

## The case of *The State of Egypt v Saad Eddin Mohammed Ibrahim*

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My work antagonised the state. I spoke out for the rights of Egypt's minorities at a time of internal strife in Egypt. I criticised the conduct of elections in 1995, and I was arrested as I prepared to monitor the 2000 elections. I caused them embarrassment, so they charged me to discredit me and to send a message to other intellectuals not to speak out. They wanted to make me into a lesson for Egyptian intellectuals and academics — do not embarrass the state.<sup>1</sup>

— Professor Saad Eddin Ibrahim speaking after his acquittal

### Summary

*This note discusses the action against the Egyptian Professor Saad Eddin Mohammed Ibrahim who was arrested in 2000 and charged, together with others, with bribery, receiving illegal funds and spreading false rumours. The defendants were tried before the Supreme State Security Court. Professor Ibrahim was sentenced to seven years in prison. On appeal, the Court of Cassation returned the case to the Supreme State Security Court for retrial. Professor Ibrahim and his co-defendants were again found guilty. In March 2003, they were finally acquitted after the Court of Cassation had retried the case on appeal.*

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<sup>1</sup> Quoted in P Baty 'I was a lesson: Don't speak out' *The Times Higher Education Supplement* (21 March 2003).

## 1 Introduction

On 18 March 2003, the Egyptian Court of Cassation delivered judgment on the case of *Saad Eddin Ibrahim and Others*, overturning the judgment of the Supreme State Security Court and acquitting all the defendants.<sup>2</sup> This case marked a victory of human rights protection in Egypt through judicial means, but also ended a long debacle that had almost exhausted the life of its central actor, Egyptian-American Professor Saad Eddin Ibrahim.

This discussion of the case briefly recaps its background and then its procedural history, before turning to a discussion of the 18 March 2003 opinion, and concludes with some brief remarks on the aftermath of this case.

## 2 Background to a debacle

For years Professor Ibrahim had been campaigning for a greater role for Egyptians in their own government. He is an academic, a former government advisor and prominent human rights defender. He undertook lecturing, advocacy and academic study of the highest quality of social phenomena relevant to civil society in Egypt. He was respected by his peers and his students at the American University in Cairo. He was looked upon as almost an icon of civil society by the small community of Arab human rights defenders for having been involved in the founding of some of their most prominent institutions. The Muslim brotherhood respected his forthright call for greater political participation for all political fractions while the government was suppressing their leaders. Even the government respected Professor Ibrahim because of the integrity of his work.

This changed substantially on 30 June 2000 when, as Professor Ibrahim was sitting in his study late in the evening, more than two dozen armed men — whom he was later to learn were Egyptian government security agents — raided his house, blind-folded him and abducted him. At the same time, more than two dozen of his co-workers were being arrested. Some of the arrestees were brought to the Ibn Khaldun Centre for Development Studies, a development think-tank where they worked together. Professor Ibrahim, who was among those brought

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<sup>2</sup> *Saad Eddin Ibrahim v Egypt* Judgment of 18 March 2003, prosecution docket No 39725/2002 and court docket No 39725 of the 72nd judicial year. The citations to and quotes from this case that appear in this contribution are taken from an English translation of the original Arab text which has been supplied to the author by the Egyptian Organisation of Human Rights. The author also had a copy of the Arabic judgment with which he was able to compare the translation.

there, witnessed the atrocities committed to some of his colleagues. He recalls a young Sudanese woman who was the accountant for the Centre:<sup>3</sup>

She was in hysterics — screaming and sobbing. She thought she was being kidnapped and that she would be raped. She had come to Egypt to escape oppression in Sudan, but here she was facing the worst kind of oppression in Egypt.

The nature of the arrests, the refusal to allow contact with both family and lawyers, and the late-night interrogations that ensued and continued for several days are similar to strategies of intimidation employed against political opponents by the most repressive regimes.<sup>4</sup> Moreover, the arrest came as Professor Ibrahim's Ibn Khaldoun Centre for Development Studies was preparing to monitor the 2002 general elections. In 1995 he had criticised the fairness of the elections, concluding that the election results had been 'marred by violence and the official arrest of supporters of the opposition and independent candidates'.<sup>5</sup>

He was arrested as he was organising civil society's monitoring of the 2000 elections and, ironically, shortly after the Egyptian Supreme Court had agreed with his assessment that the 1990 and 1995 elections were not held as required by law and ordered judges to monitor the upcoming elections.<sup>6</sup>

In the trial court, evidence of interrogations that had taken place without legal counsel present was admitted and, although the 19 defendants were all released on bail at the trial, they were held in an iron cage that is usually only used for dangerous criminals.<sup>7</sup> The prosecution also relied on evidence to which defence counsel had no access, including papers allegedly taken from the Ibn Khaldoun Centre. The views of the European Union (EU) were ignored, despite the fact that some of the most serious charges concerned the acceptance and misuse of EU funds.<sup>8</sup> At the same time, the judges in the case discussed the

<sup>3</sup> n 1 above.

