

EGYPT

THE STATE OF EGYPT VS. FREE EXPRESSION: The Ibn Khaldun Trial

TABLE OF CONTENTS

I. Summary	2
II. Recommendations	5
To the Government of Egypt	5
To the European Union and Member States	5
To the United States	6
III. Introduction	6
IV. The State of Emergency and the Supreme State Security Court	8
V. Events Leading up to the Trial	9
VI. The Substance of the Charges against the Defendants, the Verdict, and Judgment	10
Conspiring to bribe public officials to undermine the performance of their duties	10
Receiving donations without prior permission from the competent authorities	11
Deliberately disseminating false information abroad about the internal situation in Egypt and thereby undermining the stature of the state	12
Using deceptive means to defraud E.U. funds made available to the Ibn Khaldun Center and the Hoda Association	14
Accepting and offering bribes, and the forgery and use of official documents	15
VII. Human Rights Watch’s Concerns	15
Pre-Trial Irregularities	15
Trial Irregularities	17
VIII. Appendix	19
Names of Defendants and Sentences Passed	19
IX. Acknowledgments	21

I. SUMMARY

Saadeddin Ibrahim, aged 63, is one of Egypt's leading voices for political reform and democratic rights. A sociology professor at the American University in Cairo, he founded in 1988 and then directed the Ibn Khaldun Center for Development Studies until it was closed down by the Egyptian government in June 2000. The Center's program, ranging from minority rights to civic empowerment, included voter registration campaigns and election monitoring.

On May 21, 2001, Egypt's Supreme State Security Court sentenced Saadeddin Ibrahim to seven years in prison and six co-defendants to prison terms ranging from two to five years with labor. The court imposed suspended one-year sentences on twenty-one others; they were released.¹ The authorities shut down both the Ibn Khaldun Center and an affiliated organization promoting women's voting rights, the Hoda Association.

The trial of Saadeddin Ibrahim and his co-accused was manifestly unfair. Human Rights Watch believes that it was politically motivated and that the Egyptian government targeted Saadeddin Ibrahim and others associated with the Ibn Khaldun Center because of their peaceful exercise of freedom of expression and criticism of the government.

On December 19, 2001, the Court of Cassation heard the appeal, limited to points of law, presented by the lawyers for the defendants convicted in the trial. The Court of Cassation's prosecution office, a body independent of the office of the General Prosecution and that advises the court's judges on the merits of legal points raised on appeal, submitted its assessment of the Ibn Khaldun appeal. This assessment agreed on a number of points raised by the defense, and concluded with a recommendation that the seven-member bench uphold the appeal and order a retrial.

Human Rights Watch is calling on the Egyptian government to order the immediate and unconditional release of Saadeddin Ibrahim and three of those sentenced with him—Nadia 'Abd al-Nour, Usama Hammad 'Ali and Khaled Ahmad al-Fayyad. Two others convicted of bribery and forgery in the same case, Magda Ibrahim al-Bey and Muhammad Hassanein 'Amara, should be retried before an ordinary criminal court following proceedings which conform to international standards for fair trial or released.

The campaign to silence Ibrahim began when armed State Security Intelligence (SSI) officers raided his home on the night of June 30, 2000 and took him into custody. At the time the Ibn Khaldun Center was working on a voter education project and a project to monitor upcoming parliamentary elections. That same evening two of Ibrahim's associates, Nadia Abd al-Nour and Usama Hammad Ali, were seized in the street by plainclothes security officers; the officers showed no arrest warrants and refused to tell the two why they were being detained or where they were being taken. Others were detained over the following days.

Ibrahim and his associates were held in detention without charge and interrogated for up to six weeks. Ibrahim and Abd al-Nour were released on bail on August 10, and their colleagues were released over the following week. None of those who had been detained were charged, but an unspecified case against them remained "pending."

The Egyptian authorities took no further action for several weeks. However, on September 24, immediately after Ibrahim announced that he intended to proceed with the Center's plans to monitor and report on Egypt's forthcoming national elections, state authorities formally charged him with: (1) conspiring to bribe public television officials to secure media coverage of his activities; (2) accepting foreign funds for two voter education projects without official authorization; (3) disseminating false and harmful information about Egypt; and (4) defrauding European Union (E.U.) funds.

¹ The defendants' names appear in full in the Appendix.

The authorities also indicated that they were considering bringing charges of treason—committing espionage on behalf of the United States—against Ibrahim. At the opening session of the trial, however, the prosecution said the espionage charge would be referred to another “competent court,” but no further action was taken. When asked about the case in a *Newsweek* interview, President Hosni Mubarak responded: “You are making a big fuss about this man. Some people consider him a traitor. So the best thing is not to mention him.” President Mubarak, after asserting that “we never interfere” in matters before the court, went on to suggest that it was his personal intervention that had saved Ibrahim from formal charges of treason. “There was a very serious accusation against him,” he said. “I told the attorney general, put it aside, because this would make it a big story and very high punishment.”²

The indictment against Ibrahim and his colleagues was brought under the terms of the state of emergency that has been in force throughout Egypt almost without interruption since 1967. Under emergency rule, security officials are empowered to arrest at will persons they suspect of being “a threat to national security and public order,” and to refer defendants, including civilians, to military courts and exceptional state security courts. The Supreme State Security Court amounts to a parallel court system, one that is susceptible to government influence. Defendants can appeal verdicts only in relation to the application of points of law, not on matters of substance or the facts of the case.

The use of emergency legislation and special security courts have been key elements in the government’s efforts over recent years to stifle political opposition and dissent, including peaceful dissent. The decision to prosecute Ibrahim and his co-accused after he stated that his Center would monitor the elections,³ was highly selective. The charge of receiving unauthorized donations, brought under Military Order No. 4 of 1992, had been used only once before, also against a human rights activist: in 1998, the authorities arrested Hafez Abu Sa’ada, secretary-general of the Egyptian Organization for Human Rights (EOHR), following publication of an EOHR report on torture and other abuses related to the government’s handling of Muslim-Coptic disturbances in the Upper Egypt town of al-Kusheh; the Abu Sa’ada case never went to trial. The military decree, issued in response to a perceived emergency situation early in the decade, was never incorporated into existing legislation. This was underscored in a July 2001 ruling of the Court of Cassation in another case; in this, the court held that the Military Governor had exceeded his authority in issuing the decree and usurped the powers of the judiciary and legislature.

The charge of “disseminating abroad false and tendentious information” was based on Article 80(d) of the Penal Code, which is so vaguely drawn as to invite abuse by the authorities.⁴ The information in question was two criticisms that Ibrahim had repeatedly made regarding Egyptian government policies. One was that previous Egyptian elections had been characterized by widespread and serious irregularities, including fraud and intimidation of candidates and voters. That this is so had been widely reported in Egypt and abroad, and underscored by a Supreme Constitutional Court decision in July 2000 that effectively declared the 1990 and 1995 national legislative elections null and void. Ibrahim’s second criticism was his contention that discrimination against the country’s Christian (Coptic) minority was on the increase. The Supreme State Security Court ruling against Ibrahim stated that he knew he was disseminating information that by its very nature would damage the country’s prestige. The court characterized this information as “lies” despite extensive evidence regarding its factual basis.

The court also convicted Ibrahim and other defendants of committing fraud in expense claims submitted to the E.U. related to grants the latter had made to the Ibn Khaldun Center and the Hoda Association (the women’s voting rights project). The government pursued these charges despite a December 13, 2000, public statement of the European Commission which said that it had conducted external audits of both projects and that those audits “gave no cause for concern, financial or otherwise.”

² *Newsweek*, April 9, 2001.

³ There was some independent monitoring of these elections by local human rights groups, but its scope was limited in comparison with past monitoring operations. According to their findings, and as indicated by press reports at the time, the elections were marked by violence and irregularities, though on a diminished scale from that of 1995.

⁴ It was also used in the case of Hafez Abu Sa’ada.

