

**Egypt**

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Human Rights Committee Consideration of Egypt

**Submission on the List of Issues by the Lawyers for Lawyers Foundation**

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## I. Introduction

### *Submitting Party*

1. Lawyers for Lawyers ('L4L') is an independent, nongovernmental organization, supported by contributions from private individuals and organizations related to the legal profession. Established in 1986, Lawyers for Lawyers has had special consultative status with ECOSOC since 2013.<sup>1</sup>
2. Lawyers for Lawyers promotes and protects the independence of the legal profession through the support and empowerment of lawyers around the world who face reprisals, improper interferences, and undue restrictions, as a result of discharging their professional functions.<sup>2</sup> In doing so, we advocate for adherence to core values underpinning the legal profession, in conformity with internationally recognized human rights laws, norms and standards, including but not limited to the International Covenant on Civil and Political Rights ('ICCPR')<sup>3</sup> and the United Nations Basic Principles on the Role of Lawyers ('Basic Principles').<sup>4</sup>

### *Concerning*

3. In November 2019, Egypt submitted its fifth report on its implementation of the ICCPR.<sup>5</sup> At this 134<sup>th</sup> session, the Human Rights Committee ('the Committee') will adopt a List of Issues on Egypt ('State party'). Lawyers for Lawyers welcomes the opportunity to contribute to the List of Issues on the State party in preparation for its eight periodic review by the Committee. Our submission focuses on the situation of lawyers in the State party, particularly the obstacles to the independent exercise of their profession and violations committed against them.

### *Methodology*

4. Lawyers for Lawyers has been closely following the situation of lawyers in the State party. The information for this submission is collected through ongoing desk-research, interviews and engagement with and reports from Egyptian lawyers and other local and international stakeholders.

## II. Substantive part – Implementation of the ICCPR and related issues

### *Issues of concern*

5. In this submission, Lawyers for Lawyers sets out its concerns with regard to the State party's failure to comply with article 14 of the ICCPR. Based on this provision, the State party is required to uphold the right to equality before courts and tribunals as well as the right to a fair trial, which encompasses the obligation to guarantee effective access to legal services provided by an independent legal profession in accordance with the Basic Principles.<sup>6</sup>
6. Adherence to the Basic Principles is considered a fundamental pre-condition for the adequate protection of the human rights and fundamental freedoms to which all persons are entitled.<sup>7</sup> In its task of promoting and ensuring the proper role of lawyers, the State party should respect and take into account the Basic Principles within the framework of its national legislation and practice.<sup>8</sup>

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<sup>1</sup> For more information visit our website: <https://lawyersforlawyers.org/en/about-us/>.

<sup>2</sup> For more information visit our website: <https://lawyersforlawyers.org/over-ons/wat-doen-wij/>.

<sup>3</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR').

<sup>4</sup> Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 ('Basic Principles').

<sup>5</sup> Fifth Period Report Submitted by Egypt under Article 40 of the Convention, 12 November 2019, CCPR/C/EGY/5

<sup>6</sup> Interference in the work of lawyers may lead to violations of the right to a fair trial under article 14 of the ICCPR, as has been recognized by the Committee. Human Rights Committee, General Comment No.32, CCPR/C/GC/32, paragraph 34. In particular, the Committee has stated that "lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter." See also Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, in particular article 12.

<sup>7</sup> Basic Principles, preamble, paragraph 9

<sup>8</sup> Idem, preamble, paragraph 11.

7. Consequently, it is the State party's duty under the ICCPR to respect and guarantee that all persons within its jurisdiction have effective and equal access to lawyers of their own choosing, and that lawyers are able to perform their professional functions without intimidation, hindrance, harassment or improper interference from any quarter, or be threatened with sanctions for any action taken in accordance with recognized professional duties, standards and ethics.<sup>9</sup>
8. The State party must also ensure that lawyers are adequately protected when their security is threatened because of carrying out their legitimate professional duties, and that they are not be identified with their clients or their clients' causes.<sup>10</sup> In addition, the State party must recognize and respect that all communications and consultations between lawyers and their clients within their professional relationships are confidential.<sup>11</sup> The Basic Principles affirm that lawyers, like other citizens, are entitled to freedom of expression and assembly.<sup>12</sup>
9. In its fifth periodic report, the State party stated with regards to lawyers:

*Anyone whose freedom is restricted must be informed of the reasons and apprised of their rights in writing. They must be allowed to contact relatives and meet with a lawyer immediately during the evidence-gathering stage, as well as the investigation and trial phases. [...] An interrogation can only be conducted in the presence of the person's lawyer. If the person does not have a lawyer, a lawyer must be assigned to him or her, with appropriate assistance provided to persons with disabilities. [...] In all cases, accused persons may be tried for offences carrying a penalty of imprisonment only in the presence of a deputized or appointed lawyer.<sup>13</sup>*

*With regard to the framework governing the Bar Association, article 198 of the Constitution provides that the legal profession is an independent profession. It takes part with the judiciary in the administration of justice, upholding the rule of law, and ensuring the right to defence. It is to be practised independently by lawyers, including lawyers for public sector entities and corporations and the public business sector. In the course of exercising the right to defence before the courts, all lawyers shall enjoy the guarantees and protections granted to them by law, which are also applicable with respect to the investigation and evidence agencies. Except in cases of flagrante delicto, arresting or detaining lawyers while they are carrying out the right of defence is prohibited. All this must be done in the manner prescribed by law.*

*Article 120 of the Legal Profession Act provides that the Bar Association is an independent professional institution made up of the lawyers registered in its rolls. It enjoys a legal personality. Article 121 sets forth the objectives of the Association in regulating the practice of the legal profession and ensuring its good functioning, guaranteeing the right of citizens to a defence and providing legal assistance to those unable to obtain it, looking after the interests of its members, promoting the spirit of cooperation among them and ensuring their independence in carrying out their mission.<sup>14</sup>*

10. According to our information, however, the State party fails to fully respect and ensure the guarantees for the proper functioning of lawyers under article 14 of the ICCPR.
11. This submission highlights the following issues that give rise to Lawyers for Lawyers' concerns:
  - A. Lack of access to clients in detention and lack of lawyer-client confidentiality
  - B. Threats against, and harassment of, lawyers
  - C. Criminal prosecution of lawyers
  - D. Violations of freedom of expression of lawyers
  - E. Independence of the Bar Association

<sup>9</sup> Idem, Principles 1,2 and 16.

<sup>10</sup> Idem, Principles 17 and 18.

<sup>11</sup> Human Rights Committee, General Comment No.32, CCPR/C/GC/32, paragraph 34. In particular, the Committee has stated that lawyers should also be able to "meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications." See also Principle 22 of the Basic Principles.

<sup>12</sup> Principle 23 of the Basic Principles.

<sup>13</sup> Fifth Period Report Submitted by Egypt under Article 40 of the Convention, 12 November 2019, CCPR/C/EGY/5, par. 46.

<sup>14</sup> Fifth Period Report Submitted by Egypt under Article 40 of the Convention, 12 November 2019, CCPR/C/EGY/5, par. 91-92.

12. As a result, the professional rights and privileges of lawyers in the State party are violated systematically. This impairs their ability to provide effective legal representation and consequently severely undermines the proper functioning of the rule of law and the adequate protection of rights to which all persons are entitled, including the rights to effective remedy and fair trial. The work of lawyers is indispensable for the public confidence in the administration of justice and to ensure effective justice for all person.
13. In addition to the violations of their professional rights and privileges under article 14 of the ICCPR, these violations also encroach upon other rights that lawyers, like other citizens, are entitled to, including the rights to security of person (article 9), and freedom of expression (article 19).
14. Given the vital role of lawyers in the protection of the rule of law and the protection of rights, and the fact that lawyers in the State party are specifically targeted because of their work as lawyers, L4L would like to recommend the Committee to specifically address the position of lawyers, whenever appropriate, when reviewing the State party's implementation of the ICCPR.

#### **A - Lack of access to clients in detention and lack of lawyer-client confidentiality**

15. The Basic Principles provide that governments “shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential”.<sup>15</sup> In addition, the Basic Principles provide that “[A]ll arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality” and that such consultations ‘may be within sight, but not within the hearing, of law enforcement officials’.<sup>16</sup> Egyptian Law provides that lawyers have the right to visit any of their clients in general prisons in Egypt. They also have the right to a private meeting with the individual in a suitable location”.<sup>17</sup>
16. Lawyers from the State party have reported major problems when accessing clients in detention, often they are not able to access their clients at all. They report rarely being able to meet their clients, besides seeing them during court sessions. Another issue brought forward by the lawyers is that they often have trouble accessing case documents necessary for the defense of their client. Also, lawyers from the State party have reported that insufficient measures are taken by prison personnel to guarantee the confidential nature of the meetings of lawyers with their clients.
17. Further, Lawyers for Lawyers has been informed by lawyers from the State Party that repressive measures were implemented under the pretext of preventing the spread of Covid-19. Among the measures and decisions taken by the public authorities in Egypt to prevent the spread of this disease among citizens was a decision to stop visits to all Egyptian prisons, according to a statement issued by the Ministry of Interior. Visits were first suspended for a period of 10 days, but this period was renewed later, a situation that lasted for more than three months.<sup>18</sup>