<sup>4</sup> See eg Chief Counsel for Prosecution of Axis Criminality *Nazi Conspiracy and Aggression: The Slave Labor Program* Vol I Ch X (1946) 892 893. Also see Human Rights Watch *Egypt — The State of Egypt v Free Expression: The Ibn Khaldun Trial* Vol 14 No 1(E) (January 2002) (criticising the Egyptian government for using such repressive measures in other circumstances) (*The State of Egypt v Free Expression*).

<sup>5</sup> The Supreme State Security Court cited a communication by Prof Ibrahim to a German non-governmental organisation in which this statement was made.

<sup>6</sup> *Garida Rasmiya* Vol 29, 22 July 2000 3–15. Judgment of the Egyptian Constitutional Court delivered on Saturday 8 July 2000. The Egyptian government responded to the judgment of its Supreme Court by making prosecutors judges for purposes of monitoring the elections and thereby undermining the independence of the monitoring.

<sup>7</sup> *The State of Egypt v Free Expression* (n 4 above).

<sup>8</sup> See First Judgment of the Court of Cassation on 6 February 2002 6–8.

judgment with the media before it had been made available in writing to defence counsel.<sup>9</sup> Even the Decree 4/1992, under which some of the most serious charges were brought — receiving money without permission, which carries a seven year prison sentence — had rarely been used before and itself was a highly politicised provision of law. The conviction of Professor Ibrahim and 26 others was therefore no surprise, as many observers believed it had been preplanned to stifle freedom of expression that was critical of the government.

Indeed, Professor Ibrahim's criticism of the lack of democracy and the violations of human rights in Egypt had been longstanding. He had been engaged in these activities both as a highly respected professor of sociology at the American University in Cairo and as a human rights defender in several Egyptian non-governmental organisations (NGOs). Just before his arrest, he had written an article sharply criticising Egyptian President Hosni Mubarak's intention to groom his son for succession to the presidency, comparing him to a hereditary monarch.<sup>10</sup> This criticism of Egypt's powerful President was not usually welcomed and such utterances had previously drawn the wrath of the state security apparatus.<sup>11</sup>

An unusual twist was the dual nationality of Professor Ibrahim. He is both Egyptian and American, but has chosen to live with his American wife in Cairo. This gave the case a tint of international flavour that caused both pressure on the Egyptian government and jealousy or suspicion among Professor Ibrahim's peers. The United States government, for example, applied some pressure on the government of Egypt, but less than it has recently done when Egypt refused to sign an agreement to exempt American soldiers from war crimes, although the agreement would have probably violated Egypt's existing international legal obligations.<sup>12</sup> The EU, who had provided the funding that the Egyptian government complained had been taken illegally, also made statements indicating that Professor Ibrahim and his co-defendants were innocent. But again, the EU only issued occasional weak statements,<sup>13</sup> despite the fact that the MEDA Framework Convention, to which Egypt is a party,

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<sup>9</sup> See *Al-Mussawaar* (1 June 2001) 18–21.

<sup>10</sup> Saad Eddin Ibrahim, *al-Majalla* (Arabic newspaper) (2–8 July 2000) at <<http://www.sunnah.org>> (accessed 3 July 2002).

<sup>11</sup> DJ Warr *The State of Freedom of Expression in Egypt* Canadian Committee to Protect Journalists (7 November 1997) at <<http://www.cjfe.org>> (accessed 2 July 2002).

<sup>12</sup> G Dinmore 'US freezes aid to allies that withhold war crime immunity' *Financial Times* 2 (2 July 2003).

