject of the Convention. Egypt gave verbal replies to these questions during the course of the above discussion and mentioned the legal situation in connection with the said queries in the commentary on the relevant articles of the Convention in part one. A summary of those replies is given in the first three paragraphs below, while the fourth paragraph contains examples of legal judgements and provides statistical data on training, judicial and disciplinary processes and compensation awards.

A. The definition of torture

138. In regard to the definition of torture, details concerning the inclusion of all forms of torture in the provisions of Egyptian law have been given in the commentary on article 1 of the Convention, contained in part one of this report, substantiated by examples of the legal principles established by the Egyptian judiciary in that connection by means of judgements delivered by the Court of Cassation. Section D below also contains examples of such judgements.

B. The Emergency Act

139. Egypt's previous report provided details concerning the status of the Convention under the provisions of the Emergency Act. It was also confirmed in the commentary on article 3 of the Convention that the Emergency Act does not condone torture or alter the legal status of the offence of torture pursuant to the Egyptian Penal Code. Nor are the constitutional provisions suspended by its provisions. Moreover, on promulgation of the Convention, the

prohibition contained in article 2, paragraph 3, became a provision of Egyptian law, as when ratified, the Convention became an Egyptian law that is binding on all authorities.

C. The military judiciary

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 judgements 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 regard 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 which 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 judgements 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 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).

D. Applied statistics

141. In line with the formulated plans, the authorities concerned run training programmes for their personnel. The programmes which have been implemented in this connection are as follows:

1. The Ministry of Justice

142. The Ministry of Justice regularly and consistently organizes training courses in the field of human rights for members of judicial bodies. The course details are as follows:

> The National Centre for Judicial Studies incorporates the subject of human rights and their applications in the basic training programmes for members of the Department of Public Prosecutions.

During 1996, the Centre organized three seminars in conjunction with a mission from the International Committee of the Red Cross in Cairo with the aim of providing an introduction to international humanitarian law.

Throughout the year, the Centre regularly organizes various lectures by senior Egyptian and foreign professors on the subject of human rights which are widely attended by members of the judicial bodies.

The Centre sends distinguished judges to study the English language using the annual grants provided for studying at the Human Rights Institute in Strasbourg.

Three times yearly, the Centre for Social and Criminal Research prepares training and initiative courses, each lasting a minimum of three months, for public prosecution agents. Since 1992, the courses have essentially consisted of lectures and studies on the subject of human rights, international human rights conventions and the role of the Department of Public Prosecutions in that connection. The specialized courses each take 30 trainees, amounting to 90 per year, and the initiative courses take 25 trainees, amounting to 75 per year. A component of the courses is the preparation of specialist research and the trainees producing the best work are designated for travel abroad on grants provided to the Ministry and the Department of Public Prosecutions.

2. The Ministry of the Interior

143. With a view to instilling human rights principles and concepts in the hearts and minds of officers, the Ministry of the Interior runs human rights training courses, as follows:

144. The first course was held from 28 May-2 June 1994 at the Centre for Police Studies and was attended by 22 officers from the agencies of the Ministry (the State Security Intelligence, the Police Academy, the Training Department and the General Department of Information and Public Relations). As part of the course, lectures were given by international experts from the United States, the United Kingdom and the Netherlands, and from the Centre for Human Rights in Geneva, the United Nations Crime Prevention Office in Vienna and the International Committee of the Red Cross.

3. The Ministry of Foreign Affairs

145. In the context of Egypt's international and regional obligations, since 1993, the Academy of Diplomatic Studies has always taught human rights subjects to new entrants. It also holds initiative training courses on those subjects for Egyptian diplomats and media personnel, as well as for diplomats from Africa and the Commonwealth of Independent States.

146. The second course was held from 4-8 June 1998 at the Centre for Police Studies in conjunction with the United Nations Centre for Human Rights and the Department of Human Rights Affairs at the Ministry of Foreign Affairs. It was attended by 19 officers representing the various security directorates and general departments.