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<sup>15</sup> Principle 22 of the Basic Principles.

<sup>16</sup> Principle 8 of the Basic Principles.

<sup>17</sup> Article 5 of The Advocates Law 147/2019 of Egypt.

<sup>18</sup> L4L, Covid-19 series: The impact of the crisis on lawyers in Egypt, 18 June 2020, <https://lawyersforlawyers.org/covid-19-series-the-impact-of-the-crisis-on-lawyers-in-egypt/>.

## **B – Threats against, and harassment of, lawyers**

18. A wider crackdown against human rights defenders and independent civil society took place in recent years, with the Egyptian government heavily shutting down civic space and systematically violating the rule of law on security and counter-terrorism grounds. Lawyers who work on sensitive cases frequently face reprisals either in relation to their own human rights advocacy or their legal representation of people seen as critical of the government.<sup>19</sup>
19. Specifically, Lawyers for Lawyers was informed by lawyers from the State party that they are subjected to threats and harassment in connection to their legitimate activities. The Basic Principles provide that governments “shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference”.<sup>20</sup> Moreover, the Advocates Law 147/2019 of Egypt, which regulates the Egyptian Bar Association and the practice of law in Egypt states that it is an offence to assault a lawyer, insult him by gesture, speech, or threaten him while performing his professional duties.<sup>21</sup>
20. However, many lawyers have indicated that they regularly receive threats and intimidations related to their professional activities.

## **C – Criminal prosecution of lawyers**

21. Some lawyers are subjected to arrest, criminal investigations and proceedings in connection with their legitimate activities as attorneys.
22. The Basic Principles provide that “[G]overnments shall ensure that lawyers shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics”.<sup>22</sup>
23. Lawyers for Lawyers has encountered numerous cases of lawyers being arbitrarily detained based overly vague provisions of the Penal Code, the Anti-Terrorism Law No. 94 of 2015 (Anti-Terrorism Law) and the Law regulating the list of terrorist entities and terrorists No. 8 of 2015 (Terrorist Entities Law). Specifically, the Anti-Terrorism Law contains various vague and overly broad definitions of the terms “terrorist group”, “terrorist crime” and “terrorist act”, which is contrary to the principle of legality. In practice, Lawyers for Lawyers has seen that the vague definitions have been used to arbitrarily criminalize lawyers’ legitimate professional activities, including the exercise of their right to freedom of expression, peaceful assembly and freedom of association. Lawyers are detained on the accusation of forming part of a terrorist group, but state authorities do not provide the name of the terrorist groups they would allegedly have joined nor provide any actual evidence of terrorist activities.
24. On 3 March 2020, the Anti-Terrorism Law and the Terrorist Entities Law were amended and the definitions of “terrorist entity” and the offense of “funding terrorism” have consequently even been expanded. UN Special Rapporteur on Human Rights and Counter Terrorism Fionnuala D. Ní Aoláin expressed deep concern about these amendments, stating that “the intersection of these multiple legislative enactments enable increasing practices of arbitrary detention with the heightened risk of torture, the absence of judicial oversight and procedural safeguards,

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<sup>19</sup> L4L, UPR Submission Egypt, 4 April 2019, <https://lawyersforlawyers.org/upr-submission-egypt/>, par. 9.

<sup>20</sup> Basic Principle 16(a) of the Basic Principles.

<sup>21</sup> Article 50 of The Advocates Law 147/2019 of Egypt.