<sup>13</sup> See eg Joint motion for a resolution on human rights in Egypt, EU Docs No B5-0440/2001, B5-0450/2001, B5-0466/2001, B5-0471/2001 adopted 14 June 2001.

contains an explicit requirement that Egypt allows the funding of non-state entities.<sup>14</sup>

### 3 The procedural history

After more than a month of detention, on 24 September 2000, charges were brought against Professor Ibrahim and others in a written indictment by the office of the Public Prosecutor, referring the case to trial before the Supreme State Security Court (*Makamaat Amin al-Dawla al-Ulya*).<sup>15</sup> The charges stated that he had (1) participated in a criminal agreement to bribe public officials in violation of articles 40(2) and (3) and 48 of the Criminal Law; (2) received funds from the EU without the permission of the government of Egypt in violation of articles 1(6) and 2(1) of the Military Decree No 4 of 1992; (3) spread false rumours that could damage the Egyptian state by claiming that the 1995 elections had been marred by violence, that the Egyptian state was interfering with NGOs, and that religious discrimination existed in violation of article 80(d) of the Penal Code; and (4) fraudulently obtained and used funds of the EU in violation of article 336(1) of the Criminal Law.

This Supreme State Security Court had previously been established in accordance with article 1(3) of Law 105.<sup>16</sup> This Law declared a state of emergency in Egypt, which has been in effect ever since.<sup>17</sup> This has been widely criticised by international human rights groups who have pointed out that as a consequence of this law:<sup>18</sup>

<sup>14</sup> Art 7 of the Framework Convention on the Implementation of Financial and Technical Co-operation Under the MEDA Programme as well as Other EIB's Financial Agreements in Mediterranean Countries, signed 19 July 1997, entered into force 1998.

<sup>15</sup> Charges of espionage had also been brought on 6 August 2000, but no action has been taken to prosecute these charges after the prosecutor stated in his opening statement that these charges were being referred to a competent court. The charges arose from statements made by Prof Ibrahim in Washington DC in 1994 at an academic conference in which he described his research about the Islamic movement. See The National Academies (of the United States), Committee on Human Rights at <<http://www4.nas.edu>> (accessed 5 July 2002). For more details of the lower court cases, see CF Doebbler 'The rule of law v staying in power, *The State of Egypt v Saad Eddin Mohammed Ibrahim*' (2003) 8 *Yearbook of Islamic and Middle Eastern Law* 2001-2002 353-363.

<sup>16</sup> Law 105 of 1980 on the Establishment of State Security Courts, which came into force on 21 May 1980.

<sup>17</sup> Law 162 of 1958 State of Emergency Law (as amended and renewed).

<sup>18</sup> Quoted at <<http://jurist.law.pitt.edu/world/egypt.htm>> (accessed 2 July 2002), which in turn cites the United States Department of State as its source. Also see UN Doc CCPR/C/79/Add.23 (9 August 1993) (expressing the view of the United Nations Human Rights Committee that the 19-year-long state of emergency is 'one of the main difficulties impeding the full implementation of the Covenant' in Egypt).

[I]n 1993 the Supreme Constitutional Court ruled that the President may invoke the Emergency Law to refer any crime to a military court. This use of Military and State Security Emergency Courts under the Emergency Law since 1993 has deprived hundreds of civilian defendants of their constitutional right to be tried by a civilian judge.

In this instance the Court did contain three civilian judges. Although the President has the discretionary power to name two military officers to the Court at any time,<sup>19</sup> he did not exercise this power.

The trial, meeting periodically, lasted several months during which Professor Ibrahim's defence team called several prominent witnesses.<sup>20</sup> Although most of the evidence against their clients was not shared with the defence team, on 19 March 2001 the defence team was allowed three hours to examine the documents upon which the State Security Prosecutor was basing his case, but only in the presence of prosecution lawyers.

On 21 May 2001, the Supreme State Security Court gave its judgment, finding that the allegations relating to bribing a television station to publicise the work of the Ibn Khaldoun Centre were not proven and convicting the defendants on the other charges.<sup>21</sup> Professor Ibrahim was sentenced to seven years in prison for illegally receiving EU funds, defaming the state, and the misuse of EU funds. The other defendants received punishments ranging from one-year prison sentences to suspended sentences. In addition, alleged falsified documents — including some not shown by the prosecution at the trial — were confiscated.

An appeal was filed against the sentence with the Court of Cassation and after postponing its judgment several times, on 6 February 2002, the Court of Cassation granted the appeal. The Court ruled that the Supreme State Security Court's judgment had not been supported by the evidence, had failed to take into account the right of the defendants, and had erroneously applied the law.<sup>22</sup> No explicit reasoning was given concerning the charges of defaming the state, although it is clear that all the charges were struck out and the trial court was ordered to rehear the

<sup>19</sup> Art 2 of Law 105 (1980).

