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ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY

Written statement* submitted by Association for World Education,
a non-governmental organization on the Roster

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

[11 July 2003]

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

Discrimination in the Egyptian criminal justice system: two exemplary cases in regard to: 'State Security' / 'States of Emergency' / 'Military Tribunals', and the absence of Due Process

I. Human Rights Defender Saad Eddin Ibrahim: Director of Ibn Khaldun Center in Cairo

1. “*Egyptian laws are autocratic by nature.*” With a sentence, Neged Borai — a leading lawyer and political reform advocate — contradicted the affirmations in his country’s last Report to the CERD, portraying Egypt as a land of democracy and justice in the Middle East where universal human rights were taught in elementary schools. He was referring to the re-sentencing of Saad Eddin Ibrahim, Director of the Ibn Khaldun Center for Development Studies (ICDS), a staunch human rights defender and advocate of democracy and women’s rights. (1)

2. The internationally renowned professor of sociology at the American University of Cairo was jailed on 30 June 2000 with twenty-seven of his colleagues by State Security forces, and both the ICDS and the affiliated Egyptian Women Voters Support Center were closed down. This happened soon after the publication of the ICDS’s courageous ‘Appeal to the Egyptian Nation’ on the brutal killing in January 2000 of 21 Copts at Al-Khosheh in Upper Egypt (the fortieth collective attack on Copts since 1972). We widely circulated their Appeal at the Commission on Human Rights in April 2000 in both the original Arabic and an official English version.

3. Dr. Ibrahim was convicted on 21 May 2001 by a ‘Supreme State Security Court’ (2) for receiving funds without authorisation, dissemination of false information abroad, and of appropriating money by fraudulent means. The charges were related to the implementation of voter education and elector monitoring projects funded by the MEDA Democracy Progress of the European Union. He received a seven year sentence with hard labour. The charges made a total mockery of the Egyptian justice system. National and international organisations condemned this arbitrary sentence, alleging that the prosecution was politically motivated. Following their conviction and imprisonment, Amnesty International adopted Dr. Saad Eddin Ibrahim and three other human rights defenders as ‘prisoners of conscience.’

4. Prof. Ibrahim and five others were later released by Egypt’s highest Appeals Court, which ruled on 6 February 2002 that the State Security Court had acted improperly; a retrial was ordered which began on 27 April 2002. Although all the allegations were refuted by witnesses, the prosecution merely retried the case from the first trial. On 29 July 2002, the ailing 63 year-old Ibrahim was again sentenced on the same trumped-up charges. He was specifically accused of the “*embezzlement of foreign funds, receiving foreign funds without authorisation and tarnishing Egypt’s image*” (3) The court’s speedy verdict condemned him to “*seven years in prison for his efforts to register voters, monitor elections and report attacks on Egypt’s Coptic Christians.*” (4)

5. Amnesty International declared: “*This trial against human rights defender Saad Eddin Ibrahim aims to silence the human rights movement in Egypt.*” And Human Rights Watch stated that the “*trial falls in the context of a number of blows intended to muzzle civil society in Egypt.*” It was thought that President Hosni Mubarak had refused “*to forgive Ibrahim’s greatest offense: publishing an article calling attention to the fact that the Egyptian dictator is grooming his son to succeed him.*” (5) Additional details on this aspect were published by MEMRI on 8 July 2003. (6)

6. A taboo subject, rarely mentioned in media reports, is that Saad Eddin Ibrahim — a Muslim, who holds dual U.S. and Egyptian citizenship and is married to an American — had participated freely in academic symposiums everywhere in the world, including Israeli universities.

7. In response to a legal defence appeal, Egypt's Court of Cassation overturned the conviction, and on 3 December 2002 ordered a third trial for Dr. Ibrahim and for three of his colleagues, all of whom were then released from prison. Two days before the Court heard the final appeal of Ibrahim and his co-defendants on 4 February 2003, Edward Said commented: *"As the Arab world spins into further incoherence and shame, it is up to everyone of us to speak up against these terrible abuses of power. No one is safe unless every citizen protests what in effect is a reversion to mediaeval practices of autocracy."* (7)

8. On 18 March 2003, the second day of the 59th UNCHR session, Egypt's Court of Cassation found Saad Eddin Ibrahim innocent of all the charges brought against him. This was the result of much international attention. It was also examined by the Human Rights Committee last year. The AWE raised the case several times at the Commission on Human Rights and at the Sub-Commission.

