

## **Egypt**

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Human Rights Committee Consideration of the 5th Periodic Report of Egypt

Submission by the Lawyers for Lawyers Foundation

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## Introduction

### *Submitting Party*

1. Lawyers for Lawyers is an independent civil society organization, supported by contributions from private individuals and organizations related to the legal profession. Established in 1986, Lawyers for Lawyers has special consultative status with ECOSOC since 2013.<sup>1</sup>
2. Our mission is to promote and preserve the independence of the legal profession worldwide and to defend the professional rights of lawyers enabling them to provide legal services safely and independently, without fear of reprisal. We safeguard the lawyers' role in protecting the rule of law and human rights and ensuring effective justice for all.<sup>2</sup>
3. To achieve our mission, we advocate for adherence to core values underpinning the legal profession in accordance with internationally recognized laws and standards, including but not limited to the International Covenant on Civil and Political Rights ('Covenant')<sup>3</sup> and the Basic Principles on the Role of Lawyers ('Basic Principles').<sup>4</sup>
4. At its 134<sup>th</sup> session (28 February – 25 March 2022), the Human Rights Committee ('Committee') adopted the list of issues in relation to the fifth periodic report of Egypt ('List of Issues').<sup>5</sup> On 27 December 2022, Egypt ('State party') submitted its replies to the List of Issues ('Replies'). The Committee will consider the State party's fifth periodic report<sup>6</sup> at its 137<sup>th</sup> session (27 February – 24 March 2023).

### *Executive summary*

5. Before the adoption of the List of Issues, Lawyers for Lawyers submitted a report to the Committee on the State party's implementation of the Covenant (also attached as Annex 1 to this submission).<sup>7</sup> The report focused on lawyers as a central theme - particularly the State party's failure to ensure that all persons have effective access to legal services provided by an independent legal profession and the consequences thereof for the proper functioning of the rule of law and the protection of fundamental rights and freedoms to which all persons are entitled – in relation to the State party's implementation of article 14 as well as articles 9, 17 and 19 of the Covenant.

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

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

<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. See also General Assembly 45/166 of 18 December 1990, in which the Assembly welcomed the Basic Principles on the Role of Lawyers and invited Governments to respect them and to take them into account within the framework of their national legislation and practice.

<sup>5</sup> List of Issues in relation to the fifth periodic review of Egypt, Human Rights Committee, 27 June 2022, CCPR/C/EGY/Q/5. ('List of Issues')

<sup>6</sup> Egypt's responses to the List of Issues for the fifth periodic report, 27 December 2022, CCPR/C/EGY/RQ/5. ('State party response to the List of Issues')

<sup>7</sup> Submission on the List of Issues by the Lawyers for Lawyers Foundation, 23 December 2021. ('L4L submission to the List of Issues')

6. In its List of Issues, the Committee requested the authorities of Egypt to provide information under article 14 of the Covenant,<sup>8</sup> on the prevention and punishment of threats or acts of intimidation aimed at lawyers. The Committee also requested the Egyptian authorities to respond to allegations that lawyers have been subjected to numerous forms of harassment and intimidation, long and illegal pretrial detention, arbitrary detention, torture and other ill-treatment and enforced disappearance. The Egyptian authorities did not elaborate on any of the questions concerning lawyers on which the Committee requested information.<sup>9</sup>
7. The authorities of Egypt have thus not adequately responded on the Committee's questions from the List of Issues. Lawyers for Lawyers remains gravely concerned about the situation of lawyers in Egypt, as set out in our submission on the List of Issues.<sup>10</sup> Since submitting our report for the adoption for the List of Issues in December 2021, new cases of interference with the work of lawyers have been brought to the attention of Lawyers for Lawyers, as described below. We call on the Committee to ask the authorities of Egypt to provide adequate answers to the questions listed in the List of Issues and make the following recommendations:

### **Recommendations**

**Egypt should take measures to prevent the harassment of lawyers and attempts to impede or interfere on improper grounds with their defence of clients, in accordance with Article 14 of the Covenant and articles 16 and 18 of the Basic Principles on the Role of Lawyers.**