147. In addition, 23 officers were sent to attend courses offered by the Centre for Human Rights in Geneva on human rights and the safeguarding of fundamental human freedoms, as follows:

The first course (27-31 March 1995) was attended by six officers holding doctoral degrees (from the Police Academy);

The second course (3-7 April 1995) was attended by six officers holding masters' degrees (from the Police Academy);

The third course (24-27 April 1995) was attended by 11 officers holding doctoral or masters' degrees (from the Police Academy).

The course programmes included a review of various human rights subjects and issues, as well as a number of field visits to the Swiss police authorities. Meetings were also arranged with United Nations experts and other persons concerned with human rights and the protection of fundamental human freedoms.

148. In the context of implementing the Ministry's policy, which is based on respect for human rights and the protection of fundamental human freedoms and on instilling those principles and concepts in the hearts and minds of students and trainees during their years of study and training, the Police Academy started to include human rights themes and issues in its academic syllabuses. It also updated the subject of human rights in the light of international and regional conventions, internal legislation and the role of the police in protecting human rights. In the academic year 1993/94, it ran a cultural competition for students in subjects relating to human rights and the protection of fundamental human freedoms. In addition, the college library was stocked with several works dealing with human rights topics and a scientific section entitled the Criminal Justice and Human Rights Section was created in the Centre for Police Studies to cover the sciences of criminal justice, as well as research on human rights and freedoms and the mechanisms for their protection.

149. The Police Academy took part in a training course entitled “The fundamentals of human rights”, which was held on 16 December 1995 and organized by the Centre for Human Rights Studies in the Faculty of Law at Cairo University.

150. The Academy works in cooperation with the Ministry of Foreign Affairs (Department of Human Rights) to acquire the latest human rights publications issued by the Centre for Human Rights in Geneva for use with students, particularly those in higher education and those specializing in human rights fields. Such cooperation also covers the activities, courses and publications of the United Nations Crime Prevention Office in Vienna.

151. The details of a cooperation project between the Academy and the States of the European Union are currently being studied (by the Ministry for Foreign Affairs) with a view to strengthening cooperation, exchanging expertise and preparing scientific training courses for members of the police in fields connected with human rights.

4. Judicial processes in regard to complaints of torture made to the Department of Public Prosecutions

In 1993

152. In all, 63 communications were submitted to the Department of Public Prosecutions and were investigated and processed by the Office of Human Rights of the Attorney-General, as follows:

5 cases were sent for criminal or disciplinary trial;

6 cases were sent for punishment of the accused to the administrative authority to which they were subject;

25 communications were placed on file owing to the absence of any conclusive evidence that the alleged act had occurred on the basis of which the person about whom the complaint was made could be questioned, as the statements transmitted by the informers were unsubstantiated by any evidence concerning the reported torture;

11 communications were placed on file because the perpetrator was unknown, the informers having failed to accuse any specific person of having committed the act and the investigations having also failed to identify any perpetrator;

12 communications were placed on file owing to insufficient evidence, as the evidence provided by the informers concerning the torture was either conflicting or insufficient to send the persons whom they had accused for trial;

2 communications received from human rights associations were placed on file, as the person concerned in the communication stated that he had not been tortured and denied having reported to any authority that he had been;

2 communications were placed on file owing to the failure of the informers to provide their addresses due to misunderstanding the matter which they were reporting and also owing to the failure to provide information concerning any government authority which may have dealt with the persons whose names were contained in the communications.

In 1994

153. Through the Office of Human Rights of the Attorney-General, the Department of Public Prosecutions received 71 communications which were processed as follows:

6 cases were sent for criminal or disciplinary trial;

2 cases were sent for punishment of the accused to the administrative authority to which they were subject;

38 communications were placed on file owing to the absence of any conclusive evidence that the alleged act had occurred on the basis of which the person informed against could be questioned, as the statements transmitted by the informers were unsubstantiated by any evidence concerning the reported torture;

8 communications were placed on file because the perpetrator was unknown, the informers having failed to accuse any specific person of having committed the act and the investigations having also failed to identify any perpetrator;

7 communications were placed on file owing to insufficient evidence, as the evidence provided by the informers concerning the torture was either conflicting or was insufficient to send the persons whom they had accused for trial.