9. On 30 June 2003 — fifteen years after its foundation — the ICDS was re-opened, having been totally ransacked and looted during the period of its occupation by State Security forces (8). In an address read for him at the special ceremony, Secretary-General Kofi Annan praised the Center, and referred to the first Arab Human Development Report of 2002 by the UN Development Programme, and to their second Report due out in September, which will focus on the question of knowledge: *"This right — the right to seek, receive and impart information and ideas — is enshrined in the Universal Declaration of Human Rights, and must be respected. . The Ibn Khaldun Centre has a key role to play in the advancement of knowledge and development in Egypt and the Arab world."* (9)

II. Dr. Neseem Abdel Malek: former Coptic Director of the Cairo El-Khanka Mental Hospital

10. Egypt is an example of a State's constant misuse of military tribunals and its ubiquitous 'State of Emergency' system, reintroduced and reinforced in 1981 after the assassination of President Anwar Sadat. Although Egypt is not at war, this 'emergency system' was again extended for a further three years in February 2003; it automatically refers any civilian to a military court by a presidential decision if the case falls under the general category: "act of terrorism" (10)

11. The case of Dr. Neseem Abdel Malek has been highlighted by the Association of World Education since 1998 at several UN bodies – as an exemplary case of how a blatantly iniquitous criminal justice system functions, via a 'Military Tribunal', and condemnations without appeal on what is often either blatantly false or inadequate evidence.

12. During a weekend leave from asylum, Saber Abu Ulla and his brother killed nine German tourists and their Egyptian driver on 17 September 1997. Having been confined to a mental home after killing four foreign tourists in a Cairo hotel in 1993, he had initially testified that to obtain his furlough he had bribed Dr. Sayed El-Qut, a Deputy Health Minister and former head of a mental institute, who had certified him insane in 1993. But Saber then modified his allegations of bribery, naming Dr. Neseem Abdel Malek, the Coptic director, who was absent from the El-Khanka clinic on that 15-17 September weekend. This allegation was

accepted by the military court, although contradicted by Saber's own mother in court. No other 'proof' was provided.

13. Just prior to his execution in May 1998, when interviewed on Egyptian TV, Saber stated that his acts were part of his 'jihad' for Allah. His one regret was that he had not killed more 'infidels.'

14. Opinion N° 10/1999 of the Working Group on Arbitrary Detention (11) detailed all the facts and asked the Egyptian Government to review the case of Neseem Abdel Malek, unjustly condemned to 25 years imprisonment with hard labour by a military court. The AWE's written Statement (E/CN.4/ 2001/NGO/49) contains the complete Opinion N° 10/1999 (Egypt) and the brief "Reply of the Government of Egypt." (12), as well as comments by the AWE.

15. The conclusion of Opinion N° 10/1999 is unambiguous: "*The deprivation of liberty of Dr. Neseem Abdel Malek is arbitrary, as being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights and falls within category III of the applicable categories to the consideration of the cases submitted to the Working Group.*" (§19). It continues: "*Consequent upon the opinion rendered, the Working Group requests the Government: to take the necessary steps to remedy the situation, and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights.*" (§20)

15. Three years after submission to the Commission, the WGAD's recommendations in Opinion N° 10/1999 have been ignored by the Government of Egypt. However, the arbitrary sentence by a military tribunal under the 'state of emergency' regulations was reduced from 25 to 10 years in January 2000. Nonetheless, an innocent man, a distinguished doctor and highly-respected member of the Coptic community, continues to rot in prison nearly six years after his arrest and condemnation.

16. The Association for World Education wishes to alert the Sub-Commission of this exemplary case of arbitrary detention, which also relates to discrimination against a member of an indigenous religious minority group.