The trial opened on November 18, 2000, and concluded, after fifteen sessions, with the announcement of the verdicts on May 21, 2001. Ibrahim was convicted of receiving donations without prior official permission, disseminating false information designed to undermine Egypt's stature abroad, and defrauding the European Union. Four of his associates were convicted of assisting in the perpetration of fraud. All five were acquitted of the conspiracy to commit bribery charge. Two others, a one-time employee and a policeman, were convicted of offering and accepting bribes and forging official documents.

Human Rights Watch monitored the trial closely. Egyptian officials have repeatedly insisted that the trial was fair and impartial, in accord with the Egyptian constitution and with international fair trial standards. The record, however, indicates that the court compromised many basic due process rights as a result of rulings and decisions that undermined the ability of the defendants and their lawyers to mount an effective defense, including:

- Denial of defense access to key documents, including materials seized from the Ibn Khaldun Center and Ibrahim's home, until four months into the trial.
- Denial of defense access to the prosecution memorandum detailing its case against the defendants until four months into the trial.
- Access to thousands of pages of documents, when finally granted to defense lawyers, was limited to a single session of several hours, and permission to photocopy any documents was denied.
- Incomplete minutes of the trial proceedings, and denial of defense lawyers' access to official summaries of proceedings.
- Consistent failure of the presiding judge to respond to defense challenges of constitutionality of relevant statutes.
- Failure of the justices to consider all documentation submitted on behalf of the defendants prior to reaching their verdicts.

The cumulative impact of these irregularities constituted a gross denial of the defendants' right to a fair trial. This impact was all the more serious in light of the impossibility, under the emergency legislation, of raising substantive issues of fact in appealing the verdicts to a higher judicial body.

Taking into account, (1) the merits of the charges, (2) the treatment of the defendants at the time of arrest and during their detention, (3) the decision to bring those charges before an exceptional court outside of the regular judicial system and without a right of appeal on the facts of the case, and (4) systematic due process violations during the trial, it is difficult to avoid concluding that the Egyptian government was determined to secure the conviction and imprisonment of Saadeddin Ibrahim and his colleagues, both to punish their criticism of the government and to deter other actual or potential critics.

At the December 19, 2001, appeal hearing before the Court of Cassation, Saadeddin Ibrahim's defense lawyer reiterated his application, on medical grounds, for a temporary suspension of sentence pending the outcome of the appeal. Ibrahim has been diagnosed as suffering from a degenerative neurological condition requiring immediate specialist diagnosis and treatment. His health has deteriorated during his incarceration, and recent tests have shown damage to the spinal cord and motor regions of the brain. After a two-hour adjournment, the presiding judge announced that the next session of the appeal would take place on January 16, 2002. The court took no decision on the substance of the appeal or on the application for temporary suspension of sentence.

II. RECOMMENDATIONS

To the Government of Egypt

- Order the immediate and unconditional release of Saadeddin Ibrahim and his three colleagues Nadia ‘Abd al-Nour, Usama Hammad ‘Ali and Khaled Ahmad al-Fayyad.
- Ensure that the other defendants still being imprisoned, Magda Ibrahim al-Bey and Muhammad Hassanein ‘Amara, receive a fair re-trial before an ordinary criminal court or are released.
- Abolish Military Order No. 4 of 1992 and seek regular legislative approval of all new laws, or amendments to existing laws, that the government considers necessary to protect the security of Egyptian citizens, and ensure that any such laws conform to Egypt’s Constitution and its obligations under international law.
- Ensure that all trials conform to international standards of fair trial, including granting the defense adequate time to prepare their defense and ensuring that the defense is granted full and prompt access to all relevant court documentation at every stage of the proceedings.
- Amend Article 80(d) of the Penal Code to bring that law into compliance with international human rights treaty law protecting freedom of expression and the rights to seek, receive and impart information and ideas.
- Abolish the Supreme State Security Court and all other extraordinary courts, and insure that all Egyptian courts meet basic international fair trial standards, including by guaranteeing a right to appeal to a higher judicial body.
- Authorize the re-opening of the Ibn Khaldun Center and the Hoda Association and make clear that the government will not tolerate official harassment of these and other nongovernmental organizations (NGOs) on account of their leaders or members’ exercise of their rights to freedom of expression and freedom of association.
- Propose new legislation that grants legal recognition and guarantees full independence to nongovernmental associations.

To the European Union and Member States

- Restate publicly, and at the highest levels of the E.U. Commission, the incumbent presidency and the Council of Ministers, the E.U. view that there is no substance to the charges of fraud against Saadeddin Ibrahim and his colleagues.
- Call for the immediate and unconditional release of Saadeddin Ibrahim and co-defendants Nadia ‘Abd al-Nour, Usama Hammad ‘Ali and Khaled Ahmad al-Fayyad, and urge that defendants Magda Ibrahim al-Bey and Muhammad Hassanein ‘Amara are retried before an ordinary criminal court following procedures that conform to international standards for fair trial or released.
- Hold the Egyptian government to obligations under the recently signed Association Agreement between the E.U. and Egypt, and urge it to acknowledge the positive role that human rights defenders play in society and to extend all necessary protection to them in the performance of their work.

To the United States

- Raise the Ibn Khaldun case with Egyptian authorities at the highest levels, and state publicly the view that the charges on which the defendants were convicted were politically motivated and were designed to punish them for the exercise of their right to freedom of expression.
- Call for the immediate and unconditional release of Saadeddin Ibrahim and co-defendants Nadia 'Abd al-Nour, Usama Hammad 'Ali and Khaled Ahmad al-Fayyad, and urge that defendants Magda Ibrahim al-Bey and Muhammad Hassanein 'Amara be retried before an ordinary criminal court following procedures that conform to international standards for fair trial or released.
- Make clear to the government of Egypt that continued violations of human rights, including the rights of the Ibn Khaldun defendants, will affect negatively the depth and quality of U.S.-Egyptian relations, including military and economic relations, and that improved respect for human rights will strengthen those relations.

III. INTRODUCTION

On May 21, 2001, Egypt's Supreme State Security Court sentenced Saadeddin Muhammad Ibrahim to seven years of imprisonment on charges of receiving funding without authorization, disseminating false information damaging to Egypt's interests, and securing funds through fraud. The court also sentenced twenty-seven other defendants in the case, two for bribery and forgery, and the others for fraud: twenty-one defendants (nine of whom were tried *in absentia*) received one-year suspended sentences and six others (one tried *in absentia*) received sentences ranging between two and five years of imprisonment with labor. The six currently serving custodial sentences are: Saadeddin Ibrahim, Khaled Ahmad Muhammad al-Fayyad, Usama Hashem Muhammad 'Ali and Muhammad Hassanein 'Amara (held at Tora Mazra'at Prison), and Nadia Muhammad 'Abd al-Nour and Magda Ibrahim al-Bey (held at the Women's Prison in Qanater).

Lawyers for the prisoners subsequently lodged appeals against the verdict before the Court of Cassation,⁵ and at the time of writing the date for the hearing was set for December 19, 2001. Additionally, the prisoners applied to the court for a temporary suspension of their sentences until their appeal was heard.⁶ The Court of Cassation was due to consider this request at a hearing set for October 17; this was first postponed to October 24 and then cancelled altogether without explanation.

Saadeddin Ibrahim, who holds dual Egyptian/U.S. nationality, is director and chairman of the Board of Trustees of the Ibn Khaldun Center for Development Studies, a Cairo-based research institution he founded in 1988.⁷ He is also a renowned academic and a former chair and professor of the Department of Sociology at the American University of Cairo. Three of his co-defendants were permanent employees of the Ibn Khaldun Center and several others had been hired on fixed-term contracts to assist with various projects being undertaken. Other defendants had been working for an affiliate group, the Association for the Support of Women Voters (*Hay'at Da'am al-Nakhibat*, known locally as the Hoda Association),⁸ of which Saadeddin Ibrahim is treasurer. At the time of the defendants' arrest in June and July 2000, both these NGOs had been working on projects involving the promotion of voter education among a section of Egypt's electorate, a specific aim being to encourage eligible voters to register and exercise their political rights. The projects were partially funded by the European Union

⁵ In accordance with Article 34 of Law No. 57 of 1959 Concerning Cases and Procedures for Appeals before the Court of Cassation (as amended), which stipulates that an appeal must be lodged within sixty days of the issuance of the verdict (see also footnote 19).