In 1995

154. Through the Office of Human Rights of the Attorney-General, the Department of Public Prosecutions received 55 communications which were processed as follows:

5 cases were sent for criminal or disciplinary trial;

6 cases were sent for punishment of the accused to the administrative authority to which they were subject;

21 communications were placed on file owing to the absence of any conclusive evidence that the alleged act had occurred on the basis of which the person informed against could be questioned, as the statements transmitted by the informers were unsubstantiated by any evidence concerning the reported torture;

6 communications were placed on file because the perpetrator was unknown, the informers having failed to accuse any specific person of having committed the act and the investigations having also failed to identify any perpetrator;

12 communications were placed on file owing to insufficient evidence, as the evidence submitted by the informers concerning the torture was either conflicting or insufficient to enable questioning of the person whom they had accused;

5 communications received from human rights associations were placed on file, as the person concerned in the communication stated that he had not been tortured and denied having reported to any authority that he had been.

5. Administrative and disciplinary processes concerning complaints of the use of force or torture submitted to the Ministry of the Interior

155. In keeping with the policy which it follows in its constant endeavour to respect human rights and safeguard fundamental human freedoms, the Ministry of the Interior takes prompt action on complaints and allegations which it receives about officers in connection with human rights violations by immediately investigating them and referring anyone whose guilt is established to the Department of Public Prosecutions or to the Disciplinary Board for trial or for the imposition of disciplinary penalties. Below is a list enumerating the officers who were referred to the criminal or disciplinary courts or on whom disciplinary penalties were imposed (in connection with torture or use of force) between November 1993 and November 1997.

(a) Complaints referred to the Department of Public Prosecutions

156. During the above period, 19 officers were referred to the Department of Public Prosecutions for criminal trial. Some received mandatory sentences which restricted their freedom (terms of imprisonment ranging between two weeks and three years), their punishment being served in public prisons, while others received suspended prison sentences or were acquitted of any charge against them, as follows:

12 officers from November 1993 to November 1994;
2 officers from November 1994 to November 1995;
None from November 1995 to November 1996;
2 officers from November 1996 to November 1997.

(b) Disciplinary Board

157. During the above period, 35 officers were referred to the Disciplinary Board for trial. Some received mandatory disciplinary penalties, whether demotion (for periods of between 2 and 15 days) or suspension from work for varying periods, some were acquitted owing to the failure to establish any evidence against them and others are still under examination by the Disciplinary Board, as follows:

8 officers from November 1993 to November 1994;
12 officers from November 1994 to November 1995;
6 officers from November 1995 to November 1996;
5 officers from November 1996 to November 1997.

(c) Disciplinary penalties

158. During the above period, 71 officers received the mandatory disciplinary penalties (in connection with torture or use of force) of either a caution, demotion for a period of seven days or suspension from work, as follows:

22 officers from November 1993 to November 1994;
12 officers from November 1994 to November 1995;
19 officers from November 1995 to November 1996;
13 officers from November 1996 to November 1997.

(d) Compensation

159. On the basis of the final legal judgements pronounced in cases of use of force or torture, between 1 January 1993 and 30 September 1998, victims or their heirs obtained from the civil courts a total of 648 preliminary compensation awards for material or moral damage inflicted on them, as follows:

In 1993, 43 awards were made in favour of victims for compensation of between LE 1,000 and LE 40,000, amounting to a total of LE 339,500;

In 1994, 65 awards were made in favour of victims for compensation of between LE 1,000 and LE 20,000, amounting to a total of LE 367,300;

In 1995, 121 awards were made in favour of victims for compensation of between LE 500 and LE 50,000, amounting to a total of LE 706,000;

In 1996, 177 awards were made in favour of victims for compensation of between LE 1,000 and LE 14,000, amounting to a total of LE 1,023,500;

In 1997, 225 awards were made in favour of victims for compensation of between LE 500 and LE 30,000, amounting to a total of LE 1,178,000 [$1 = LE 3.4].

