



---

# **DEFAMATION AND 'INSULT': WRITERS REACT**

**A report from International PEN's Writers in Prison Committee**

---

## **DEFAMATION IN EGYPT TODAY**

**by Trevor Mostyn**

March 2007

# DEFAMATION IN EGYPT TODAY

A global campaign to highlight how defamation and 'insult' laws around the world are undermining the right to freedom of expression

The word *maqam* ('stand up!') rings out like a gunshot into the lofty central court room of Egypt's Supreme Court. The nine sombre judges of the Court of Cassation, Egypt's highest and most respected appellate court which is restricted to procedural issues, enter briskly and spread out along the bench. Their green sashes give them the air of a French revolutionary tribunal; Egypt's legal system is based on the Code Napoleon. The severe-looking State Security prosecutor in his red and green sash takes his seat to the far left. He had persecuted the defendant, sociology professor Saad Eddin Ibrahim, with his accusations at the notorious State Security Court trials, created during the dark years of Nasser's autocracy, that preceded this one. Under Nasser the role of the role of the French *Juge d'Instruction* was abandoned and in what seemed to many a conflict of interest his responsibility for investigating a case went to the Prosecution.

The twenty policemen with wooden staves as if ready to ward off attack at a trial of militant Islamists looked absurdly out of place standing in a line before the great Belle Époque doors into the courtroom. The building was built in 1925 as the British-administered Mixed Courts by three French architects, Leon Azema, Max Edrei and Jacques Hardy although its severe stone cladding, lofty halls and great dome remind me of Lutyens's New Delhi. This is the trial in 2003 of Egypt's high-profile human rights activist and sociology professor, Saad Eddin Ibrahim.

## Ibrahim and defamation

The known reasons for Ibrahim's arrest were on the record, defamation being the most significant. The 29 June 2000 article he had written comparing the succession strategy of five Arab countries, Syria, Iraq, Libya, Yemen and Egypt went down very badly at a time when Mubarak's second son, the 39-year old Gamal, was being groomed to succeed his father. Mubarak has been in power since President Sadat's assassination in 1981. Comparing the five fathers to North Korea's Kim Il Sung was even worse. Ibrahim's Ibn Khaldun centre had been very critical of Egypt's election process both in 1985 and 2000 when Mubarak claimed to have well over 90% of the vote. This, in particular, annoyed the state

security services whose job is to ensure that the ballots are properly rigged.

By accusing Ibrahim of these things the government tried to portray him first as a traitor and later as a con-man, using foreign funds to 'tarnish Egypt's image.' Ibrahim told me that this law was created by the British in 1914 to protect their client monarchy; other British laws include law no 10 of 1914 which stipulates that no more than four people may gather in one place – the penalty for this crime is between six months and three years imprisonment. 'If two people join us on this balcony we are illegal', Ibrahim said. He said that there are 60,000 laws in Egypt, that all laws are retained and that 'the government can always get you on something.' I was told by a local journalist that laws about loading donkeys are Pharaonic laws.

Ibrahim was charged with bribing officials, receiving donations without permission, disseminating false information abroad about Egypt, using deceptive means to defraud European Union funds made available to his Ibn Khaldun Centre and his linked Hoda Association and forging official documents. The EU's ambassador told me that the prosecution had never approached it over the past three years.

For the next six hours the five defence lawyers put every angle of the case to the leading judge, a wise looking man who only interrupted to remind lawyers that they should shorten their theatrically delivered arguments. The other eight judges never uttered a word. The prosecutor took less than 20 minutes, concentrating only on the lesser crime of 'tarnishing Egypt's image' by Ibrahim having run a conference on minorities some years ago which addressed the issue of Egypt's Copts, a highly charged issue in Egypt today.

To universal surprise the nine Court of Cassation judges postponed the verdict despite the energetic defences made by three top defence lawyers. The brief, weak prosecution dropped the vindictive attacks on him that had characterised the previous State Security Court (SSC) hearings. It restricted its summing up to the charge of 'tarnishing Egypt's image abroad' (Article 6 of Military Decree No 4). The Egyptian press covered this last trial with low-level articles, in contrast with the previous SSC trials when Ibrahim was attacked in bold headlines. Ordinary Egyptians do not like having

their country criticised. The nine-judge bench of the Court of Cassation sitting as a trial court in a case that it had previously heard twice on appeal, sat throughout the day to hear all the defence and prosecution arguments. The prosecution read out the charges and wound up in about twenty minutes. Ibrahim's team of five lawyers spent over five hours refuting the case brought against Ibrahim and his four co-defendants.

Defence lawyer Muhammad Aboul Fouttuh charged that the prosecution had failed to substantiate the charges against Ibrahim. He said that the prosecution had used vague language and broad accusations and that a case had been built against Ibrahim 'in a vindictive spirit of prejudice'. The prosecution concentrated in his short rebuttal with its arguments on defamation, the charge of tarnishing Egypt's image abroad, ignoring the more serious charges of fraudulently misusing EU funds.