17. In a statement to the Commission on 9 April 2003, we explained that we had referred this matter to Mr. Param Cumaraswamy, then Special Rapporteur on the Independence of Judges and Lawyers, asking him to pursue it under his mandate, as extended by Resolution 2002/37: Integrity of the Judicial System. He sent a communication to the Egyptian Government but had not received a reply. We call on the Working Group on Arbitrary Detention in the light of the continuing arbitrary detention of Dr. Abdel Malek to reconsider his case, taking into account the findings made in Opinion N° 10/1999, and the action taken recently by the former Special Rapporteur.

18. As Egypt's State of Emergency system allows no appeal from a Military Tribunal ruling, we here reiterate our appeal to President Hosni Mubarak — based on WGAD Opinion N° 10/1999 — to free Dr. Neseem Abdel Malek on compassionate grounds by a humanitarian, presidential pardon.

1. Quoted by Nadia Abou El Magd in an AP article of 29 July 2002 from Cairo.

2. Law N° 105 of 1980, established, context of a State of Emergency, according to Law N° 162 of 1958, as amended.

3. 170,000 euros from July 1997-July 2000 to the ICDS, granted by the EU Commission supported programme of voter education; and 145,000 euros for the League of Egyptian Women Votes, partly funded from the MEDA Democracy programme – see in an AP article of 29 July 2002.
4. New York Times editorial: ‘The Shame of Egypt,’ 31 July 2002, and in the IHT, 1 Aug. 2002.
5. Washington Post editorial, 30 July 2002 and IHT, 31 July 2002.
6. Nimrod Raphaeli, “The Grooming of Gamal Husni Mubarak,” MEMRI, Inquiry and Analysis – Egypt, 8 July 2003, N° 141 (English trans. from Arabic press): www.memri.org/bin/opener_latest.cgi?ID=IA14103
7. Marwa Abdel Rehim, article in AFP, 2 February 2003).
8. Jailan Halawi, ‘He’s back’ (exclusive interview with Saadeddin Ibrahim), Al Ahram Weekly, 26 June 2003; Sarah Gauch, ‘Egyptian human rights take a hit with tough new law. Activists are watching the implementation of 2002 law on nongovernmental groups,’ The Christian Science Monitor, 20 June 2003.
9. Kofi Annan Praises Ibn Khaldun Center Re -Opening, United Nations News Service, 30 June 2003.
10. Article 6, Act N° 52, 1966.
11. E/CN.4 /2000/4 Add.1, pp.52-55;
12. E/CN.4 /2000/4 §27,28

1 *Commentary for the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, subsection d. at p. 18, last edited April 11, 2003.

2 *Id.* at subsection d.

3 *Id.* at subsections a.-i. on pp. 20-21.

4 Mary Robinson, *The Ways a ‘Business Leaders Initiative on Human Rights’ Might Add Value*, May 7, 2003 (Brussels, Belgium).

5 Principles 1 and 2 of UN Global Compact available at http://www.unglobalcompact.org/content/AbouttheGC/TheNinePrinciples/prin1_&prin2.htm.

6 See OECD Watch, Review of National Contact Points: June 2002-June 2003 available at <http://208.55.15.210/OECD-Watch-June-2003.htm>, Oliver Williams, *Major US Companies doubt Global Compact credentials*, Business Day, April 22, 2003 available at <http://www.bdfm.co.za/cgi.bin/pp-print.pl>, and CALIFORNIA GLOBAL CORPORATE ACCOUNTABILITY PROJECT, BEYOND GOOD DEEDS: CASE STUDIES AND A NEW POLICY AGENDA FOR CORPORATE ACCOUNTABILITY 5-7 (2002).

7 BEYOND GOOD DEEDS: CASE STUDIES AND A NEW POLICY AGENDA FOR CORPORATE ACCOUNTABILITY at pp. 23-44.

8 Juan Forero, *Rights Groups Overseas Fight U.S. Concerns in U.S. Court*, N.Y. TIMES, June 26, 2003, at A3.

9 *Id.*

10 *Id.*

11 *Id.*