160. It should be noted that, of these awards, those which became final were executed, while some are still being considered by the appeal courts.

6. Examples of judgements delivered in connection with cases and allegations of torture

161. The list below contains examples of the judgements and principles pronounced by the Court of Cassation and the military judiciary in connection with cases and allegations of torture, exemplifying the commitment of the judiciary to comply in practice with all principles, rules, measures and safeguards relating to torture cases in regard to both the accused and the victims.

(a) Judgements and principles established by the Court of Cassation

(i) Concerning the offence of torture designated as a crime under article 126 of the Penal Code

162. The law does not define the meaning of physical torture and lays down no specific degree of gravity as a prerequisite; that is a matter left for the trial court to infer at its discretion from the circumstances of the case (Appeal No. 1314 of judicial year 96, hearing of 28 January 1966, record 17, page 1161).

163. Under the provision of article 126, paragraph 1, of the Penal Code, a suspect is any person who is charged with committing a specific offence, even if he is charged while the investigation officers are still conducting inquiries into offences and their perpetrators and gathering the evidence essential to the investigation and proceedings pursuant to articles 21 and 19

of the Code of Criminal Procedure, provided that he is suspected of having played a part in perpetrating the offence in connection with which the officers are gathering evidence. There is nothing to prevent any such officer from being subject to punishment under the provision of article 126 of the Penal Code if he tortures a suspect in order to extract a confession, regardless of his motive for doing so. Nor is there any reason to differentiate between the statements of the suspect as contained in the report of the investigation conducted by the investigating authority and his statements as contained in the evidence report, as the criminal judge is in no way bound by a specific type of evidence and is at full liberty to draw evidence from any source in the proceedings if he believes it to be authoritative. It is also inadmissible to state that the legislator intended to protect a certain type of confession, as nothing is singled out and it would be inconsistent with the provision (Appeal No. 1314 of judicial year 96, hearing of 28 January 1996, record 17, page 1161).

164. Statements made by witnesses and interviewees who were in any way subjected to genuine torture must be dismissed. No reliance can be properly placed in such statements, even if they are veritable and true to fact, when they are extracted by any modicum of torture or coercion. However, if no torture ever occurred, reliance may be rightly placed in such statements (Appeal No. 1275 of judicial year 39, hearing of 13 October 1969, record 20, page 1056).

165. It is decreed that under no circumstances does obedience to a superior officer extend to the perpetration of offences and that a subordinate must not obey an order from his superior officer to commit an act which he knows to be punishable by law. Accordingly, if the appellant's defence is based on exigency in that he perpetrated the act on the order of his superior officer, it cannot be said that the appealed judgement was defective in its application of the law (Appeal No. 6533, judicial year 25, hearing of 24 March 1983, record 34, page 432).

166. Since any confession to be taken into account must have been made freely and voluntarily, no reliance can be placed in a confession, even if it is genuine, when it is the result of any degree of coercion or threat. A promise or inducement is regarded as comparable to coercion and threat in that it affects the freedom of the suspect to choose between making a denial or a confession and leads him to believe that, by confessing, he will reap some benefit or avoid harm. Accordingly, when the plea was made in court that the confession of the first and fifth guilty defendants was the result of the physical coercion to which the fifth guilty defendant had been subjected in the form of torture and the moral coercion to which they had both been subjected in the form of threats, promises and inducements, the court is responsible for investigating that defence and exploring the link between the coercion and its cause and relationship with the statements of both persons. The court, however, refrained from doing so and simply stated that the prosecution attorney saw no marks of torture on either defendant, thus excluding the possibility of their coercion, even though the fact that he noticed no marks on them does not in itself exclude the possibility that the fifth guilty defendant, who stated that he had been subjected to physical coercion, bore marks from being tortured or beaten. Nevertheless, no definitive link was made between threat, promise and inducement and their

confession, in which the court had placed reliance. The court's judgement was therefore flawed by unsound evidence and omission (Appeal No. 951 of judicial year 35, hearing of 2 June 1983, record 34, page 730).