⁶ In accordance with Article 36 of Law No. 57 of 1959.

⁷ The Ibn Khaldun Center's research and advocacy programs focus on issues of democratization and the role of civil society organizations. It provides consultation and training services to governmental and international organizations in a variety of fields and, until its closure in June 2000, produced a monthly magazine, *Civil Society*.

⁸ The Hoda Association is named after the renowned Egyptian women's rights activist Hoda Sha'rawi, and provides educational and practical support for women voters.

under its MEDA Democracy Programme.⁹ Additionally, the Ibn Khaldun Center was preparing a project to monitor Egypt's upcoming National Assembly (parliamentary) elections, which were scheduled for and subsequently held in October and November 2000.

The arrest and conviction of Saadeddin Ibrahim and his co-defendants, and the closure of the Ibn Khaldun Center and the Hoda Association, come against a backdrop of serious erosion of basic civil rights enshrined in Egypt's Constitution and international human rights law.¹⁰ Although political violence in Egypt, which the government has used to justify the continued use of emergency legislation and the detention without trial of thousands of political suspects, is at its lowest ebb in almost a decade, state control of civil society institutions is at its highest. Throughout the 1990s the Egyptian government has exerted relentless pressure on those choosing to exercise their right to freedom of expression and of association, as well as academic freedom. It has hampered the work of NGOs, professional associations, the media, trade unions and political parties through the promulgation of a series of restrictive laws, effectively weakening civil society and increasing its control over any activities critical of the government. The government has interfered with board elections of Egypt's professional associations, notably the Bar Association; it has curtailed freedom of expression by imprisoning journalists deemed to have defamed its officials. In addition, individuals and activists working in these fields have been targeted for reporting on human rights abuses in the country under the ever-present threat of being charged under vaguely worded statutes with "offenses" that effectively breach their rights to freedom of expression and association. A range of other methods have also been used to stifle writers, academics and intellectuals, including the banning of books or, as in the case of Saadeddin Ibrahim, the leveling of charges such as "dissemination abroad of false information harmful to Egypt's interests."

The conviction of Saadeddin Ibrahim on this particular charge rests in part on statements he made regarding electoral fraud in Egypt. This charge was brought against the backdrop of his preparations for monitoring the 2000 parliamentary elections. Saadeddin Ibrahim had previously served as secretary general of Egypt's nongovernmental Independent Commission for Electoral Review at the time of the 1990 and 1995 parliamentary elections. The Commission's findings demonstrated that both elections had been flawed by widespread irregularities and electoral fraud. This monitoring exercise—in which the Ibn Khaldun Center played a major role—together with a landmark ruling by Egypt's Supreme Constitutional Court, led the government to take the positive step of amending the legislation governing the electoral process. In order to try to eliminate fraud, full judicial supervision of all polling stations was imposed for the first time in Egypt (see Section VI below).

Despite these changes, however, the run-up to the 2000 parliamentary elections witnessed serious infringements of the rights to free expression, association and assembly, putting in question the government's stated commitment to fair and free elections and to broad political participation. One manifestation of this, which has become a regular feature of elections in Egypt, was the arrest in the run-up to the elections of opposition candidates and their supporters to prevent them from exercising their political rights. Most of those targeted were individuals affiliated to the banned Muslim Brotherhood, but they also included persons affiliated to the Labor Party, whose activities had been "frozen" by the government in May 2000. This pattern repeated itself ahead of the mid-term *Majlis al-Shura* (Consultative Council—the upper house of the parliament) elections—held from May 16 through June 12, 2001—with the arrest of Muslim Brotherhood candidates running as independents in Alexandria and elsewhere.

⁹ The MEDA democracy program is a regional program which supports NGOs in the field of civil and democratic rights, in implementation of the objectives of the Barcelona Declaration signed in November 1995 by all E.U. Member States and the Mediterranean partner states, including Egypt. The Ibn Khaldun project, entitled "Political Education and Electoral Rights," received a grant of 170,000 euros. The Hoda Association project, entitled "Campaign for the registration of Egyptian voters," received a grant of 145,000 euros. Both projects were launched in July 1997 and were designed to be implemented over three years.

¹⁰ Constitution of the Arab Republic of Egypt of 11 September 1971 (as amended).

IV. THE STATE OF EMERGENCY AND THE SUPREME STATE SECURITY COURT

The state of emergency in Egypt,¹¹ in force almost continuously since 1967, was extended for a further three years in May 2000 in the face of opposition from various sectors of Egyptian society. This emergency legislation, which violates both Egypt's Constitution and its international human rights obligations, has facilitated an environment where the authorities abuse fundamental human rights on a wide scale and with impunity, and where they adopt arbitrary measures to silence their critics in the name of safeguarding national security.

The infringement of basic rights under the continuing state of emergency violates Egypt's obligations under the International Covenant on Civil and Political Rights (ICCPR).¹² These rights include freedom from arbitrary arrest (Article 9); the right to a fair trial (Article 14); freedom of thought (Article 18); freedom of expression (Article 19); and the right to freedom of association (Article 22).

The wide-ranging and extensive powers given to the security authorities under the state of emergency enables them to arrest at will people suspected of being a threat to national security and public order. Such persons can be held in detention without charge for prolonged periods: in some cases this has meant not months but years. Similarly, censorship of the press can be imposed and newspapers ordered to shut down if the authorities decide that such measures are required for reasons of national security or public safety. Since 1996, legislation governing the media has provided custodial sentences for offences such as slander, insult and libel. Emergency legislation also infringes workers' rights by prohibiting strikes, which in some cases have been violently broken up. Public meetings and election rallies are also prohibited.

The state of emergency has also made it possible for the authorities to refer civilian defendants to military courts or to exceptional state security courts, in effect creating a parallel court system that is susceptible to government influence, undermining the independence of the judiciary. Since 1992, political activists, including those who were not involved in any violent activity, have been tried before military courts following procedures that did not meet minimum fair trial standards, as set out in Article 14 of the ICCPR.¹³ These include the right to be tried before a competent, independent and impartial court; the right to have adequate time to prepare one's defense; the right to be defended by a lawyer of one's choice; and the right to appeal to a higher court. These basic rights have been regularly infringed, including in cases where the defendants were accused of "terrorist" offences and faced the death penalty, and were subsequently executed.

The Supreme State Security Court (*Mahkamat Amn al-Dawla al-'Ulya*) was established in accordance with Law No. 105 of 1980,¹⁴ itself promulgated on the basis of a continuing state of emergency. Together with military courts, the Supreme State Security Court constitutes a parallel system for the administration of justice that follows procedures that consistently violate internationally recognized fair trial norms. Law No. 105 of 1980 empowers the Supreme State Security Court to hear cases involving serious offences defined in the Penal Code as prejudicial to the security of the state,¹⁵ as well as a variety of offences under other laws.¹⁶ The court bench is composed of three civilian judges drawn from the appeal courts, although two military judges may also be appointed to sit alongside the regular judges.¹⁷ Verdicts of the court can only be appealed by review or cassation,¹⁸ limiting the

¹¹ Law No. 162 of 1958 Concerning the State of Emergency (as amended).

¹² The Government of Egypt ratified the ICCPR on January 14, 1982.

¹³ Most recently, the government announced in mid-October 2001 that 253 Islamist detainees would be tried before the Supreme Military Court on a variety of charges, including membership of illegal organizations and planning to overthrow the government by force. The trial of ninety-four of them, which opened on November 18, was ongoing at the time of writing.

¹⁴ Law No. 105 of 1980 on the Establishment of State Security Courts, which came into force on May 21, 1980.

¹⁵ *Ibid.*, Article 3.

¹⁶ These include offences specified under Law No. 34 of 1972 Concerning the Protection of National Unity, and Law No. 40 of 1977 on the Regulation of Political Parties (as amended).

¹⁷ This is provided for in Article 2 of Law No. 105 of 1980, which states that the two military judges are appointed by the President of the Republic.

