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Call for input of the Special Rapporteur on the independence of judges and lawyers for the next thematic report on safeguarding the independence of judicial systems in the face of contemporary challenges to democracy

(EGYPT)

Committee for Justice (CFJ) and **Egyptian Front for Human Rights (EFHR)** are grateful for the opportunity to answer the call for input to highlight trends and information and to provide insights on Egypt's Judicial system regarding the next thematic report of the Special Rapporteur on the independence of judges and lawyers. We want to take this opportunity to elaborate with comments about the practices of the Prosecution and the Judiciary against prisoners of conscience, human rights defenders, lawyers and political opponents in Egypt.

1) The Egyptian Prosecution and the Judiciary (Lack of Independence)

Provisions within Egyptian domestic law guaranteeing the independence of judges and lawyers include articles 184 - 189 of the Constitution, article 187 of the Criminal Code on punishments for attempting to influence or influencing members of the Judiciary, and the Judicial Instructions regulating the work of the State Prosecution Office, which establishes the independence of the Prosecutor General. Despite these provisions, ties between the Public Prosecutor's Office, the executive branch, and different arms of the criminal justice system, namely the police, prosecutors, courts, and prison staff remain concerning. In 2006, the former Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, had expressed concern over the erosion of judiciary independence under the Mubarak Presidency. Such erosion has been exacerbated since the military coup d'état 2013 as claims of institutional independence (e.g. prosecutorial or judicial) have been progressively dispelled. In fact, in February 2019, 23 new amendments were introduced to the Egyptian Constitution out of which four brought about significant changes to the judicial system, further eroding its independence.

The judicial and Prosecution authorities, which are supposed to protect citizens from malpractices, have participated in one way or another in their abuse and repression in coordination with the security authorities and the ruling elite¹. The employees of these institutions manipulate procedures, regulations, and policies to ensure keeping the military elite and the ruling government in power. After the June 2013 demonstrations and the military elite's accession to power, the politicized judiciary scaled back the possibilities of political mobility, while the authority worked to "securitize" the judiciary by establishing several military and emergency special courts.

¹ <https://www.cfjustice.org/egypt-new-cfj-paper-documents-extremism-in-prisons-and-methods-to-confront-it/>



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Particularly the Supreme State Security Courts, to put the capabilities of political activity and action in the hands of state judges who were “hastily recruited” by the authority².

The Egyptian authorities since 2013 have enacted several laws and decisions that introduced penalties of life imprisonment and the death penalty, against the background of very broad and vague accusations, which undermined the principles and guarantees of a fair trial. Hence, expanding the executive authority’s encroachments on the work of the prosecution and the judiciary. The Egyptian regime established a judicial department that specializes in specific cases to prosecute certain people and select their judges who show loyalty to the ruling regime.

In that context, we would like to highlight the role of Terrorism Circuit judges 'terrorism chambers' of the Criminal Courts -particularly councilors Naji Shehata, Hassan Farid and Sherine Fahmy- who became elemental in undermining the litigation and defense rights of defendants, denying their right to cassation, and issuing harsh sentences of aggravated imprisonment and execution. One of the ambiguous examples of the lack of independence of the Prosecution and the judiciary and its use in a politicized manner was the decision -number 5/year 2018 regarding Case No. 620 of 2018- issued by the judiciary stipulated placing 1,529 Egyptian citizens on terrorism lists, only “ten days” after the Supreme State Security Prosecution referred the matter to the judiciary. The latter decision mostly included political opponents, activists and human rights defenders, as indicative of the authorities’ persistent deployment of counterterrorism legislation to deprive Egyptians of their basic rights, including the right to free movement or travel, as well as the right to dispose of their property and assets.