167. In order for the offence of torture to obtain, Egyptian law does not stipulate that a specific degree of serious pain or suffering should result from the torture or that the torture should leave marks. Consequently, the offence of torture obtains however negligible the pain and irrespective of whether or not it leaves marks (ruling of the Court of Cassation, hearing of 5 November 1986).

168. Similarly, a confession is not required in order for the provision of article 126 of the Penal Code to apply. On the contrary, it is enough that the suspect should have engaged in torture with a view to inducing a confession (ruling of the Court of Cassation, hearing of 28 November 1966).

169. The offence of torture provided for in article 126 of the Penal Code does not require that the person carrying out the torture should be competent to seek evidence or conduct an investigation in connection with the offence perpetrated by the suspect. Instead, it is sufficient that the public official should, by virtue of his office, have the authority that places him in a position to torture the suspect with a view to extracting a confession from him (ruling of the Court of Cassation, hearing of 8 March 1995).

170. In torture offences, criminal intent is present where a public official deliberately tortures a suspect in order to induce him to make a confession, irrespective of his motive for doing so (ruling of the Court of Cassation, hearing of 8 March 1995).

(ii) Concerning the offence of the use of force designated as a crime under article 129 of the Penal Code

171. The offence of use of force referred to in article 129 of the Penal Code occurs whenever a public official or servant relies on his position to use force in a manner which is detrimental to an individual's dignity or which causes him bodily pain. It is not a prerequisite that the suspect should be performing his job at the time of committing the assault or that the assault should attain a specific degree of severity if the ruling establishes that the suspect was a member of the police who used his position to assault and wound the victims. Neither the failure to state whether the suspect was performing his job at the time of using force nor the failure to state the name of the victim or the details of the assault provide reason to reverse the judgement (hearing of 20 March 1944, Appeal No. 374, judicial year 14).

172. The use of force by public officials on the basis of their position is an offence punishable under article 129 of the Penal Code. If battery is involved, it is also an offence punishable under article 242 of the Penal Code and other articles which punish incidents involving battery or deliberate injury. When both offences are committed in one criminal act, pursuant to article 32, paragraph 1, of the Penal Code, only one punishment may be imposed on the suspect, namely the punishment stipulated for the more serious offence. The punishment stipulated under article 241 of the Penal Code for battery where the person subjected to the battery is unable to lead his normal life

for a period of more than 20 days is heavier than the punishment prescribed in article 129 of the Penal Code. It is not therefore wrong to punish the accused (who is a village headman) under article 242 if it is established that his battery of the victim attained that degree of severity (hearing of 12 November 1945, Appeal No. 1466, judicial year 15).

173. The chief element of the use of force in the offence provided for in article 129 of the Penal Code obtains with any material act that is likely to cause the victim bodily pain, however slight, even if the act causes no apparent injuries. It therefore includes battery and minor trauma (hearing of 14 April 1952, Appeal No. 264, judicial year 22).

174. The chief elements of the use of force offence provided for in article 129 of the Penal Code are present where it is shown that the suspect assaulted the victim based on the authority of his position. It is unnecessary to state the injuries inflicted on the victim as a result of the assault (hearing of 16 November 1954, Appeal No. 1022, judicial year 24).

175. The Court of Cassation ruled that the provision of article 129 of the Penal Code concerned only those means of violence which did not involve arresting individuals and placing them in confinement. This article appears among those dealing with the offences of coercion and ill-treatment of individuals by public officials in volume II, chapter VI, on felonies and misdemeanours prejudicial to the public interest. Articles 180 and 282 of the Penal Code appear among those dealing with offences of the unlawful arrest and detention of individuals in volume III, chapter V, on felonies and misdemeanours involving individuals. This distinction in the titles under which these articles appear demonstrates the thinking of the Egyptian legislator in that he regards the encroachment on individual freedom by means of arrest, imprisonment or detention as an offence categorically committed by a public official or other person (Appeal No. 1286 of judicial year 34, hearing of 8 December 1964, record 15, page 805).