<sup>20</sup> See *Al-Ahram Weekly Newspaper* (25–31 January 2001) at <<http://www.ahram.org.eg>> (accessed 1 July 2002), listing the some of the prominent Egyptian scholars and statespersons who testified on behalf of the defense.

<sup>21</sup> Just days after the trial court's judgment, art 48 of the Criminal Law was found to be unconstitutional and in violation of arts 41 (freedom from arbitrary arrest and detention), 65 (supremacy of the rule of law), 66 (requirement that crimes be specified by law and personal), and 67 (the right to be presumed innocent until proven guilty and the right to legal defence) of the Egyptian Constitution. *Al-Sa'id 'Eid Taha Nour v the President of the Republic, the Minister of Justice, the President of the People's Assembly and the Prosecutor General* Supreme Constitutional Court Ruling No 114 of Judicial (Constitutional) Year 21.

<sup>22</sup> First Judgment of the Court of Cassation, n 8 above.

case in its entirety.<sup>23</sup> Neither was any reference made to the provisions of the Egyptian Constitution<sup>24</sup> or international law.<sup>25</sup> The Court of Cassation also criticised the trial court's consideration of the evidence, stating that gross mistakes had been made in evaluating the evidence that rendered the judgment invalid.<sup>26</sup> According to Egyptian law, a conviction must be based on a full consideration of evidence that proves guilt beyond a shadow of doubt.<sup>27</sup> Mistakes in evaluating the evidence included the trial court's failure to consider inconsistencies between the testimony of witnesses;<sup>28</sup> the failure to take into account the specific particulars of the contract between the EU and the Ibn Khaldun Centre;<sup>29</sup> and the failure to sufficiently consider claims of moral coercion.<sup>30</sup>

The Court of Cassation stated that the trial court's judgment had lacked supporting evidence because it had failed to give adequate consideration to the contracts with the EU.<sup>31</sup> The trial court had described the funds received from the EU as donations; the Court of Cassation found them to be funds received for contracted services. The Court of Cassation distinguished between a registered commercial company and a non-profit non-governmental organisation (NGO). As both the Ibn Khaldun Centre and the Association to Support Women Voters were registered as commercial companies and not NGOs, the funds received by them, according to the Court, should have been treated as commercial transactions.<sup>32</sup> This being the case, the funds should be considered to be revenue governed by the terms of the contract between the organisations and the EU. The Court did not indicate whether the funds had been declared as revenue, nor did the Court appear aware of the fact that the government of Egypt had consented, both in the earlier mentioned MEDA Framework Convention<sup>33</sup> and by its support of the Human Rights Defenders

<sup>23</sup> As above, 14.

<sup>24</sup> Art 47 (freedom of opinion); art 48 (liberty of press); art 49 (freedom to conduct research); and art 57 (freedom of person) of the Egyptian Constitution.

<sup>25</sup> By virtue of art 151 of the Egyptian Constitution, duly ratified treaties have the force of law in Egypt.

<sup>26</sup> First Court of Cassation Judgment 7.

<sup>27</sup> Art 310 of the Criminal Procedure Law.

<sup>28</sup> First Court of Cassation Judgment 8. The Court of Cassation pointed out that the trial court relied on statements by prosecution witnesses Abdel Hadi El Sayed Abdel Fattah and Khalid Mohamed Fayyad that were not found anywhere in the prosecution's investigation and that the trial court failed to reconcile contradicting statements from these same two witnesses as concerns the use of funds that were allegedly misappropriated.

<sup>29</sup> First Court of Cassation Judgment 7 8.

<sup>30</sup> As above, 8–10.

<sup>31</sup> As above, 7.

<sup>32</sup> As above.

<sup>33</sup> n 14 above.

Declaration,<sup>34</sup> to allow NGOs to receive funding from abroad for human rights activities. The judgment, therefore, left unresolved the position of registered NGOs that receive funding from abroad. NGOs have been placed on even more precarious ground by the recently adopted NGO law which imposes more restrictions on them than any previous law.<sup>35</sup> The Court also failed to refer to the fact that the EU had repeatedly stated that it was satisfied that the funds had been legitimately obtained and spent.<sup>36</sup> These views of the EU have also been suppressed by the Egyptian government subsequent public reports about the case.