**Egypt should recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential in accordance with article 14 of the Covenant and article 22 of the Basic Principles on the Role of Lawyers and not force lawyers to act as a witness in cases in which they represent their clients.**

**Egypt should take all necessary measures to prevent that lawyers suffer or be threatened with prosecution or other sanctions on improper grounds, in accordance with article 14 of the Covenant and article 16 of the Basic Principles on the Role of Lawyers.**

**Egypt should take measures to guarantee the effective protection of the right of freedom of expression of lawyers as set out in article 19 of the Covenant and article 23 of the Basic Principles on the Role of Lawyers, in particular their right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action.**

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<sup>8</sup> List of Issues, paragraph 20.

<sup>9</sup> State party response to the List of Issues, paragraph 77.

<sup>10</sup> L4L submission to the List of Issues.

## Methodology

8. 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.
9. In this report, Lawyers for Lawyers will provide updated and targeted information on the issues and questions raised in the List of Issues that have an impact on the proper functioning of lawyers and the consequences thereof in the State party.

### **II substantive part – The implementation of article 14 of the Covenant by Egypt**

#### A. Effective Mechanisms for the Protection of Human Rights

10. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are able to carry out their professional activities independently. This follows from – amongst other international instruments - the Covenant.
11. Interference in the work of lawyers may lead to violations of the right to a fair trial under Article 14 of the Covenant, as has been recognized by the Committee.<sup>11</sup> 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'*.<sup>12</sup> 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'*.<sup>13</sup>
12. The right to a fair trial also entails the principle of equality of arms. In view of the Committee, this means that *'the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant'*.<sup>14</sup>
13. In its task of promoting and ensuring the proper role of lawyers, the government of Egypt should respect and take into account the Basic Principles within the framework of its national legislation and practice.<sup>15</sup> Adherence to the Basic Principles is considered a fundamental pre-

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<sup>11</sup> Human Rights Committee, General Comment No.32, CCPR/C/GC/32, para.34. 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, especially article 12

<sup>12</sup> Ibid par 34.

<sup>13</sup> Ibid par 34.

<sup>14</sup> Ibid par 13.

<sup>15</sup> Basic Principles, Preamble, paragraph 11.

condition to fulfilling the requirement that all persons have effective access to independent legal assistance.<sup>16</sup>

14. In December 2021, Lawyers for Lawyers submitted a report for the adoption of the List of Issues on Egypt.<sup>17</sup> In this report we described that, in recent years, repressive tactics such as enforced disappearance and prolonged pre-trial detention have been increasingly used by the Egyptian authorities to silence dissidents and human rights activists, including lawyers. The Penal Code, Anti-Terrorism Law No. 94 of 2015 (Antiterrorism Law) and the Law Regulating the List of Terrorist Entities and Terrorists No. 8 of 2015 (Terrorist Entities Law) are also been used as repressive tools by the authorities against human rights defenders, who are often charged on the grounds of ‘joining a terrorist group’, ‘inciting the commission of terrorist acts’ or ‘spreading false news.’ These offences are very broadly defined by the Antiterrorism and Terrorist Entities laws, and this has led to the arbitrary or politically motivated persecution of human rights lawyers.
15. In its List of Issues, the Committee asked the Egyptian authorities to provide information on measures taken to prevent and punish threats or acts of intimidation aimed at lawyers.<sup>18</sup> They further asked them to respond to the allegations that lawyers have been subjected to numerous forms of harassment and intimidation, long and illegal pretrial detention, arbitrary detention, torture and other ill-treatment and enforced disappearance. The authorities were further asked to provide information on the case of Ibrahim Metwally, a lawyer who was arrested on 10 September 2017, before traveling to Geneva where he was planning to provide information to the Working Group on Enforced or Involuntary Disappearances, and who was then forcibly disappeared, subjected to torture and ill-treatment and held in pretrial detention for more than two years, as well as accused of various crimes, including “membership in a terrorist group”.
16. In their reply to the List of Issues, the Egyptian authorities have not adequately responded to questions from the Committee about the prevention or punishment of threats or acts of intimidation against lawyers. It neither responded to allegations that lawyers have been subjected to numerous forms of harassment and intimidation, long and illegal pretrial detention, arbitrary detention, torture and other ill-treatment and enforced disappearance.
17. Nonetheless, since the last submission of L4L, new cases of interference in the work of lawyers were brought to the attention of L4L. Lawyers continue to encounter difficulties in carrying out their profession independently, immediately impacting the right to effective legal representation as enshrined in Article 14 of the Covenant.