(b) Rulings pronounced by the military judiciary

176. In Military Felony Case No. 18 of 1993, Office of the Military Prosecutor General, the court acquitted the suspects based on their plea that their confessions in the arrest report were invalid, as it established through its investigations that the plea was genuine and declared their acquittal on the ground that the only documented evidence was the confessions which they had made under coercion during the investigations.

177. In Military Felony Case No. 23 of 1994, Office of the Military Prosecutor General, the defence pleaded that the statements of some of the suspects were invalid because they had been subjected to torture. Discounting this plea for the reason that the forensic reports did not state that the suspects bore any marks of torture, the court dismissed it. On the contrary, far from being the result of torture, the marks noticed on some of the suspects were produced during their attempted escape when they were pursued by inhabitants who beat them up when they learnt that they were among those involved in killing tourists and nationals. The forensic reports affirmed that such injuries could have occurred as stated in the account given by the arresting officer (i.e., assault by inhabitants), which was accepted. In its

opinion, the Court stated that the Department of Public Prosecutions had begun its investigations by physically examining the suspects and recording the injuries which some of them displayed, thus confirming that there were no factual or legal grounds for the defence that they had been subjected to physical coercion.

178. In Military Felony Case No. 12 of 1995, Office of the Military Prosecutor General, the defence sought to invalidate the confessions attributed to the suspects in general on the grounds that they had been made under coercion and torture and therefore had no legitimacy. The court replied to these pleas by stating that the confessions had been made to the Department of Military Prosecutions, which is the responsible party in the proceedings, and that none of the suspects had stated that he had been subjected to torture. As such, their confessions were made during the course of legitimate procedures, in which case the investigations had no connection with pre-investigation measures in breach of the law. Nevertheless, the court decided to inform the competent prosecution of its views concerning transgressions in that connection. Generally speaking, the military court always rejects as evidence of guilt confessions made by suspects which are proved to the court to have been made under coercion or torture and does not take them into account. A suspect who, under torture or coercion, makes a confession during any stage of the pre-trial investigation that is subsequently eliminated as false may be convicted on other documented evidence in the proceedings.

179. In Military Felony Case No. 18 of 1993, Office of the Military Prosecutor General, although it placed no confidence in the confessions which they had made under torture, the court convicted the suspects on the basis of other documented evidence against them.

180. In Military Felony Case No. 10 of 1994, Office of the Military Prosecutor General, although the suspect's documented confessions in the case were deemed null and void after the court harboured suspicions that they had been made under duress, it convicted him on other documented evidence in the case.

181. These rulings confirm the full compliance of the military judiciary with all the legal rules prescribed in the Penal Code and the Code of Criminal Procedure. It also provides all the safeguards prescribed for citizens under the Constitution in connection with prohibiting and designating as crimes the acts of torture prohibited under the provisions of the Convention, even when the provisions of the Emergency Act are in force.

III. THE PREVIOUS RECOMMENDATIONS OF THE COMMITTEE

182. The recommendations of the Committee contained in its reports of 1993 and 1996 have been thoroughly studied by the committee constituted in the Ministry for Foreign Affairs comprising representatives of the Ministry of Justice, the Ministry of the Interior, the Department of Public Prosecutions and the military judiciary. The aim of doing so was to make use of the recommendations in the relevant fields, since they are taken as guidelines provided by independent experts in the light of their international experience with a view to strengthening and protecting individual rights and social

integrity. In the context of Egypt's full respect for its contractual obligations in connection with this Convention, and in accordance with its established policy of welcoming permanent cooperation with the United Nations and its human rights agencies, the following measures were taken:

(a) A working group was formed consisting of representatives of the authorities involved in the administration of justice (the Ministry of the Interior, the Ministry of Justice and the Department of Public Prosecutions), as well as the Ministry for Foreign Affairs (being the point of contact and coordination in the field of human rights), human rights experts and specialists in the relevant research centres and colleges.