<sup>22</sup> Basic Principle 16(c) of the Basic Principles.

restrictions on freedom of expression, the right to freedom of association and the right to freedom of peaceful assembly”.<sup>23</sup>

25. Further, Lawyers for Lawyers has received numerous reports of the practice of “rotation” being applied in cases of lawyers. Rotation refers to the practice of bringing an entirely new cases against a defendant who was ordered to be released, reached their maximum detention limit for a case or has served their sentence. Based on this new case, the detention period is brought back down to zero, effectively making it possible to keep the defendant in pretrial detention indefinitely. In practice, this leads to lawyers spending very long periods in pretrial detention, which is contrary to Article 9(3) of the ICCPR which states that detainees are entitled to “trial within a reasonable time or... release”.
26. The trend of criminal prosecution of lawyers is illustrated by the following cases:

***Mohamed El-Baquer***

*Mohamed El Baquer is a lawyer and human rights defender from Egypt. He is the director of the Adalah Center for Rights and Freedoms, which provides legal aid for political detainees and prisoners of conscience, as well as promoting civil and political rights in Egypt.*

*Mr. El-Baquer was arrested on 29 September 2019 at the Supreme State Security Prosecution (SSSP) premises in Cairo while attending an interrogation of activist and blogger Alaa Abdel Fattah, for whom he served as legal counsel. Mr. El-Baquer was thus transformed from a defense lawyer in Case No. 1356/2019 into a defendant in the same case. He has since been detained pending investigations into charges of “joining a terrorist group,” “disseminating false news that undermines national security,” “using social media to commit publishing offenses,” and “funding a terrorist group.”*

*A Terrorism Circuit judge in the Cairo Criminal Court ordered the release of both Mr. El-Baquer and Abdel Fattah on 19 February 2020, but the decision was reversed following an appeal from the SSSP.*

*While in detention, the SSSP added Mr. El-Baquer to a new case, No. 855/2020, and accused him of similar charges, a practice commonly referred to as “rotation”. Then, in November 2020, Mr. El-Baquer’s name was added to the terrorist list for five years. Consequently, he is banned from traveling abroad and from assuming any official position or civil work for five years. In addition, a judicial order will freeze his bank accounts and assets. On 18 October 2021, a new case file was opened, No. 1228/202, that replicated the charges held in case no. 1356 of 2019. On 8 November 2021, Mr. El-Baquer was presented before the New Cairo Emergency State Security Misdemeanour Court for Case No. 1228/2021. On 20 December 2021, the New Cairo Emergency State Security Misdemeanour Court sentenced Mr. El-Baquer to four years in prison on charges of “spreading false news”.*

*Mr. El-Baquer remains detained in inhumane conditions in the Tora Maximum Security 2 Prison. He is held in a small and poorly ventilated cell, banned from exercising outside of his cell, and deprived of a bed, mattress, books and newspapers.<sup>24</sup>*

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<sup>23</sup> OHCHR, Egypt’s updated terrorism law opens the door to more rights abuses, says UN expert, 9 April 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25787>

<sup>24</sup> L4L, Letter on the continued detention of Mohamed El-Baquer, 10 December 2021, <https://lawyersforlawyers.org/letter-on-the-continued-detention-of-mohamed-el-baquer/>.

**Haitham Mohamadein**

*Haitham Mohamadein is a prominent human rights lawyer and labor rights defender from Egypt, who through his affiliation with the El Nadim Centre for the Rehabilitation of Victims of Violence provided pro bono legal assistance to victims of human rights violations.*

*Reportedly, on 15 May 2018 Mr. Mohamadein was arrested in El Saf city in Giza Governorate. After his arrest, he was detained in an unknown location. On 19 May 2018 the SSSP in Cairo ordered a detention of 15 days pending an investigation on charges of “aiding a terrorist organization” and “calling for illegal protests”. According to our information, Mr. Mohamadein did not take part in protests and is merely active in offering pro-bono legal advice to workers. A court ordered his release in October 2018.*

*Mr. Mohamadein was again arrested on 12 May 2019 at the police station while serving probationary measures related to his release in October 2018. He was missing for a few days before he finally surfaced on 16 May 2019. He then appeared before the SSSP as a defendant in case No. 741/2019. The SSSP accused him of “collaborating with a terrorist organization”. After a court decision on 8 March 2021 to release Mr. Mohamadein on probation, the SSSP on 10 March 2021 re-accused him of the same charges, but in a new case, No. 1956/2019. The court’s release order was not enforced and to date Mr. Mohamadein remains in pre-trial detention.<sup>25</sup>*

*It has been reported that Mr. Mohamadein has not been able to receive any in-person prison visits and has had his pretrial detention renewed without having been brought before a court and without his lawyers having been granted the right to present a defense. On 28 November 2021, the Criminal Court of Cairo renewed the preventive detention of Mr. Mohamadein for an additional 45 days in case No. 1956/2019.*