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<sup>16</sup> Basic Principles, Preamble, paragraph 9.

<sup>17</sup> L4L submission to the List of Issues

<sup>18</sup> List of Issues, paragraph 20

## B. No effective guarantees for the functioning of lawyers

### *i. Harassment and intimidation of lawyers*

18. As set out in our submission on the List of Issues, lawyers in Egypt who are working on sensitive cases (often with a political dimension) are sometimes subjected to attempts by investigative authorities to harass and disrupt their work. They face threats and intimidation in connection with their legitimate activities as lawyers.<sup>19</sup>
19. 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>
20. Since May 2020, new cases of the harassment of were brought to the attention of L4L. These cases show an ongoing practice of acts of intimidation and harassment against lawyers and is illustrated by the following:

#### **Makarios Lahzy**

Mr. Makarios Lahzy is a lawyer, human rights defender and an OHCHR fellow, who works mainly with minorities in Egypt. On 30 October 2022, Mr. Lahzy was informed by his client, Ajit Rajagopal, that he had been arrested at a security checkpoint while traveling in from India to Egypt for the Conference of the Parties 27 (“COP27”). Mr. Lahzy went to help his client at the security checkpoint and thereafter disappeared. During this time of disappearance, he had had no contact with a lawyer or his family. After being disappeared for 24 hours, he was released from the Transit Police Department on 31 October 2022.<sup>21</sup>

#### **Youssef Mansour**

Youssef Mansour is a human rights lawyer who formerly worked on cases related to the 20 September protests at the Arab Network for Human Rights Information (ANHRI). On 24 March 2022, Mr. Mansour was arrested by a group of officers from the National Security Forces, who reportedly failed to present an arrest warrant.<sup>22</sup> The mobile phone and laptop of Mr. Mansour were seized by the officers. Mr. Mansour disappeared to an undisclosed location for two days and was not presented before any investigative body until 26 March 2022, where he appeared before the Supreme State Security Persecution (SSSP) in Cairo. The SSSP ordered the pre-trial detention of Mr. Mansour for a period of fifteen days in Al-Basatin Police station. His pre-trial detention was renewed twice. Mr. Mansour is detained in relation to case no. 330/2022 and is accused of ‘joining an illegal group’, ‘inciting the commission of terrorist crimes’ and ‘publishing false news inside and outside Egypt’.<sup>23</sup> His lawyers were reportedly not allowed to view the evidence held against him. His arrest seems to be linked to a social media message

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<sup>19</sup> L4L submission to the List of Issues, paragraph 19.

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

<sup>21</sup> Concerns about the arrest of Egyptian lawyer Makarios Lahzy, 2 november 2022 <https://lawyersforlawyers.org/lawyers-for-lawyers-expresses-concerns-about-arrest-of-egyptian-lawyer-makarios-lahzy/>

<sup>22</sup> Lawyers for Lawyers, Letter on the arrest and detention of Youssef Mansour, 12 april 2022, Lawyers for Lawyers: <https://lawyersforlawyers.org/en/letter-on-the-arrest-and-detention-of-youssef-mansour/>

<sup>23</sup> Ibid.

he posted prior to his arrest in which he denounced the conditions in the Tora Maximum Security Prison. During his interrogations, he was reportedly asked about these social media postings.<sup>24</sup>