(b) The status of the mechanisms in Egypt which are concerned with implementation of the Convention were studied and their effectiveness evaluated in order to identify the best way of enhancing and developing their performance and determining the need for new mechanisms in this field.

(c) A second working group consisting of representatives of the authorities involved in the administration of justice, as well as representatives of the ministries concerned with devising and organizing educational programmes for ordinary, further and higher education, was charged with studying the current status of human rights curricula and syllabuses and evaluating the need to introduce new subjects and develop those already being taught, with the focus on assessing the need for training and initiative courses for personnel working in the administration of justice and formulating future plans in that connection.

183. The detailed studies of the above working groups produced the following conclusions:

(i) In the light of the safeguards, follow-up procedures and measures for the prevention of prohibited acts which were discussed in the commentary on articles 11 and 12 and which are provided by the Egyptian legal system at the constitutional and legislative levels and by the provisions of the Convention against Torture, which is an Egyptian law, the view is that there is currently no need to establish new monitoring mechanisms. Instead, emphasis should be placed on the importance of strengthening and stimulating the role of the present mechanisms established by the Ministry for Foreign Affairs and the Department of Public Prosecutions and on enabling them to undertake their tasks. Emphasis should also be placed on coordination with these mechanisms with a view to the exchange of expertise and information. Part two of this report has already cited the information provided by the Office of Human Rights at the Department of Public Prosecutions concerning judicial processes in connection with complaints received between 1993 and 1995. It also cited the information received from the Ministry of the Interior concerning the administrative and disciplinary measures taken concerning complaints of use of force and torture and compensation awarded to victims between 1993 and 1997.

(ii) Interest in legal, statistical, field and applied research by universities and specialized scientific centres is encouraged and

their findings are used to draw up future plans in the relevant fields of action, reveal the shortcomings to be addressed and determine the means of doing so.

(iii) In 1993, the Office of Human Rights was established in the Department of Public Prosecutions with a deputy attorney-general at its head. It is staffed by several experts from the Department of Public Prosecutions who devote their time exclusively to investigating complaints concerning offences in connection with human rights violations, including torture and use of force, with the aim of endeavouring to complete investigations promptly and within a reasonable period of time. Two further aims were to train personnel from the Department of Public Prosecutions in order to equip them with the experience needed to deal with these types of investigations and to standardize the processing of the cases involved in order to facilitate compilation of the statistics needed to study the indicators showing the practical aspects entailed in the implementation of the Convention. It was as a corollary of this that the information and statistics contained in part two of this report were produced.

(iv) Executive plans for the continuous training of personnel working in the administration of justice at the different levels, both locally and internationally, were drawn up. The plans are concerned with the effective implementation of the various human rights agreements to which Egypt has acceded and which have consequently become an integral part of national legislation. They are also concerned with providing information on developments in the legislative and applied fields in line with the outcome of the Committee's recommendations and based on the studies undertaken in their respective fields by the agencies concerned. Training courses in the fields of justice administration were organized. Data from the Ministry of Justice and the Ministry of the Interior provides a practical example of such courses (details contained in part two of this report).

(v) Work has been developed in the criminal justice agencies and offices with the introduction of machine memory systems and computers in the Ministry of Justice and the Ministry of the Interior, a development which has now spread to the Court of Cassation and the appeal courts and is currently under way in the courts of first instance and the Departments of Criminal Status, Civil Status and Prisons. The impact of this development will be felt in the ease with which data, information and legal and administrative processes can be enumerated. It will also help to expedite the judicial, legal and administrative follow-up and decision-making processes.

(vi) The Ministry of the Interior has endeavoured to provide the committee concerned with certain information which was previously unavailable for circulation so that it can be submitted to the Committee against Torture as evidence of the increasing attention devoted to this subject by the Ministry, whether from the

standpoint of control with a view to punishing anyone who abuses his authority or has a tendency to use force or whether from the standpoint of training with a view to familiarizing officers with human rights principles as an integral part of their work in the field of enforcing justice (part two of this report contains detailed statistics relating to the training of officers and action taken on complaints sent to the Ministry of the Interior, whether in terms of disciplinary questioning or compliance with judicial processes).