¹⁸ As stipulated in Article 8 of Law No. 105 of 1980.

grounds for appeal to points of law and precluding consideration of the facts of the case.¹⁹ If an appeal by review is upheld, the Court of Cassation may either nullify the verdict and acquit the convicted party or order a retrial.²⁰ If, however, an appeal by cassation is upheld, the Court of Cassation can only order a retrial. In such instances, the case is usually referred back to the Supreme State Security Court for retrial before a different panel of judges but following the same procedures.²¹ If a retrial results in a conviction once again, and the verdict is appealed, the Court of Cassation on this occasion can rule not only on points of law but also on the substance of the case.²²

V. EVENTS LEADING UP TO THE TRIAL

On the evening of June 30, 2000, a detachment of some thirty armed State Security Intelligence (SSI – *Mabahith Amn al-Dawla*) officials raided the home of Saadeddin Ibrahim in the Cairo suburb of al-Ma'adi, arresting him and seizing documents, computers and other belongings. Present among the SSI officials was Hisham Badawi, head of the Supreme State Security Prosecution (*Niyabat Amn al-Dawla al-'Ulya*), who announced that he had a warrant to search the premises but failed to produce it when challenged to do so. That same evening, the SSI also arrested Nadia 'Abd al-Nour, financial director and chief accountant at the Ibn Khaldun Center, together with her assistant Usama Hammad 'Ali. Both had been working late and were arrested in the street after leaving the center. They were forced into a waiting car, blindfolded and taken to an unknown destination by unidentified government security agents. Later that night they were brought back to the Ibn Khaldun Center together with Saadeddin Ibrahim. The Center's offices were searched and documents, computers and other material seized. At around 2:00 a.m., the three were taken to the premises of the Supreme State Security Prosecution in Heliopolis where they spent the night.

Prosecution officials began interrogating the detainees almost immediately, before they had had the opportunity to contact their lawyers. Saadeddin Ibrahim refused to answer any questions in the absence of a lawyer, but officials questioned Nadia 'Abd al-Nour and Usama Hammad 'Ali for several hours. Later in the day, after further interrogation, Saadeddin Ibrahim and Nadia 'Abd al-Nour were ordered held in preventive detention, renewable every fifteen days. Usama Hammad 'Ali was released but was rearrested several days later and held in preventive detention. The prosecution initially accused Saadeddin Ibrahim of receiving foreign funding without the authorities' permission, forgery of official documents, fraud, and the dissemination of false information damaging to Egypt's interests, but did not clarify the laws under which these (or later accusations) were made. In the ensuing days, a number of others connected to the Ibn Khaldun Center and the Hoda Association were also interrogated in connection with the case, several of who were detained for some weeks.

On August 10, both Saadeddin Ibrahim and Nadia 'Abd al-Nour were released on bail, as were their detained colleagues in the week that followed. On September 24, in the wake of an announcement by Saadeddin Ibrahim that he intended for the Ibn Khaldun Center to proceed with its election monitoring plans despite his arrest, the prosecutor general formally referred the case to the Supreme State Security Court, naming Ibrahim and twenty-seven other defendants. Both the Ibn Khaldun Center and the Hoda Association remained closed. In a press conference held on October 2, Saadeddin Ibrahim announced his intention to freeze his public activities, including election monitoring, pending the outcome of the court case. The trial date was set for November 18.

The Supreme State Security Prosecution issued the bill of indictment on September 24. The chief defendant, Saadeddin Ibrahim, was charged on four counts: 1) conspiring to bribe public officials to undermine the

¹⁹ Procedures for appeal by cassation are governed by Law No. 57 of 1959 Concerning Cases and Procedures for Appeal before the Court of Cassation (as amended by Law No. 106 of 1962), while those for appeal by review are set out in the Code of Criminal Procedure (Law. No. 150 of 1950 as amended). The law defines three possible grounds for appeal by cassation: where the verdict is based on a violation, misapplication, or misinterpretation of the law; where the verdict is invalid; and where procedural irregularities have had a bearing on the verdict (Article 30 of Law No. 57 of 1959). Article 441 of the Code of Criminal Procedure defines five separate grounds for appeal by review, including instances where new information on the case comes to light subsequent to the verdict and which establishes the innocence of the convicted party.

²⁰ Code of Criminal Procedure, Article 446.

²¹ Law No. 57 of 1959 (as amended), Article 39.

²² Law No. 57 of 1959 (as amended), Article 45.

performance of their duties; 2) receiving donations without prior permission from the competent authorities; 3) deliberately disseminating false information abroad about the internal situation in Egypt and thereby undermining the state's stature; and 4) using deceptive means to defraud the E.U.. Four other defendants, Nadia 'Abd al-Nour, Khaled al-Fayyad, Usama Hammad Ali, and Marwa Ibrahim Zaki, were also charged with participating and assisting in conspiracy to commit bribery and in committing fraud.²³ Two others, Muhammad Hassanein 'Amara and Magda al-Bey, were charged with separate offences relating to bribery and forgery of official documents.²⁴ The remaining defendants were charged with participating and assisting in the perpetration of fraud.

The trial was held over fifteen sessions spread over seven months, attended by journalists, embassy or consular officials and observers from a number of Egyptian and international human rights groups (including Human Rights Watch, Amnesty International and the International Federation of Human Rights).

VI. THE SUBSTANCE OF THE CHARGES AGAINST THE DEFENDANTS, THE VERDICT, AND JUDGMENT

The outcome of the trial and the severity of Saadeddin Ibrahim's sentence provoked a public outcry, particularly at the international level. In apparent response, the three judges in the case took the unusual step of giving an interview to *al-Mussawar*, an Egyptian weekly magazine, in which they sought to explain their verdict and sentencing.²⁵

The following are the details of the charges against the defendants and the main points contained in the judgment, which was issued on June 9, 2001:

Conspiring to bribe public officials to undermine the performance of their duties

This charge was brought under the provisions of articles 40 (2) and (3) and 48 of the Penal Code. Article 48 provides a penalty for criminal conspiracy by two or more persons even if no crime has actually been committed. In other words, criminal conspiracy is considered a crime in itself, and belongs to a category of crimes punishable by between three and fifteen years of imprisonment.²⁶ The prosecution charged Saadeddin Ibrahim with conspiring, and inciting four of his co-defendants, to bribe public officials of the Egyptian national Broadcasting and Television Center in return for media coverage of the Ibn Khaldun Center's activities, with the aim of securing further funding from the E.U. The four co-defendants charged under these articles were: Nadia 'Abd al-Nour, Khaled al-Fayyad, Usama Hammad Ali and Marwa Ibrahim Zaki (the latter, never apprehended, was tried *in absentia*).

All five were acquitted on this charge. The judgment stated that neither the material nor the non-material evidence presented by the prosecution were sufficient to secure a conviction.

The judgment noted that during the trial, defense lawyers had challenged the constitutionality of Article 48 of the Penal Code, but did not explain why the judges had decided not to refer the matter to the Supreme Constitutional Court. On June 21, 2001, less than two weeks after the conclusion of the Ibn Khaldun trial, the Supreme Constitutional Court did rule in a separate case, that Article 48 of the Penal Code was unconstitutional and in breach of articles 41, 65, 66 and 67 of Egypt's Constitution.²⁷ This ruling precludes the possibility of an appeal by the Supreme State Security Prosecution in the Ibn Khaldun case against the acquittal of the defendants on this charge.

²³ Penal Code, articles 40 and 48, and 336(1) respectively.

²⁴ These charges are based on the provisions of articles 103, 104, 107, 207, 211, and 214 of the Penal Code.

²⁵ *Al-Musawwar*, June 1, 2001, pp. 20-21.

²⁶ As provided for in Article 16 of the Penal Code.

²⁷ Supreme Constitutional Court Ruling No. 114 of Judicial (Constitutional) Year 21: Al-Sa'id 'Eid Taha Nour vs. the President of the Republic, the Minister of Justice, the President of the People's Assembly and the Prosecutor General.