*ii. Enforced disappearance of lawyers*

21. In paragraph 10, the Committee asked the Egyptian authorities to describe specific measures taken to ensure that victims of enforced disappearance and their relatives have access to effective remedies. It asked them to indicate the measures taken to investigate all allegations of disappearance and ascertain the whereabouts of disappeared persons [...]<sup>25</sup>.
22. In its reply to the List of Issues, the Egyptian authorities mention that the constitution guarantees personal freedom and freedom of movement that is not restricted except by a reasoned judicial order.<sup>26</sup> The authorities further state that no person in a correctional and/or community rehabilitation center is subjected to detention without a judicial order or ruling that specifies the period of detention.<sup>27</sup>
23. Nonetheless, L4L has received reports that lawyers are also subject of enforced disappearance. In some cases they are arrested and disappear for multiple days. Their families and/or legal representatives are not notified of their location and contact is impossible. Their legal representatives are thus not enabled to provide legal services. The following case serves as an example.

**Islam Salama**

On 25 May 2020, Egyptian security forces arrested lawyer Islam Salama in his home in Zefta. Security forces refused to present a warrant and to provide an answer as to why he was being detained. Hereafter, Mr. Salama was detained in an undisclosed location for ten days before he was brought before the Supreme State Security Prosecution on 6 June 2020. The prosecution ordered his imprisonment over charges of Mr. Salama “joining a terrorist group”. On 14 October 2020, Mr. Salama was ordered to be released on parole by Cairo’s Fifth Circuit Terrorism Court. Yet, after Salama’s transfer to the local police station on 19 October 2020 to complete the parole proceedings, neither his family nor his lawyers were able to contact him. His whereabouts remained unknown for 45 days until he was produced before court on 30 November 2020 on the basis of new charges, which led to his pre-trial detention.<sup>28</sup> Mr. Salama forcibly disappeared for a third consecutive time in 2021 while in custody, following earlier verdicts by criminal courts in Cairo and Mahalla ordering his release. On 16 January 2021 the Mahalla Criminal Court ordered Mr. Salama’s release on bail. Despite the bail having

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<sup>24</sup> Joint Communication Special Rapporteur on Human Rights Defenders, Egypt: arrest, detention & short-term disappearance of Youssef Mansour, 26 July 2022. [https://srdefenders.org/egypt-arrest-detention-short-term-disappearance-of-youssef-mansour-joint-communication/?\\_gl=1\\*\\_1mitcom\\*\\_ga\\*OTgwNzk1NDI3LjE2NzQ2NTU2MTM.\\*\\_up\\*MQ>](https://srdefenders.org/egypt-arrest-detention-short-term-disappearance-of-youssef-mansour-joint-communication/?_gl=1*_1mitcom*_ga*OTgwNzk1NDI3LjE2NzQ2NTU2MTM.*_up*MQ>)

<sup>25</sup> List of Issues, Paragraph 10 under (B).

<sup>26</sup> Articles 54 and 62.

<sup>27</sup> State party response to the List of Issues, paragraph 45 and 46.

<sup>28</sup> Lawyers for Lawyers, Disappearance Attorney at Law Islam Salama, 1 March 2021, <https://lawyersforlawyers.org/wp-content/uploads/2021/03/Disappearance-attorney-at-law-Islam-Salama.pdf>

been posted and all other (legal) procedures being completed, Mr. Salama disappeared after having been in custody of the Egyptian authorities.<sup>29</sup> Mr. Salama was then released on 5 March 2021.<sup>30</sup>