## **Egypt's tarnished legal system**

Egyptian human rights activists told me that this was a political trial and that the Court of Cassation's decision would be based on political interests. If so, why was Ibrahim eventually acquitted? Because the court was professional or because of pressure coming from the West at a time when it was about to go to war against Saddam Hussein? My own feeling at this trial was that judges at this level are committed to legal integrity and that it is at lower levels that courts seek guidance from their political masters. Nevertheless, recent demonstrations by judges suggest that the judiciary is subject to strong political pressures from the President and the National Democratic Party (NDP). In April last year 50 Egyptian judges held a sit-in protest at the judges' association in central Cairo. They were protesting against the government's decision to prosecute two of their senior colleagues who had pressed for an inquiry into alleged electoral fraud during the general election in 2005. Both were members of the Court of Cassation. The protest led to demonstrations that sparked off unrest and a violent police response. In late 2005 Mubarak's ruling NDP had, controversially, won more than 70% of seats in parliamentary elections.

Since the assassination of President Sadat in 1981 the presidency has used a powerful network of special courts mainly in his struggle against Islamic militancy and terrorism. An Arab Human Development Report published in 2003 warned of the dangers of throwing human rights and democracy aside in the name of this struggle. Nevertheless, the parallel rulings regarding Ibrahim were considered hopeful by some observers, given that Egypt's highest court was able and willing to overturn the findings of Egypt's notoriously corrupt

shadow courts, the SSC's, which are subject to government influence.

The civil courts have retained a level of independence and have even instituted some reforms such as cutting case times, educating judges and monitoring elections. Human rights groups noted to me that old guard lawyers are still struggling to maintain the rule of law at this highest level but that a new generation of lawyers is emerging and only time will tell what its position will be.

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, the security forces may arrest persons they suspect of being 'a threat to national security and public order,' and refer defendants to military courts and Exceptional State Security Courts.

According to figures produced by the Egyptian Organisation for Human Rights (EOHR) under the emergency laws in the period 1992-2002, 1,117 citizens, in 36 court cases, had been referred to military courts. Eighty-five of them have received the death penalty. Twenty journalists had been taken to court, 47 peaceful demonstrations had been blocked and 418,560 cases had been made against citizens in relation to construction issues. In other words, about half a million citizens had been harmed by the emergency laws in issues which related to neither terrorism nor drugs (the two security issues).

Egypt enjoys a reputation for comparative tolerance. However, the increase in prosecutions over cases of defamation reflects the deteriorating condition of human rights and freedom of expression today, in particular since the destruction of the twin towers on September 11th, 2001. Significantly, the amanuensis of Al-Qa'ida, Ayman az-Zawahiri, and the leading terrorist in the 9/11 atrocity, Muhammad Atta, were both Egyptian. On the one hand the government of President Hosni Mubarak is widely suspected of using its US-backed war on terror as an excuse to violently suppress dissent. This reached a high point in May 2006 when mostly middle-class women protesters were manhandled and stripped in the streets of Cairo by security forces and by activists of Mubarak's ruling party, the National Democratic Party (NDP). On the other hand state prosecutors, often operating through state security courts rather than civil courts, are using emergency laws brought in after the 1981 assassination of President Sadat to appease Islamists by punishing those accused of 'insulting Islam'.

## Amendments may make things worse

Egypt's first president, Gamal Abdel-Nasser, oversaw the nationalisation of Egypt's media in 1961. This involved strict censorship. However, the emergence of pan-Arab satellite television channels such as Al Jazeera promoted more open discussion on social and political issues. The internet and its bloggers have further challenged the censors. Yet Egypt's emergency laws give Mubarak military powers and constitutional amendments which the Egyptian parliament approved in mid-March 2007, including a ban on the creation of political parties based on religion, and draconian security powers. These amendments are to go to a referendum expected in April. Amnesty International has called the change the greatest erosion of human rights in Egypt in 26 years. It is too soon to know whether or how the new laws might affect the media and, in particular, its vulnerability to libel and defamation laws. Under pressure from the US and the EU, particularly following the trial of the high-profile democracy activist Saad Eddin Ibrahim which English PEN had attended in 2003, Mubarak in February 2004 had promised to amend the 1996 press laws and abolish all prison sentences for press offences.

## Tarnishing Islam

Despite this, last September both *Le Figaro* and the *Frankfurter Allgemeine Zeitung* were banned for articles 'which disparaged Islam and claimed that the Islamic religion was spread by the sword and that the Prophet...was the prophet of evil', according to the state news agency Mena. The German newspaper had contained an article in which a German professor had discussed the Prophet Muhammad, perhaps unflatteringly, in terms of his military leadership. In a sermon in Germany on September 12th Pope Benedict had quoted a Byzantine emperor making similar remarks about Islam and the Prophet although there is no clear evidence of a link between this and the bans.