Receiving donations without prior permission from the competent authorities

This charge was brought under the provisions of articles 1(6) and 2(1) of Military Order No. 4 of 1992. The prosecution charged Saadeddin Ibrahim with accepting funds from the E.U. in his capacity as chairman of the board of trustees of the Ibn Khaldun Center and as treasurer of the Hoda Association, in order to fund projects carried out by these two institutions. Specifically, these funds involved the receipt of 145,000 euros for the Ibn Khaldun Center project, and a further 116,000 euros for the Hoda Association project, which Saadeddin Ibrahim was charged with having accepted without prior permission from the legally competent authorities and without subsequently notifying the authorities.²⁸

Article 1(6) of Military Decree No. 4 of 1992 prohibits the collection or receipt of donations through any means for use in coping with the consequences of disasters and other emergencies, or for any other purpose, without prior authorization from the Minister of Social Affairs. Article 2(1) of this decree provides a custodial sentence of no less than seven years upon conviction for the violation of Article 1(6). The thrust of the defense team's arguments countering this charge rested on the point that the funds received from the E.U. were not "donations" but "grants," allocated to the Ibn Khaldun Center and Hoda Association projects on the basis of contractual obligations between the parties concerned. The sums of money were therefore paid in return for services to be rendered, with the responsibilities of the recipients clearly set out in the contracts and involving regular and close monitoring by the funding party. Defense lawyers argued that since Military Decree No. 4 of 1992 specifies that the type of funding requiring authorization be "donations," its provisions were not applicable to the grants received from the E.U.

Egypt's Civil Code (Law No. 131 of 1948 as amended) provides for a category of contract involving donations (*'aqd hiba*). Article 486(1) of the code clearly states that such donations are given without obligation or return. However, Article 486(2) also states that "the donor may, without losing the intention of making a donation, impose a certain obligation on the donee." It was on the basis of this legal provision that the judges, in their written judgment, rejected the defense arguments. They stated that while the contracts entered into with the E.U. imposed on the recipients the obligation to provide records of expenditure, progress reports and other documentation, this obligation did not alter the nature of the contracts as being essentially one of *'aqd hiba*. As such, they concluded that Military Decree No. 4 of 1992 did apply to the funds in question received by Saadeddin Ibrahim, and that in failing to obtain prior authorization for their receipt, he was guilty as charged.

In their judgment, however, the judges did not comment on the point, also put forward by the defense team, that Military Decree No. 4 of 1992 requires that the authorization for the receipt of funds be obtained from the Ministry of Social Affairs. Both the Ibn Khaldun Center and the Hoda Association are registered as civil companies, whose workings are governed by the Civil Code. The Ministry of Social Affairs' jurisdiction is limited to institutions registered as nongovernmental organizations in accordance with the Law on Private Associations and Institutions (No. 32 of 1964). These associations do not include Egypt's human rights NGOs, which came into being during the 1980s and 1990s. Most are registered as civil companies and as such fall outside the jurisdiction of the Ministry of Social Affairs.²⁹

It is important to note that Military Decree No. 4 of 1992 is an exceptional law emanating from emergency legislation. It was promulgated in the wake of the 1992 earthquake in Egypt that caused extensive devastation and

²⁸ These amounts represent the second and third installments received from the E.U. and not the total amounts agreed upon for the projects as a whole.

²⁹ Indeed, it was in recognition of this situation that the controversial Law on Civil Associations and Institutions (No. 153 of 1999) was enacted, mandating excessive restrictions on the activities of human rights groups in the country and representing a means of extending governmental control over them. Law 153 of 1999 was subsequently ruled unconstitutional on procedural grounds by the Supreme Constitutional Court, but a new draft law is expected to be approved in the near future. The Supreme Constitutional Court, in a ruling on June 3, 2000, declared Law 153 of 1999 unconstitutional since it had not been presented to the *Majlis al-Shura* (Consultative Council, the upper house of the parliament). The substance of the new draft law remains highly restrictive, allowing the government a high degree of interference in the activities of NGOs and criminalizing any activity deemed "political." At the time of writing, the draft law had not been referred for debate to the National Assembly.

prompted large amounts of relief aid from abroad. Many in Egypt believe that the purpose behind the military decree was to regulate these foreign funds and to prevent them from passing directly into the hands of local relief organizations, some of which were being managed by Islamist opposition groups. Whether or not this was the case, the fact remains that the military decree was issued swiftly in response to an emergency situation without going through established legislative procedures, and it was not subsequently incorporated into existing legislation.³⁰ This was the case, for example, with other decrees issued on the basis of emergency legislation and later incorporated into the Penal Code.³¹ This lends credence to the view, shared by some members of Egypt's judiciary, that the military decree was intended for use at a specific time and for a specific purpose. Since its promulgation in 1992, the decree has not been used as an instrument to regulate the funding of civil companies in Egypt. These companies include the vast majority of human rights NGOs—many of which have been funded almost exclusively by foreign donors over a number of years. Indeed, Article 1(6) of the decree has only been invoked twice, and in both of these instances the accused were human rights activists. The first was Hafez Abu Sa'ada, secretary general of the EOHR, who in 1998 was accused of accepting funds from a foreign donor without prior authorization from the competent authorities (the case never went to trial—see footnote 40). The second was Saadeddin Ibrahim. The use of this legislation by the authorities, therefore, has been both highly selective and politically motivated.

Two months after the conclusion of the trial, Military Order No. 4 of 1992 was the subject of a ruling by the Court of Cassation in a separate case which should undoubtedly have a bearing on the appeal in the Ibn Khaldun case.³² In a ruling issued on July 21, 2001, the Court of Cassation made several important points: first, that the Military Governor, through Military Order No. 4 of 1992, had exceeded his powers by increasing the penalty for crimes already set in existing laws; second, that emergency legislation (upon which Military Order No. 4 of 1992 is based) did not empower the Military Governor to amend existing legislation without following normal legislative procedures—such a usurpation of the powers of the judicial or legislative authorities, the ruling stated, would render any orders emanating from it null and void; third, that Military Order No. 4 of 1992 was being invoked by lower courts to deal with cases which did not involve public order or security considerations.

Deliberately disseminating false information abroad about the internal situation in Egypt and thereby undermining the stature of the state

This charge was brought under the provisions of Article 80(d) of the Penal Code, which provides a custodial sentence of not less than six months and not exceeding five years upon conviction. The prosecution charged Saadeddin Ibrahim with stating that any elections held in Egypt were rigged, and that there was religious discrimination in the country, namely against the Coptic Christian minority, and that he disseminated such information abroad with the intention of damaging Egypt's reputation.

The judgment stated that Saadeddin Ibrahim had taken advantage of his position as head of the Ibn Khaldun Center to disseminate false and misleading information intended to damage the country's reputation. The material evidence for this, as presented by the prosecution, included a fax sent by Saadeddin Ibrahim in September 1997 to a Bonn-based German Protestant church organization seeking funding for a project. The judgment noted that this fax, together with an accompanying report, stated that discrimination against Egypt's Coptic Christian minority had increased significantly. Another piece of material evidence submitted by the prosecution was a video film

³⁰ During the trial, the lawyer acting for the third defendant Khaled al-Fayyad challenged the constitutionality of Military Order No. 4 of 1992 on the basis that it had not been promulgated following normal legislative procedures, and requested leave to refer the matter to the Supreme Constitutional Court. The presiding judges did not respond to or comment on this request during the trial. However, in their written judgment, they dismissed this challenge on the grounds that since the defendant in question (Khaled al-Fayyad) had not been charged with any offence under the military decree, there was no legal basis for referring the matter to the Supreme Constitutional Court, as specified in Article 3 of the Civil and Commercial Procedures Code (Law No. 13 of 1968). The judges stated that the Civil and Commercial Procedures Code can be considered as a general law whose provisions may be applied where those of the Code of Criminal Procedure prove inadequate.

³¹ These include the Law to Combat Terrorism (No. 97 of 1992).