*iii. Prolonged arbitrary detention*

24. In its List of Issues, the Committee asks the State party to respond to the allegations that prisoners of conscience and others in detention for political reasons are held in particularly harsh conditions and denied access to health care as a measure of punishment.<sup>31</sup> Additionally, in paragraph 15, the Committee asks the State party to respond to reports of persons being held in prolonged arbitrary detention without charge, without access to judicial authorities and without being afforded fundamental legal safeguards, including contact with family or access to council. In addition to its requests on the topic of prolonged arbitrary detention, the Committee asks the Egyptian authorities in paragraph 19 to describe the efforts made to address the case of Mohamed al-Baqer, a lawyer that has been targeted by the practice of rotation.<sup>32</sup>
25. To this, the State party replied that all detainees have access to their lawyer and that it disputes the reports received about prolonged pretrial detention.<sup>33</sup> With regard to reports of excessive use of pretrial detention, the State party indicated that signing a pretrial detention order is a matter subject to the discretion of the investigator and the attending judge. The authorities further state that due to the growth of terrorist activity, the claim of excessive use of pretrial detention lacks an objective control.<sup>34</sup> With this, the State party has not adequately replied to the Committee's questions on prolonged arbitrary detention and the harsh conditions that detainees have to suffer. Moreover, even though the Committee specifically asked the Egyptian authorities for a description of the efforts made to address the shortcomings in Mr. Al-Baqer's trial, the Egyptian authorities have not replied to this question.
26. In our previous submission for the List of Issues, L4L mentioned that it received many reports of the practice of "rotation".<sup>35</sup> As described there, rotation refers to the practice of bringing an entirely new case 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.
27. As L4L described in its submission for the List of Issues in December 2021, the case of Mohamed Al-Baqer serves as an example of the practice of rotation. Mr. Al-Baqer was arrested on 29 September 2019 at the Supreme State Security Prosecution (SSSP) while

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<sup>29</sup> Lawyers for Lawyers, Disappearance Attorney at Law Islam Salama, 1 March 2021, <https://lawyersforlawyers.org/wp-content/uploads/2021/03/Disappearance-attorney-at-law-Islam-Salama.pdf>

<sup>30</sup> Lawyers for Lawyers, release of Islam Salama, 5 March 2021, <https://lawyersforlawyers.org/release-of-islam-salama/>

<sup>31</sup> List of Issues, paragraph 14.

<sup>32</sup> Ibid, paragraph 19.

<sup>33</sup> State party response to the List of Issues, paragraph 62.

<sup>34</sup> Ibid, paragraph 64.

<sup>35</sup> L4L submission to the List of Issues, paragraph 25.

attending an interrogation of activist and Blogger Alaa Abdel Fattah. After spending more than two years in pre trial detention, he was sentenced to 4 years imprisonment for “spreading false news”. That his case is an example of rotation, is shown by the three different cases in which Mr. Al-Baqer was a defendant, which are all based on similar charges, of which one was initiated when Mr. Al-Baqer was set to release.

- a. Mr. Al-Baqer was transformed from a defense lawyer in Case No. 1356/2019 into a defendant in the same case.
- b. While in detention, the SSSP added Mr. Al-Baqer to a new case, No. 855/2020, and accused him of similar charges.
- c. On 18 October 2021, a new case file was opened, No. 1228/2021, that replicated the charges held in case no. 1356 of 2019.

According to our latest reports Mr. Al-Baqer is still detained, after being transferred to Badr 1 prison on 2 October 2022.

### **III. Conclusions and recommendations**

28. The authorities of Egypt do not always uphold the necessary guarantees for the proper functioning of the legal profession in practice. Lawyers are regularly subject to improper interference and harassment. Some lawyers are even subjected to criminal proceedings, in connection to their legitimate professional activities. As a result, lawyers are not in an equal position to represent their clients. This violates the right to a fair trial as set out in article 14 of the Covenant.

### **Recommendations**

**Egypt should take measures to prevent the harassment of lawyers and attempts to impede or interfere on improper grounds with their defence of clients, in accordance with Article 14 of the Covenant and articles 16 and 18 of the Basic Principles on the Role of Lawyers.**

**Egypt should recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential in accordance with article 14 of the Covenant and article 22 of the Basic Principles on the Role of Lawyers and not force lawyers to act as a witness in cases in which they represent their clients.**

**Egypt should take all necessary measures to prevent that lawyers suffer or be threatened with prosecution or other sanctions on improper grounds, in accordance with article 14 of the Covenant and article 16 of the Basic Principles on the Role of Lawyers.**

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