The Court found that the allegations concerning the misuse of funds were not proven beyond a shadow of doubt,<sup>37</sup> because the trial court had failed to make an appropriate evaluation of the evidence linking Professor Ibrahim to other defendants, and had failed to take into account the particulars of the contracts between the EU and Professor Ibrahim's Ibn Khaldoun Centre.<sup>38</sup> Furthermore, there had been conflicting testimony by two witnesses that the trial court had failed to reconcile by its reasoning.<sup>39</sup>

When presented with evidence that one of the confessions had been obtained by the use of moral coercion, the trial court had not properly investigated this allegation and had in fact relied on the confession, which would be invalid if not freely given.<sup>40</sup> The Court of Cassation

<sup>34</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, UNGA Res 144 UN Doc 53/144 (9 December 1998) (adopted by consensus). See art 6(a): 'Everyone has the right, individually and in association with others: To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems'; art 6(b) 'Everyone has the right, individually and in association with others: As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms'; and art 6(c) 'Everyone has the right, individually and in association with others: To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.'

<sup>35</sup> Law of 3 June 2002.

<sup>36</sup> Statement from the European Union Presidency 'Declaration by the Presidency on behalf of the European Union on the sentences against Dr Saad Eddin Ibrahim/Ibn Khaldoun Centre' (27 May 2001) at <<http://www.geocities.com/lrrc.geo/Saad/eustatementmay2001.htm>> (accessed 2 July 2002) and Statement from the European Union Presidency 'Declaration by the Presidency, on behalf of the European Union, on the trial in Egypt against Dr Saad Eddin Ibrahim and the employees of the Ibn Khaldoun Centre and Hoda Association' EU Doc No 11415/02 (Presse 225), P 100/02 (Brussels, 30 July 2002).

<sup>37</sup> Art 310 of the Criminal Procedure Law.

<sup>38</sup> First Court of Cassation Judgment 8.

<sup>39</sup> As above, 11.

<sup>40</sup> As above, 9 10.



affirmed that the confession of one defendant was coerced by referring to the fact that the witness had been imprisoned for three days without access to legal counsel and had been promised procedural benefits if he co-operated with a confession indicting other co-defendants.<sup>41</sup>

Finally, the Court of Cassation found that the trial court had been inappropriately lenient in sentencing the government officials who were also convicted for their part in the crime of bribery. However, their sentences could not be changed because this would be to the disadvantage of these defendants.<sup>42</sup>

The judgment of the Court of Cassation meant that Professor Ibrahim and his co-defendants were released pending a retrial. However, it was accompanied by a travel ban that prohibited Professor Ibrahim from seeking medical treatment abroad before the retrial.<sup>43</sup> The Court of Cassation's judgment returned the case to the Supreme State Security Court for trial by another panel of judges.

On 27 April 2002, the retrial began and several hearings were being held. On 29 July 2002, however, after barely two hours of deliberation, the Supreme State Security Court again found Professor Ibrahim guilty of the same charges and again sentenced him to seven years in prison. The Court responded to the Court of Cassation's decree by mentioning more relevant facts and by failing to mention some of the facts for which the first judgment had been criticised for mentioning. The concluding evaluation of the facts and the application of the law was, however, similar to that of the first judgment.

On 3 December 2002, after Professor Ibrahim and his co-defendants had spent an additional four months in prison, the Court of Cassation agreed to retry the case and ordered their release pending a rehearing of the case. Around the same time, a petition was filed with the Egyptian Constitutional Court, a judicial body whose jurisdiction is limited to judicial review of legislation, but which is well-respected among lawyers of comparative constitutional law for a series of judgments during the 1990s, upholding the rule of law in politically unpopular cases. The case before the Constitutional Court challenged the constitutionality of applying Military Decree No 4 of 1992 to this matter. The case before the Court of Cassation was based on a request to hear the case *de novo*, as was permitted by law when a case was returned to Court of Cassation for

<sup>41</sup> As above, 10.

<sup>42</sup> Art 35(2) of the Law Concerning Appeals to the Court of Cassation prohibits interference with a flawed judgment of a trial court except when it is in the interest of the appellant.

<sup>43</sup> After his release, Prof Ibrahim underwent extensive medical tests that indicated that his degenerative neurovascular disease had become worse as a consequence of a series of small strokes that he had suffered in detention. Several medical experts also provided uncontroversial written statements claiming that no adequate medical treatment for his condition could be obtained in Egypt.

a second time. Thus the Court of Cassation reviewed both the law and the facts of the case — including re-evaluating all the evidence.