**D – Violations of freedom of expression of lawyers**

27. Lawyers, like any other individual, have the right to freedom of expression.<sup>26</sup> In particular, they have the right to take part in public discussion of matters concerning the law, the administration of justice, and the promotion and protection of human rights. The freedom of expression that lawyers enjoy in connection to their professional functions should not only be guaranteed in light of the rights of the lawyer, but also in protection of the rights of their clients. The lawyer should be enabled to effectively protect the rights and interests of his or her client.
28. Vague provisions based on amongst others, the Anti-Terrorism Law are used to arbitrarily criminalize expressions that fall under the freedom of expression. We have received many reports of lawyers being criminally prosecuted or attacked based upon their legitimate exercise of their right to freedom of expression and assembly, or engaging in public discussions about human rights and the rule of law.

**E – Independence of the Bar Association**

29. Professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them.<sup>27</sup> The executive body of the professional association must exercise its functions without external interference.<sup>28</sup>

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<sup>25</sup> L4L, Letter on the arrest and continued detention of Haitham Mohamadein, 9 April 2021, <https://lawyersforlawyers.org/letter-on-the-arrest-and-continued-detention-of-haitham-mohamadein/>.

<sup>26</sup> Principle 23 of the Basic Principles.

<sup>27</sup> Preamble of the Basic Principles.

<sup>28</sup> Principle 24 of the Basic Principles.

30. Lawyers for Lawyers was informed that the Egyptian Bar Association has not always provided adequate protections for Egyptian (human rights) lawyers, when their rights and privileges are not being respected and that the Association always deliberately fails to defend lawyers imprisoned in opinion cases or related to their right of expression or human rights work.
31. The Egyptian Bar Association must take into account and respect international law and internationally recognized principles on the role of lawyers. Moreover, its role as an independent legal institution should be at the forefront as there is a strong need in the Egyptian legal community for disciplinary proceedings to be independent, impartial, fair, and based on clearly established standards of conduct.

### **III. Conclusions and recommended questions**

32. According to our information, the State party fails to fully respect and ensure the guarantees for the proper functioning of lawyers under article 14 of the ICCPR. As a result, the lawyers' professional rights and privileges are violated. This impairs their ability to provide effective legal representation, makes lawyers increasingly wary of working on sensitive cases, and consequently severely undermines the proper functioning of the rule of law and the adequate protection of rights to which all persons are entitled, such as the right to effective remedy and fair trial as well as the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment. The work of lawyers is indispensable for the public confidence in the administration of justice and to ensure effective justice for all persons in the State party.
33. In addition to the violations of their professional rights and privileges under article 14 of the ICCPR, these violations also encroach on other rights that lawyers, like other citizens, are entitled to, including the rights to security of person (article 9), privacy and unlawful attacks on a person's honour and reputation (article 17), and freedom of expression (article 19).
34. Given the vital role of lawyers in the protection of the rule of law and the protection of rights, and the fact that lawyers in the State party are specifically targeted because of their work as a lawyer, **Lawyers for Lawyers recommends the Committee to specifically address the position of lawyers, whenever appropriate, when reviewing the State party's implementation of the ICCPR.**

#### **Recommended Questions to State Party**

**Please respond to reports of difficulties of lawyers to access clients in detention centers, lack of access to case documents and the lack of guarantees for the confidentiality of these meetings.**

**Please provide information on what measures the State party has taken to ensure that lawyers are able to carry out their professional functions safely and independently without fear of threat, intimidation, hindrance, harassment, improper interference, reprisals, or criminal prosecution.**

**Please respond to persistent reports of arbitrary criminal proceedings initiated against lawyers in the context of their legitimate professional activities, specifically in relation to the practice of "rotation" and the overly vague provisions of the Penal Code, the Anti-Terrorism Law No. 94 of 2015 (Anti-Terrorism Law) and the Law regulating the list of terrorist entities and terrorists No. 8 of 2015 (Terrorist Entities Law).**

**Please respond to the reports of harassment, the improper interference, the arbitrary arrest, the prosecutions, and the convictions in relation to lawyers who have exercised their right to freedom of expression.**

**Please respond to how it is guaranteed that the Egyptian Bar Association can function independently and protect its members from undue interference in their work.**