³² The General Prosecution vs. Hassan al-Sayyid Hashem: Case No. 3381 of 1995. The Court of Cassation in this case rejected the General Prosecution's appeal against the acquittal by a lower court of Hassan al-Sayyid Hashem, who in 1994 had been charged with violating construction regulations under Military Order No. 4 of 1992.

and related transcript that had been in preparation by the Ibn Khaldun Center as part of its project for promoting voter awareness. The judgment noted that the message in this film was that the electoral process in Egypt was fraudulent, and that this was tantamount to a violation of voters' political rights. In addition, the judgment noted that in his first application to the E.U. for funding, Saadeddin Ibrahim justified the proposed project by saying that elections in Egypt were marked by violence; that political opponents and independent candidates had been arrested; that the Egyptian government's dealings with the human rights movement in the country were hostile; and that the level of religious discrimination had increased. As for the non-material evidence substantiating the charge, the judgment stated that this was based on Saadeddin Ibrahim's knowledge that he was disseminating this kind of information and that by its nature it would result in the weakening of the country's standing and prestige. The judges interpreted the act of sending the aforementioned fax as evidence that he had intended to disseminate to the outside world "lies" about the internal situation in Egypt. They made no reference to defense arguments that the video film in question, when seized, was still in preparation and had therefore neither been used, broadcast nor disseminated.

The wording of Article 80(d) of the Penal Code is so vague that it could be variously interpreted to bring charges against individuals whom the authorities wish to silence.³³ It is one of a number of such "offenses" whose criminalization represents a breach of the right to freedom of expression.³⁴ Further, the basis of the charge in Saadeddin Ibrahim's case rested on his criticisms of electoral fraud and institutionalized discrimination against the Coptic minority in Egypt. Both are issues which he himself had addressed in his writings over a number of years, as have many other writers and academics. There was no reference in the judgment to questions raised by the defense as to why the authorities had brought this charge at this time when they had been aware of Saadeddin Ibrahim's views and publications for a number of years, and why, if the expression of such views constituted a crime, had others in Egypt who had addressed both these issues publicly not been similarly prosecuted.

In its reliance on the material presented by the prosecution as "evidence" of the "lies" which Saadeddin Ibrahim was charged with disseminating, the judgment made no reference to defense arguments that charges of electoral fraud in Egypt were supported by numerous rulings of the Court of Cassation regarding the 1995 National Assembly elections. Those elections were marked by widespread electoral fraud as well as incidents of violence that led to the deaths of scores of people. The Court of Cassation ruled in at least 140 of the cases referred to it following the elections that electoral fraud had taken place, and on that basis declared those results null and void. Furthermore, the Supreme Constitutional Court called into question the entire electoral system used to hold Egypt's parliamentary elections when it ruled in July 2000 that legislation governing the electoral process was unconstitutional because it failed to provide for full judicial supervision of the elections, contrary to the provisions of Article 88 of Egypt's Constitution.³⁵ The ruling brought about amendments to the Law on the Exercise of Political Rights (Law. No. 73 of 1956), providing for full judicial supervision for the next elections which were held in October and November 2000.³⁶

The Ibn Khaldun Center had played a major role in the monitoring of the 1995 elections, and their findings had been made public. Saadeddin Ibrahim had announced his intention to monitor the 2000 parliamentary elections, and preparations for this were underway in the summer of 2000 when he was arrested.

³³ Article 80(d) of the Penal Code provides for custodial sentences ranging between six months and five years, or a fine or both, for "any Egyptian who deliberately disseminates abroad false and tendentious information, statements or rumors on the internal situation in the country, with the aim of weakening confidence in its economy or undermining its stature or prestige, or who carries out any activity aimed at damaging the national interest of the country." This charge was leveled at another human rights activist, EOHR secretary-general Hafez Abu Sa'ada, in 1998.

³⁴ Other such provisions include Article 98(f) of the Penal Code, which punishes with terms of imprisonment of between six months and five years the expression of "contempt for religion."

³⁵ In both the 1990 and the 1995 parliamentary elections, only the principal polling stations were supervised by members of the judiciary, while civil servants supervised auxiliary stations.

³⁶ The imposition of full judicial supervision over the voting process in the 2000 parliamentary elections did not prevent numerous cases from being brought before both the administrative courts (contesting the eligibility of candidates in the run-up to the elections), and the Court of Cassation (contesting the results in certain constituencies after the elections).

Using deceptive means to defraud E.U. funds made available to the Ibn Khaldun Center and the Hoda Association

This charge was brought under the provisions of Article 336(1) of the Penal Code. Prosecution officials charged Saadeddin Ibrahim with presenting false documentation for expenditures that they stated were never made (including checks said to represent his employees' salaries, various invoices and the fabrication of 60,000 voter registration cards), with the aim of defrauding the E.U. Twenty-five co-defendants (numbers two to five and eight to twenty-eight—see Appendix) were also charged under this article.

The material presented by the prosecution to substantiate this charge relied heavily on the testimony of one of the defendants, Nibal Abdul Nabi, who had been employed first at the Ibn Khaldun Center and later at the Hoda Association. She was the only one among the defendants who had not been arrested in the summer of 2000 while investigations were being carried out, while all the other defendants who were subsequently convicted were detained for up to six weeks pending investigation. She was also the only defendant (apart from those who were at large and not apprehended) who did not attend the trial with the exception of the last two sessions. Her testimony was used by the prosecution as evidence against Saadeddin Ibrahim and other defendants (she subsequently received a one year suspended sentence).

The prosecution also used as evidence of fraud the existence of some 60,000 photocopied voter registration cards which were seized from the home of Saadeddin Ibrahim on the night of his arrest. Some three days before his arrest, these registration cards had been deposited “for safe keeping” at his house by Nibal Abdul Nabi at her request (which she confirmed in her testimony). According to Saadeddin Ibrahim, security officials who searched his home appeared to know where the bags containing the registration cards had been placed and promptly seized them. During the trial, prosecution officials stated that these voter registration cards were fakes since the names that appeared on them did not correspond with those on official electoral lists. However, the prosecution did not submit any evidence to support this assertion, yet it was accepted by the court as fact.

The judges rejected defense arguments that the material presented by the prosecution was insufficient to prove that fraud had been committed. They stated that the material evidence demonstrated that Saadeddin Ibrahim had used ruse and trickery in order to delude the injured party (the E.U.) into believing that its funds had been used in accordance with the terms of the contracts. Among other things, they stated that this delusion was achieved through the submission of fake checks and false invoices as proof of expenditures that never took place. Further, that Saadeddin Ibrahim informed the E.U. that as a result of the project to promote voter awareness, some 60,000 Egyptians were persuaded to have electoral cards issued for them, whereas these cards were pronounced to be fakes on the basis that the names they contained did not appear on the electoral register.³⁷ The judges also stated that the evidence showed that Saadeddin Ibrahim had transferred some of the funds obtained from the E.U. into his personal accounts. On the question of the non-material evidence, the judges stated that this rested on the notion of criminal intent, and that this was proved on the basis of Saadeddin Ibrahim's knowledge that the funds in question were the property of another party and that he consciously proceeded to commit fraud.

Egyptian legislation requires that for the crime of fraud to be proved, it must be shown that it was perpetrated prior to the receipt of the funds in question. The prosecution argued that Saadeddin Ibrahim and his co-defendants had committed fraud in order to secure the second and third installments of funds from the E.U., the first installment having been secured following the signing of the contracts. The defense team argued that these contracts had already committed the E.U. to providing the full amount agreed upon, rendering the use of fraud redundant. Any fraudulent acts that may have been perpetrated by the defendants would therefore necessarily have followed rather than preceded the receipt of the funds. This point was not addressed in the judgment. The judges also made no reference to the substance of documentation presented by defense lawyers, either during the trial or in their judgment, demonstrating that the funding party had expressed satisfaction as

³⁷ Electoral registers in Egypt are notoriously inaccurate. Local human rights organizations which carried out election monitoring during the 1990s recorded numerous complaints by Egyptians attempting to cast their vote in parliamentary elections who could not find their names on voter registration lists, or were unable to vote because of errors in the spelling of their names. Other errors have included the inclusion of the names of deceased persons on such lists.

various stages with the manner in which the projects were being carried out. This documentation included affidavits and progress reports approved by the donor, and a statement issued on December 13, 2000, in which the European Commission said that “both the Ibn Khaldun and HODA projects were the subject of external mid-term audits whose reports gave no cause for concern, financial or otherwise.”³⁸

The judges did address a related point raised by defense lawyers, namely that the contracts between the two parties were private civil contracts, and since the funding party had not submitted any complaints or made allegations of fraud, it was not incumbent upon the authorities to bring criminal charges. The judges rejected this line of defense, stating that the crime of fraud was not among those crimes for which the General Prosecution requires prior authorization, application or complaint from the injured party in order to institute criminal proceedings. Those crimes requiring such authorization are clearly specified in Article 3 of the Code of Criminal Procedure, and the crime of fraud is not among them.³⁹ As such, the judges argued, the General Prosecution had the authority to bring criminal charges, despite the fact that in a case involving fraud, the rights of the injured party are property rights. This was justified, they stated, because the crime of fraud can be detrimental to society as a whole if the principle of good intentions in financial transactions is not established. The fact that no complaint had been made by the E.U. did not, in their opinion, restrict the power of the prosecution from charging the defendants with fraud.