#### 4 The final judgment of the Court of Cassation<sup>44</sup>

The second judgment of the Court of Cassation was handed down on 18 March 2003. It exonerated Professor Ibrahim as well as the other defendants of all wrongdoing, with the exception of one defendant who was punished for the misuse of voting registration materials and who received a suspended sentence.

Because it had heard the case *de novo*, the bulk of the judgment of the Court of Cassation considered issues of evidence, in essence finding the evidence to be faulty or inadequate. Nevertheless, the judgment contains some important statements of law as concerns each of the three charges against Professor Ibrahim and these will be discussed.

First, the charge of receiving funds in violation of Military Decree 4/1992 was dismissed because the funds were found to be contractual payments, not donations. The Military Decree had been promulgated to protect the government against the embarrassment it had suffered when the Muslim brotherhood mounted a more organised and comprehensive humanitarian response to the earthquake that devastated Egypt in 1992. The government had been caught off-guard by the significant funds and humanitarian supplies that the Muslim brotherhood had available to assist Egyptians. Many of these funds had come from abroad to support the Muslim brotherhood's efforts to assist people in countries such as Bosnia and Herzegovina. To ensure that it was not caught in such a situation again, the government passed Military Decree 4/1992, requiring all Egyptian charities to report funds received from abroad. Dealing with the charges under this Decree, the Court of Cassation found that the funds that had been paid by the European Commission (European Union) to the Ibn Khadoun Centre and to the Organisation for Women Voters for encouraging voter awareness, were paid on the basis of a contract for services to be preformed by these organisations. As such, the Decree did not apply. In so holding, the Court avoided questioning the constitutionality of the Military Decree — part of which had already been struck down — and also set a favourable precedent for human rights defenders in Egypt that may allow them to operate as individuals and companies on contract to foreign or international organisations. This would allow them to receive

<sup>44</sup> The excerpts and references to the Court of Cassation's judgment of 18 March 2003 are from the English language translation of the original Arabic that was provided to me by the Egyptian Organisation of Human Rights. This decision is referred to as *Saad Eddin Ibrahim v Egypt* (Court of Appeal) 18 March 2003. No reliable page or paragraph numbers are available to the author at the time of this publication.

much needed funding from abroad for their human rights work. As indicated below, this goes some way towards implementing the rights of human rights defenders that the government of Egypt has recognised in several international instruments.

Second, as concerns the charge of fraud or swindle, the Court rested its finding that Professor Ibrahim was innocent on two general determinations about the evidence. The Court found that the trial court had failed to appreciate that the required constituents of the crime of swindle were not present, because the witnesses against Professor Ibrahim had admitted that he had paid the money to others and had not deposited it into his account for his own benefit as the prosecution had alleged. Moreover, the Court found that the trial court had erred in relying on weak evidence provided by a witness who had changed his story during the investigation and trial and who was mistreated during the course of the investigation. Somewhat oddly, the Court did not examine more closely the claims of mistreatment and coercion that may have in fact amounted to torture.

Third, the Court of Cassation determined that the charge of false and maligning statements was not one that could be brought against an academic researcher conducting research in accordance with established academic practices. The Court held<sup>45</sup>

that a sociologist who monitors the society's developments to record any prevailing negative aspects and address them by study and analysis for the purpose of discussing them should not be taken as harboring intentions other than his objectives insofar as he did not deviate from scientific approach based on true statistics, steady inference, and logical analysis and no evidence of bad intent was proved.

After reviewing some of the statements of Professor Ibrahim concerning discrimination against Copts and his criticism of election practice, as well as the statements of numerous persons defending his academic integrity, the Court concluded as follows:<sup>46</sup>

In view of the foregoing, the Court has made sure that Saad Eddin Mohamed Ibrahim, a scientist in his field of specialty, has not given up his affiliation to his country, Egypt. According to article (47) of the Constitution, freedom of opinion is ensured. Every person has the right to express and publish his opinion by saying, writing, depiction, or any other means of expression within the limits of the law.

Out of his belief that self-criticism and constructive criticism, as provided in the Constitution, is an assurance of the safety of the national fabric, the defendant employed his science in studying the negative aspects of the Egyptian civil society in its democratisation. After he mentioned and historically listed these negative aspects as published and established without forgery or counterfeit, he analysed and found solutions for them. He was motivated by a desire to eliminate these negative aspects. To this end, he

<sup>45</sup> *Saad Eddin Ibrahim v Egypt* (Court of Cassation) 18 March 2003.