In Egypt today defamation is sometimes dealt with by accusing the plaintiff of other crimes such as fraud, usually based on trumped-up charges. In Egyptian courts plaintiffs are sometimes at the mercy both of the law and of Islamist militant vigilantes. One such victim was the Nobel Peace Prize winner Naguib Mahfouz whose novel *Children of Gebelawi* (1959) was banned in Egypt for alleged blasphemy over its allegorical portrayal of God and the Abrahamic faiths of Judaism, Christianity and Islam. In 1994 an Islamist extremist attempted to assassinate the 82-year-old novelist by stabbing him in the neck outside his Cairo home. In a bizarre case Prof. Abu Zayd, who lectured at

Cairo's Dar al-'Ulum University, in 1994 had been ordered by a Cairo court to divorce his wife Dr. Ebtehal Yunis on the grounds that his writings made him an apostate (a Muslim woman may not be married to a non-Muslim man, according to the Shari'a). His appeal against the ruling was overturned by the Court of Cassation. The case, which was apparently manipulated by jealous academic rivals, attracted the attention of the militant Islamist group Jihad, which had been behind the assassination of President Sadat in 1981. Jihad announced that Abu Zayd must be killed for apostasy. In 2001 an Islamist lawyer, on similar grounds to those that formed the basis of Abu Zayd's indictment, had attempted to have Nawal el-Saadawi, the feminist writer, forcibly divorced from her husband for criticising orthodox Islamic belief.

## Tarnishing the State

In cases of defamation and libel, members of the NDP appear to enjoy unlimited protection. In November 2005 Reporters Sans Frontières complained that since joining the government in 1993, Dr. Mohamed Ibrahim Sulaiman, Egypt's Minister of Housing had brought 29 libel actions against journalists, five of them in the previous four years. Fourteen of the actions had been brought against Adel Hammouda, the editor of the independent weekly *Sawt al-Ummah* (Voice of the Nation), and five against Muhammad Saad Khattab, a journalist on the newspaper. Sulaiman had also sued four other members of the newspaper's staff. As a result of these complaints three journalists had been sentenced to a year in prison and fined. Some 26 NGO's signed a letter addressed to Mubarak which was issued in Brussels by IFEX in February 2006. The letter drew attention to his failure to fulfill his promise to amend the 1996 press laws and enact legislation to end the imprisonment of journalists for press offences and to 'bring Egypt closer to its obligation to abide by international standards for press freedom'. In July 2006 new press laws were passed by a show of hands in parliament that abolished custodial sentences for libel but retained increases in fines for libel. The clause that allowed jail terms for journalists who impugned the financial integrity of officials or state employees was removed.

Nevertheless, in one of six cases of defamation in 2006 a military court jailed opposition MP Talaat Sadat, a nephew of the late president Sadat, on charges of insulting the army and spreading disinformation. He was sent to prison with hard labour for a year after he alleged in a television interview that the armed forces, including Mubarak who was then vice president, were complicit in his uncle's murder (for which an Islamist militant had already

been executed). Talaat Sadat was convinced that he had been prosecuted only because he opposed the government. His imprisonment followed the jailing of leading opposition leader Ayman Nour, leader of the Al-Ghad (Tomorrow) party, in December 2005 on charges, widely dismissed by the international community, of forging political documents. Such questionable charges were beginning to form a pattern in the campaign against Egypt's liberal opposition to the 26-year old regime.

Article 48 of the Egyptian constitution guarantees press freedom but in practice other laws have made respect for this principle an exception. In addition to the legal provisions for sentencing journalists to prison terms, the state of emergency in force since Mubarak became president in 1981 means that anyone suspected of disturbing the peace can be held without charge for six months or more. At the heart of the problem for writers in Egypt are two articles, Article 197 of the penal code which criminalises 'insulting the President' and article 102 which allows for the detention of anyone who 'deliberately diffuses news, information/data, or false or tendentious rumours, or propagates exciting publicity, if this is likely to disturb public security, spread horror among the people, or cause damage to the public interest.' I, myself, nearly fell foul of one of these laws as a journalist living in Cairo as far back as 1985 when my article about the Agha Khan's strategy for urban planning in Cairo included the words 'rotten wood'. This had me arrested by plain clothes policemen inside the Marriott Hotel and imprisoned for five hours under the state security headquarters in Cairo's Garden City because I was perceived to have insulted and defamed the Egyptian state. In reality the words had been read out of context and the article was not insulting but it had been misunderstood by the hotel's desk officer, a member of the *Mubahith amn ad-Dawla* (State Security Apparatus) with a poor grasp of English.