(vii) As part of its efforts to achieve transparency in matters of human rights, Egypt has provided all the relevant United Nations mechanisms with replies to the inquiries made of it. It has also continued its objective dialogue with international non-governmental organizations, which, during its discussion of Egypt's second report, was affirmed by the Committee as a positive feature, which Egypt is endeavouring to pursue.

(viii) As stated in part one of this report, university education includes special curricula on human rights and fundamental freedoms, the result of which will be to instil in this important segment of young people the principles of human rights and fundamental freedoms.

Conclusion

184. In concluding this report, Egypt is keen to highlight the following facts.

185. Egypt is a State believing in the principle of the sovereignty of the law, which is the basis of government in the State in accordance with the Constitution promulgated in 1971. The principle of separation of power is also provided for under the Constitution, which also affirms the independence and immunity of the judiciary, as well as the subjection of the State to the law, these being two fundamental safeguards for the protection of rights and freedoms. In addition, the Constitution guarantees all human rights principles and as such they enjoy the safeguards prescribed under Egypt's constitutional provisions, which the national legislator may not contravene. All such matters are under the control of the judiciary, represented in the Supreme Constitutional Court, which, under the Constitution, is empowered to make decisions as to the constitutionality of laws. In this respect, it should be mentioned that the Department of Public Prosecutions in Egypt is a branch of the judicial authority. Its members enjoy judicial protection and cannot be removed from office.

186. At the end of the last century, the Egyptian judicial legislator designated all forms of torture as an offence and stipulated harsh punishment for those who perpetrated or participated in torture or ordered it to be carried out. The offence is also one in connection with which criminal or civil proceedings are not subject to any statute of limitations and the State guarantees compensation for any person who suffers infringement. In addition, any confession, statement or evidence produced under torture is null and void, even if true and genuine. The statistical information contained in part two

of this report confirms that all agencies involved in the administration of justice are required to implement in practice all the rules and safeguards in connection with the acts prohibited under the Convention, as guaranteed by the legal system and by the provisions of the Convention.

187. On that basis, Egypt was one of the first States to accede to the Convention against Torture, which, in accordance with article 151 of the Constitution, became a law of the country. During its discussion of Egypt's second report, the Committee expressed its satisfaction concerning this legal system.

188. We have constantly endeavoured to cooperate with the distinguished Committee by submitting to it our periodic reports, replying to the questions posed by its experts and dispatching officials and specialists to provide any clarifications which it may require concerning the administration of justice in our country.

189. It is noteworthy that, in the context of Egypt's growing concern with human rights issues, permanent mechanisms have been established to deal with their every aspect at both the domestic and international levels:

(a) A Department of Human Rights was established in the Ministry of Foreign Affairs (September 1992) to serve as the connecting link between the relevant domestic agencies and international organizations and bodies. It is competent to prepare periodic reports for the treaty bodies of the United Nations, as well as replies to the bodies and working group of the Commission on Human Rights. It is also competent to engage in dialogue with international non-governmental organizations and to transfer and provide international expertise to relevant local agencies (the Department is currently headed by a deputy assistant emissary for human rights of the Minister for Foreign Affairs).

(b) The Office of Human Rights, which falls directly under the Attorney-General, was established in the Department of Public Prosecutions (1993) to study, follow up and investigate human rights complaints (the Office is headed by the Deputy Attorney-General and Justice).

190. The above-mentioned facts reflect the extent of Egypt's compliance with and respect for its contractual obligations in connection with the Convention against Torture. They also affirm the efforts of the agencies involved in the administration of justice in Egypt to investigate all torture practices and punish those responsible for them, irrespective of the time elapsed since the offence and whatever the standing of its perpetrators.

191. In conclusion, in submitting this report, Egypt wishes the distinguished Committee enduring success in the performance of its valuable task. It also welcomes the continuation of dialogue and is pleased to respond to any questions of the distinguished Committee.

- - - - -