<sup>46</sup> As above.

availed himself of the contributions and contracts permitted by the international agreements to which Egypt has joined.

The information contained in his reports or research projects on rigging the elections and the minorities' obsessions are a mere echo of the published material in a book or newspapers or a lawsuit. With the communication revolution, it is not impossible that this sort of information be accessible to any person abroad who seeks to know this information. Therefore, sending information or research by the defendant, whether originally prepared by him or by any other person, to a certain body abroad on the occasion of proposing a project related to the society development with the purpose of achieving the project's objectives does not mean spreading false statements or disseminating malignant rumours abroad.

Thus, the requirements of the crime provided under article (80-d) [of the Penal Code] are not fulfilled, with the result that the defendant should be acquitted of this crime like the previous crime, pursuant to article (304) of the Penal Procedure Code. With this finding, there is no need to discuss the plea to an exception of non-constitutionality.

Directly after this, the Court went on to conclude the portion of its judgment concerned with Professor Ibrahim with curious *obiter dicta*, restating the claims of the Coptic community in Egypt. The Court stated:<sup>47</sup>

Needless to say that the Copts obsessions are still discussed in some Egyptian newspapers. In October magazine, issue No 1365 on 22 December 2002 under the title 'Copts problems in Egypt on their way to solution', an interview was conducted with Dr Nabil Luqa Bebawi. In this interview, Dr Bebawi talked about discrimination against Copts in Egypt by the Christian Romans. The Othman rule deprived the Christians from being treated on equal footing with Moslems. It imposed on them certain restrictions [relating to ] walking on the streets, wearing types of clothes, riding horses, and carrying weapons. All this is history now and Copts at present call to broadcast their Sunday service from a church like what happens in Moslems' Friday prayers.

The Copts demand that they should be represented in leadership, political, administrative, executive, and judicial posts in proportion to the ration between their number to the number of the population. The Copts also demand that the procedures for returning their *waqfs* (or endowments) be completed and that the education syllabuses do not ignore their history. They also call for purifying the religious Islamic and Christian discourse from fanaticism. All this, in fact, is no more than what Saad Eddin Ibrahim has called for.

These brief references to human rights — first to the human right of freedom of expression of academics and second to the human rights of the Coptic minority in Egypt — are of some consolation to Arab and international human rights defenders who have long battled for minority rights in Egypt.<sup>48</sup>

<sup>47</sup> As above.

<sup>48</sup> See eg AE Wakin *Lonely minority: The story of Egypt's copts* (1963). Also see Minority Rights *The copts of Egypt* (1996) (Prof Ibrahim and others were the authors of this report).

Finally, although the Court of Cassation did not refer to international human rights law, it is obvious from its judgment that human rights were at least in mind and it is likely that a communication filed with the African Commission on Human and Peoples' Rights (African Commission) played a role in the Court's and the government's response to this case. Therefore, it is valuable to briefly examine the international human rights law that is relevant to his case.

## 5 The relevance of international human rights law

Egypt is party to several international treaties providing for rights to life, humane treatment, free expression, fair trial and health. Among these are the widely ratified International Covenant on Civil and Political Rights,<sup>49</sup> the International Covenant on Economic, Social and Cultural Rights,<sup>50</sup> and the African Charter on Human and Peoples' Rights (African Charter).<sup>51</sup> Although all of these treaties provide for legally binding human rights, only the African Charter<sup>52</sup> provides for an international procedure to which the Egypt government has agreed to submit.<sup>53</sup> This procedure became particularly relevant to this case, when on 24 December 2001, the Arab Organisation for Human Rights, an Egyptian NGO, filed a communication on behalf Professor Ibrahim and six other defendants with the African Commission.<sup>54</sup> The communication argued that all regular domestic remedies were exhausted or would cause undue delays in light of the poor state of Professor Ibrahim's health.<sup>55</sup>

<sup>49</sup> 999 UNTS 171 (1966).

<sup>50</sup> 993 UNTS 3 (1966).

<sup>51</sup> African Charter on Human and Peoples' Rights, adopted at Nairobi on 27 June 1981, entered into force 21 October 1986, OAU Doc CAB/LEG/67/3/Rev 5 (1981), reprinted in (1982) 21 *International Legal Materials* 59; (1986) 7 *Human Rights Law Journal* 403.