## Unfulfilled Promises

Despite the president's promise, the situation of journalists has not improved. Many journalists have received prison sentences for press offences of late. Abdul-Nasser Al-Zohairy of the independent daily *Al-Masry Al-Youm*, for example, was sentenced on appeal on 23 February 2006 to a year in prison for libel although his sentence was finally quashed on 3 March 2006 after negotiations between The Union of Egyptian Journalists and the information ministry. Violence increased during the parliamentary elections held between 9 November and 7 December 2006 when more than 50 journalists for local and foreign media were harassed and jostled.

The Union of Egyptian Journalists has worked

hard on a draft of new press laws, submitting and resubmitting them in February 2004, then after the 2005 legislative elections, then three times in 2006 (in February, March and April of 2006). However, RSF notes that the People's Assembly has never examined the draft which would abolish prison sentences for press offences in all the relevant laws and would impose a ceiling for fines and damages so that they could not be used as a way to bankrupt a news organisation or journalist.

On the other hand, says RSF, the government submitted its own draft law to parliament on 19th June, 2006 and far from meeting journalists' expectations, the government's bill took no account of the union's proposals and even introduced a new offence punishable by imprisonment: insulting a person by accusing them of corruption. Corruption is a taboo subject in Egypt and the introduction of this offence would have effectively closed off any possibility of a serious journalistic investigation of the issue. The offence of 'accusation of corruption' was finally dropped from the draft law. In the end, only the criminal code was amended and other laws were left alone. While the possibility of prison sentences was suppressed for certain offences, in practice they were ones that had anyway ceased to be the subject of prosecutions. An example of such a prosecution was in 2002 when Adel Hamouda, then a reporter with *Sawt al-Umma*, and the paper's publisher, Essam Fahmy, were convicted of libelling Naguib Sawiris, the head of Orascom, one of the country's two biggest telecommunications firms. Each was sentenced to six months in prison and fined 500 Egyptian pounds (100 Euros) for saying in an article that the wealthy Sawiris was involved in shady business deals. The conviction was overturned on appeal in October, but Sawiris filed a total of 30 lawsuits against the paper.

## Bloggers are now victims

Meanwhile, Ibrahim Issa, the editor of the weekly *Al-Dustur*, and Sahar Zaki, one of his journalists, were sentenced last year to a year in prison and fines of 10,000 Egyptian pounds (1,400 Euros) for insulting President Mubarak. Egyptian journalists working for foreign news media have not been spared, either. Al-Jazeera's Howayda Taha was prosecuted last year on a charge of 'endangering the national interest and the country's reputation' in connection with a documentary she was making about torture in Egyptian prisons. The four-year prison sentence imposed on 22 February this year on blogger and former Al Azhar theological student Abdel Kareem Nabil Suleiman (who writes as Kareem Amer) for 'inciting hatred of Islam' and insulting Mubarak was confirmed on appeal in March in Alexandria after an Alexandria judge brought a complaint accusing 21 websites of

attacking the President. During the appeal hearing the presiding judge ruled that the courts could accept complaints brought by individual lawyers demanding reparations from Suleiman for 'insulting' Islam in his blog. Sulaiman was convicted under *Hisba* law which allows any Muslim to make a claim against any person on behalf of Islam and lies at the heart of the Shari'a (Islamic Law) and the Hadith (Sayings of the Prophet). Human rights activists in Egypt note that *Hisba* is often misused by people to serve their own goals or even blackmail people.

*Plus ça change.* When in 1997 *Rose al Youssef* reported that it had uncovered an Al Azhar plot to ban 196 Egyptian books, Adel Hammouda noted:

'You write, then you are a criminal. You are trying through writing to change your society for the better, then you are a criminal, If you try to confront corruption, you are a criminal. If you try to escape life, then you are a criminal. Egyptian shaikhs want to burn books and burn their authors. Every intellectual is now likely to be accused of being an atheist.'

It seems that little has changed over the past decade.

### **Trevor Mostyn**

*A Middle East writer and consultant, Trevor Mostyn read Arabic and Persian at Edinburgh University. He was Middle East correspondent for The Tablet newspaper and at one stage was deputy Cairo correspondent for the Financial Times. He founded the European Union's Med Media Programme (1990-96) and travelled in the Middle East for the EU and UNDP. His book "Censorship in Islamic Societies" was published in 2002. His other six books include "The Cambridge Encyclopedia of the Middle East and North Africa" (Ed. 1988) and "Egypt's Belle Époque, Cairo and the Age of the Hedonists" (republished 2006). He was rapporteur at Freemuse's 2006 conference in Beirut and is deputy chair of the Writers in Prison Committee of English PEN for whom he covered the trial of Saad Eddin Ibrahim in 2003.*