Accepting and offering bribes, and the forgery and use of official documents

These charges were brought under the provisions of articles 103, 104, 107bis, 207, 211 and 214 of the Penal Code, in respect of two defendants: Muhammad Hassanein ‘Amara, a police constable at al-Manuf police station, and Magda Ibrahim al-Bey, an employee at al-Manuf City Council (the sixth and seventh defendants respectively). As a public servant, ‘Amara was charged with requesting and receiving bribes in return for breaching his official duties. Prosecution officials stated that he had falsified six official documents, which were stamped with the seal of the Republic of Egypt, indicating that he had assisted in the issuance of thousands of voter registration cards. Magda al-Bey was charged with offering bribes to the sixth defendant in order to falsify official documents, and also with using those documents in order to obtain remuneration from the Hoda Association. Both defendants were found guilty and sentenced to five years of imprisonment with labor.

During the trial, the prosecution provided forensic evidence that it stated demonstrated that the signatures and handwriting on the relevant documents were those of the two defendants. However, neither defendant was accorded the full rights to a fair trial in accordance with internationally accepted norms for fair trial, and as such they should be retried before an ordinary criminal court following such procedures, or released.

VII. HUMAN RIGHTS WATCH’S CONCERNS

Having closely monitored developments in this case, starting with the arrests in the summer of 2000 through to the conclusion of the trial, Human Rights Watch has identified serious pre-trial and trial irregularities that are in conflict with internationally recognized standards for fair trial as well as Egypt’s domestic legislation. Some of these irregularities were due to a failure to follow prescribed legal procedures, while others are inherent in the shortcomings of the specific legislation being applied in the case.

Pre-Trial Irregularities

During pre-trial detention, the defendants were held for up to six weeks without being formally charged. The authorities failed to clarify the legal basis of the accusations against them, and simply renewed their detention orders “pending investigation.” Although all the defendants had been released by the end of August 2000, the authorities failed to clarify whether, on the basis of investigations carried out while the accused were in detention, the case would go to trial: it remained “pending” a further decision by the public prosecution. The practice of

³⁸ Statement of the European Commission on the trial of the Egyptian democracy activist Professor Saad Ibrahim, Brussels, December 13, 2000.

³⁹ These crimes fall broadly into three main categories: adultery, child abduction, and defamation or slander.

keeping official investigations pending, in some cases for years, is widely used in Egypt against targeted activists and others whom the authorities wish to intimidate or deter from peaceful opposition activity.⁴⁰ In the case of Saadeddin Ibrahim and his co-defendants, the announcement on September 24 that the case had been referred to the Supreme State Security Court came in the wake of Ibrahim's announcement that he intended to proceed with election monitoring despite his arrest.

Of equal concern was the manner in which some of the defendants had been arrested and the circumstances in which they were interrogated by prosecution officials. In the case of Nadia 'Abd al-Nour and Usama Hammad Ali, for example, the arrests were carried out by unidentified officials and, as with Saadeddin Ibrahim, without the production of arrest warrants. The two Ibn Khaldun employees at first were neither informed of the reasons they had been apprehended nor where they were being taken.

In accordance with the Code of Criminal Procedure, suspects must be brought before the public prosecution within twenty-four hours of arrest, questioned by prosecution officials within the next twenty-four hours, and either ordered detained or released.⁴¹ All suspects have the right to have a lawyer of their own choosing present during interrogation by prosecution officials.⁴²

One of the defendants in the case, Khaled al-Fayyad, stated that he was initially taken to the SSI headquarters in Lazoghli Square, Cairo, and questioned there before being referred to the public prosecution. In his subsequent statements, he alleged that SSI officials had pressured him into "cooperating" in their investigation. Some three weeks after the arrests, Nadia 'Abd al-Nour was removed from her cell in the Women's Prison and taken to the office of the head of the Qanater Prisons Region where, without a lawyer being present, she was questioned at some length by two SSI officials. This was in violation of the provisions of the Code of Criminal Procedure, which stipulate that once suspects are ordered to be detained by the office of the prosecutor general pending investigation, they may only be questioned by prosecution officials or by an investigating judge drawn from the courts of first instance.⁴³

Some of the interrogation sessions before prosecution officials were similarly conducted in the absence of defense lawyers acting for the suspects. For the three accused arrested on the evening of June 30 (Saadeddin Ibrahim, Nadia 'Abd al-Nour and Usama Hammad), prosecution officials began questioning them within hours of arrest, at around 2:00 a.m., before they had had the opportunity to contact a lawyer. Saadeddin Ibrahim refused to answer questions put to him until his lawyer was present, but Nadia 'Abd al-Nour was interrogated for several hours that day without her lawyer. Indeed, she was repeatedly interrogated by Assistant Prosecutor Ashraf al-'Ashmawi over some two and a half weeks without a lawyer (involving at least ten separate sessions), even after she requested to have one present. The authorities apparently attempted to persuade her that dispensing with this right would secure her earlier release. It was only after her family's insistence that she was finally allowed to have her lawyer attend the sessions with her.

⁴⁰ Hafez Abu Sa'ada was detained for fifteen days in December 1998 after the government charged him and other EOHR members with accepting funds from a foreign donor—the British Embassy in Cairo—with the intent of harming Egypt's national interests. His case remained "pending" following his release, without clarification as to whether the case would go to trial. On February 13, 2000, several days before the EOHR was due to issue a report on renewed sectarian violence in the village of al-Kusheh in Upper Egypt, the Prosecutor General's Office announced that it had referred the case to the Emergency Supreme State Security Court. In March 2000, however, Prosecutor General Maher Abdel Wahed told Human Rights Watch that the British Ambassador had confirmed that the funds in question were intended to support a women's legal aid project, and that in light of this information Hafez Abu Sa'ada's "file was closed." To date, the authorities have not informed Abu Sa'ada officially that his case was closed.

⁴¹ Code of Criminal Procedure, Article 36.

⁴² However, Article 77 of the Code of Criminal Procedure does allow for suspects to be questioned in the absence of defense lawyers if this is deemed "necessary to reveal the truth."

⁴³ *Ibid.*, Article 64. While other officials (which could include police and state security officials) may be appointed to assist in the gathering of evidence surrounding a crime, Article 70 of the Code of Criminal Procedure clearly states that they may not be involved in the questioning of suspects.

The authorities also failed to inform some of the defendants officially and in writing of the charges against them once the decision to refer the case to trial had been taken. The bill of indictment dated September 24 was not communicated directly to the defendants or their lawyers. Saadeddin Ibrahim, for example, learned of it through the newspapers; only some days later and after several attempts were his lawyers able to obtain a copy from the court. Other defendants encountered the same problem.

Trial Irregularities

The Egyptian government, in responding to international criticism of the arrests and prosecution of the Ibn Khaldun defendants, has repeatedly insisted that they were accorded a trial that was fair and impartial, implying that it was in accord with the Egyptian constitution and international fair trial standards.⁴⁴ The record shows otherwise.