<sup>52</sup> Egypt is legally bound by its obligations under the African Charter. Egypt deposited its ratification to this human rights treaty on 3 April 1984. Furthermore, according to art 151 of the Egyptian Constitution, this treaty is part of Egyptian law.

<sup>53</sup> Arts 55 & 56 African Charter. The first article provides for inter-state complaints, thus another state could bring a case against the government of Egypt. While such complaints are unlikely, art 56 provides for the more realistic and more frequently used possibility that an individual — either Prof Ibrahim, his legal representatives or anyone having detailed knowledge of a violation of his human rights — could bring a case.

<sup>54</sup> Communication No 244/2001, *Arab Organisation for Human Rights v Egypt*, filed 24 December 2001. (The communication was apparently discussed at the Commission's 31st session in May 2002 and deferred while further information concerning the ongoing proceedings before the Court of Cassation was obtained.)

<sup>55</sup> While another appeal to the Court of Cassation is possible, as well as an appeal to the Constitutional Court concerning the legality of Decree 4/1992, these remedies are extraordinary and limited in scope and do not constitute domestic remedies that need to be exhausted. There is also the possibility of an appeal to the President of Egypt for a pardon, but again this is an extraordinary remedy.

Although the exact influence of the communication on the case before the Egyptian courts is unclear, it is relevant to note that the communication was pending and had been discussed by the African Commission with representatives of the Egyptian government when the Egyptian Court of Cassation decided the case. The possibility that the communication to the African Commission persuaded the Court of Cassation to pay greater attention to human rights must not be discounted, as in the past the Egyptian government had reacted to filings before the African Commission by quickly resolving cases.<sup>56</sup> In any event, as the international human rights obligations of Egypt remain legally binding on the government, they are of relevance to any case coming before the Egyptian courts. And thus for a practitioner, reliance on these international human rights treaties should be an important part of their legal arguments.

Both the arrest and the trial of Professor Ibrahim raise relevant human rights issues. Also raised before the African Commission was the government of Egypt's refusal of permission for him to travel abroad to obtain medical treatment after his release pending the appeal. This refusal was challenged as violating Professor Ibrahim's right to life (article 4), right to humane treatment (article 5) and right to health (article 16). The arrest was challenged as an arbitrary arrest (article 6) and the trial was challenged as a violation of Professor Ibrahim's right to a fair trial (article 7). Finally, the prosecution was challenged as violating his right to freedom of expression (article 9), in so far as he was charged for expressing his opinion about an important social issue. All of these rights, as the articles in parentheses indicate, are protected by the African Charter, to which Egypt is a party.

## 6 Conclusion

While the exoneration of Professor Ibrahim and his co-defendants and the references by the Court of Cassation to human rights in the Constitution are positive developments for human rights in Egypt, there is also much to be disappointed about. First, both the Egyptian court and the lawyers ignored international human rights law. Even the Arab Organisation for Human Rights only begrudgingly agreed to file a communication with the African Commission, despite clear grounds for such an action. The implicit evidence that this complaint might have contributed to resolving this case, however, might encourage lawyers to

<sup>56</sup> In the matter of Mohammed el-Ghanam, the government of Egypt resolved the case to the satisfaction of the petitioner within days of a communication to the Commission. This case is on file with the author who represented the petitioner in his communication to the African Commission.

consider such efforts more seriously in the future. Second, the Egyptian government has appeared to have only learnt a partial lesson. While Professor Ibrahim and his co-defendants are free and Egypt is even considering abolishing the security tribunals, NGOs continue to be harassed by the government's strict control. Recently, several Egyptian human rights NGOs have been refused registration under a new law that requires them to submit to close state supervision. Finally, the arrest and prosecution of Professor Ibrahim has had a chilling effect on free speech in Egypt and the Arab world. Despite his acquittal, which many Arabs attribute to American pressure based on his dual nationality, some other human rights defenders will undoubtedly be less willing to challenge social injustices being perpetrated by governments out of fear of reprisals. They reason that if such a public figure as Professor Ibrahim could be arrested and treated as he was, they are much more vulnerable and have much less protection because they are not international figures. Indeed, the clouds remain over the North African and Arab world's attempts to achieve respect for human rights. The case of Professor Saad Eddin Ibrahim was a unique storm with a silver lining that ended with partly cloudy skies. But throughout the region thunderstorms continue to rage.