The most serious flaw in the trial proceedings lay in the lack of adequate time and facilities for the defense team to prepare its case. The trial began on November 18, 2000, but defense lawyers did not obtain access to any of the prosecution documents pertaining to the case until at least March 19, 2001—in other words, four months into the trial. These documents included all the material seized from the Ibn Khaldun Center, the Hoda Association and Saadeddin Ibrahim's home following the arrests at the end of June and in July 2000, and which were used by the prosecution to prepare its case. They also included the prosecution's memorandum detailing its case against the defendants. Access to this document was all the more crucial since the prosecution had called no witnesses on its behalf to give evidence during the trial, opting instead for a written submission.

As a result of this lack of access, defense lawyers were obliged to proceed without full knowledge of the evidence the state had against their clients. They called the chief prosecution witness, a major in the SSI, for questioning during the January 16, 2001 session, and called character witnesses on behalf of Saadeddin Ibrahim during the sessions of January 20 and 21, without that knowledge.

When the defense team was finally granted access to the documents by the presiding judge, they were obliged to examine several thousand pages during a single session limited to several hours only. A request for permission to photocopy some of these documents was denied.

Access by the defense to minutes of the proceedings, once the trial began, also proved equally difficult. Early on in the trial, copies of some of these minutes were only secured by some defense lawyers on the basis of a “friendly arrangement” with a court clerk. Other minutes were not made available at all. Moreover, the minutes were written in summary form, with the clerk noting down certain points in response to a nod from the presiding judge. This was noted when the official records of the January 2001 sessions were compared with transcripts made from tape recordings of the proceedings, which the presiding judge had allowed some of the defense team to make. When defense lawyers raised this discrepancy with the judge, his response was to bar tape recorders altogether from subsequent sessions.

During the trial, the presiding judge failed to respond to a number of key issues raised by defense lawyers. They had challenged the constitutionality of Article 48 of the Penal Code, the statutory basis of the conspiracy to commit bribery charge. This article provides a penalty for criminal intent by two or more persons even if no crime has actually been committed. The presiding judge neither commented on this challenge nor gave the defense lawyers leave to refer the matter to Egypt's Supreme Constitutional Court. This was despite the fact that the constitutionality of this article had already been challenged in other cases and the matter was before the Supreme Constitutional Court at the time Saadeddin Ibrahim and his colleagues were on trial (see Section VI above). Defense lawyers also challenged the constitutionality of Military Decree No. 4 of 1992, on which the

⁴⁴ For example, in a letter dated June 19, 2001, to a member of the British House of Lords, Egypt's ambassador to the United Kingdom said: “Our legal system knows only litigations in which the individuals and institutions have equal rights and opportunities to those of the State.... The judicial system observes the due process of law in a very strict manner. I trust that you would not find these norms ‘objectionable’ or ‘below ... international standards’.” He added that in the Ibn Khaldun case, “none of the charges brought against the accused had anything to do with their freedom of opinion or expression of belief.”

charge of accepting donations without obtaining prior authorization from the competent authorities was based. The presiding judge did not comment on either of these challenges before issuing the verdict.⁴⁵

The presiding judge pronounced the verdict at the end of the last session, held on May 21, 2001. The three-member bench had deliberated for less than two hours, although defense lawyers had submitted additional documentation to the court during that morning's session that could not have been adequately taken into account by the judges.

⁴⁵ Additionally, one of the defense lawyers challenged the constitutionality of the ministerial decision that set up the Supreme State Security Prosecution, the body which investigated and brought the charges against the defendants in this case. The Supreme State Security Prosecution was set up by decision of the Minister of Justice, dated 8 March 1953, outside the framework of the normal legislative process. The challenge was based on the argument that this violates Article 167 of the Constitution, which states that the law shall determine and define all judicial bodies, and their competence and structure. The defense requested leave to refer the matter to the Supreme Constitutional Court, but the judges did not respond to this challenge either during the trial or subsequently in their judgment.

VIII. APPENDIX

Names of Defendants and Sentences Passed

1. Saadeddin Muhammad Ibrahim: aged 63; professor of sociology at the American University of Cairo and head of the Ibn Khaldun Center for Development Studies. Sentence: seven years. Currently held in Tora Prison.
2. Nadia Muhammad Ahmad ‘Abd al-Nour: (f) aged 49; chief accountant at the Ibn Khaldun Center; Sudanese national. Sentence: two years with labor. Currently held in al-Qanater Women’s Prison.
3. Khaled Ahmad Muhammad al-Fayyad: aged 29; employee of the Ibn Khaldun Center and the Ministry of Information. Sentence: two years with labor. Currently held in Tora Prison.
4. Usama Hashem Hammad ‘Ali: aged 28; law graduate; employee of the Ibn Khaldun Center. Sentence: two years with labor. Currently held in Tora Prison.
5. Marwa Ibrahim Zaki Ahmad al-Sayyid Gouda: (f) at large; tried *in absentia*. Sentence: two years with labor.
6. Muhammad Hassanein Hassanein ‘Amara: aged 49; police constable at al-Manuf police station. Sentence: five years with labor. Currently held in Tora Prison.
7. Magda Ibrahim Ibrahim al-Bey: (f) aged 41; employee of al-Manuf City Council. Sentence: five years with labor. Currently held in al-Qanater Women’s Prison.
8. Nibal Abdul Nabi Ahmad Kishk: (f) aged 28; treasurer of the Hoda Association. Sentence: one year with labor (suspended).
9. Tareq Hassan Abdul Aziz Hassan: aged 31; copyist/transcriber of documents. Sentence: one year with labor (suspended).
10. Muhammad Mukhtar Abdul Wahab Sulaiman: aged 29; owner of a printing company. Sentence: one year with labor (suspended).
11. Tamer Muhammad Nabil Abdo Abdul Wahab: aged 27; editor employed by the Ministry of Information. Sentence: one year with labor (suspended).
12. Ahmad Ata Abdul Aal Abdul Qader: aged 29; employee of an investment company. Sentence: one year with labor (suspended).
13. Muhammad Ibrahim Abdul Aziz Ahmad: aged 30; freelance electrician. Sentence: one year with labor (suspended).
14. Awad Abdo Abu Rub’: aged 43; employee of al-Manuf Religious Institute. Sentence: one year with labor (suspended).
15. Abdul Mun’im Ibrahim Muhammad Rabi’: aged 44; employee of al-Manuf Religious Institute. Sentence: one year with labor (suspended).
16. Ashraf Salah Ahmad Ali: aged 23; student at the Arts Faculty of Junub al-Wadi University. Sentence: one year with labor (suspended).

17. Hassan Abdul Rahman Muhammad Shehata: aged 25; laborer. Sentence: one year with labor (suspended).
18. Hiba Ibrahim Muhammad al-Sayyed: (f) aged 21; student at the Faculty of Commerce at al-Azhar University. Sentence: one year with labor (suspended).
19. Leila Saad Abu al-Nasr al-Sa'id: (f) aged 21; student at the Faculty of Commerce at al-Azhar University. Sentence: one year with labor (suspended).
20. Mamdouh Mansour Abdul Radi al-Sanbasi: at large. Tried *in absentia*. Sentence: one year with labor (suspended).
21. Ibrahim Kamal Umran Ibrahim: at large; tried *in absentia*. Sentence: one year with labor (suspended).
22. Ahmad Ibrahim Abdul Majid: at large; tried *in absentia*. Sentence: one year with labor (suspended).
23. Sha'ban Kamal Umran Isma'il: at large; tried *in absentia*. Sentence: one year with labor (suspended).
24. Adel Ahmad Hilali: at large; tried *in absentia*. Sentence: one year with labor (suspended).
25. Gharib al-Sayyed Hussain: at large; tried *in absentia*. Sentence: one year with labor (suspended).
26. Abdul Karim Ali Muhammad al-Sayyed: at large; tried *in absentia*. Sentence: one year with labor (suspended).
27. Sayyed Saleh Abu Halqa: at large; tried *in absentia*. Sentence: one year with labor (suspended).
28. Abdul Fadil Gharib Amin: at large; tried *in absentia*. Sentence: one year with labor (suspended).

IX. ACKNOWLEDGMENTS

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*Human Rights Watch
Middle East and North Africa division*

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