Inclusion on terrorism lists also entails the deprivation of political rights and social stigmatization. Terrorist list decisions are mostly based on investigations by national security, which included allegations -with the same format and charges- against some individuals of involvement in funding the Muslim Brotherhood. This reflects the ongoing utilization of counter-terrorism laws by the Supreme State Security Prosecution, which broadly define terrorism, to repeatedly target thousands of peaceful government opponents while depriving them of fair trial guarantees. At the same time, the prosecution has failed to initiate serious investigations on the crimes of enforced disappearance and torture, while the courts rely upon confessions coerced under physical and psychological torture and mistreatment. This has been one of the most notable facets of the authorities' abuse of the citizens' right to litigate before natural judges and the most prominent examples of 'litigation' becoming an instrument of repression in the hands of the "National Security" at the Ministry of the Interior.

Moreover, to increase the control and dominance of the executive authority over the judiciary, articles 7, 8, 14 and 15 of the Egyptian Emergency Law, followed by the 2019 constitutional

² <https://www.cfjustice.org/cfj-paper-highlights-the-challenges-facing-human-rights-lawyers-under-authoritarianism-in-egypt/>



amendments, allow the President of the Republic to hold the position of Chairman of the Supreme Council of Judicial Bodies. The most notable stage in this regard was the judgment of the Administrative Court of 20/06/2017 invalidating the agreement of Egypt to relinquish ownership of the islands of Tiran and Sanafir. Later, the authorities pressured the Supreme Constitutional Court to overturn the decision to repeal the agreement in March 2018 and to approve the transfer of the islands to Saudi Arabia. Then, in 2019, constitutional amendments were made to tighten the President's grip on judicial institutions to give the President the right to choose and suspend judges from work so that the judiciary becomes weaker before the executive.

The authority has also legalized the “exception” by expanding the jurisdiction of military litigation to include crimes within/on/against public and vital installations as military installations protected by the Armed Forces under Resolution No.136/2014 and Constitutional Amendment to Article 204 in April 2019. The retroactive application of the Act and the Judiciary's rejection of case No. 18911 of 69 concerning the “obligation of the Minister of Defense to identify public installations under military protection” paved the way to undermine the freedoms of individuals and to engage thousands in extraordinary trials against the background of "minor" conflicts and crimes occurring/had occurred in facilities not known to be subject to military protection.

The Justice Watch Archive by CFJ documented and monitored more than 610 cases; in most of them, the detainees were arrested in violation of the law and the constitution and were subjected to physical and psychological torture and intimidation. The Public Prosecution or the Emergency State Security Prosecution (SSP) refused to listen to their statements and testimonies, and the judiciary accepted the confessions extracted under torture to rule without respecting any fair trial and due process standards.

A striking example of the lack of independence of the Public Prosecution and the judiciary during elections was from September 25 to October 14, 2023, when the National Security Agents arrested at least 128 members of Ahmed Al-Tantawy’s presential campaign (including 13 women) during the stage of collecting endorsements for the 2024 presidential campaign in Egypt. They were all investigated before the Supreme State Security Prosecution (a special prosecution) and accused in 7 different cases with charges of publishing false news and joining a terrorist group.

The former potential presidential candidate, Ahmed Al-Tantawy and 22 members of his campaign were recently referred to trial under Case No.16336 of 2023³ (Matareya Misdemeanors, Cairo) in retaliation for exercising their legitimate right to political participation and public work. Ahmed Al-Tantawy and his campaign manager, Mohamed Abo Al-Diyar, faced charges of inciting others

³ The mentioned case is traced to October 8, 2023, when Ahmed Al-Tantawy called on his supporters to fill in popular endorsement forms as a protest way against the obstacles, restrictions and violations in notary offices. It is worth noting that the Ministry of Interior had announced on October 9, 2023, the arrest of citizens in various governorates under the accusation of issuing forged powers of attorney for one of the presidential candidates.



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to influence the conduct of the electoral process. The rest of the accused members faced charges of printing and circulating electoral process papers without the permission of the competent authority. The penalty for these charges could be imprisonment for no less than one year. It's worth mentioning that the lawyers of al-Tantawy and al-Diywar have not been allowed to copy the referral order and case papers.

2) Egyptian Lawyers (Human Rights Defenders)

In Egypt, Lawyers are playing an effective role not only in safeguarding democracy and upholding fundamental democratic rights but also the roles of Egyptian lawyers -especially rights lawyering- have shifted from arguing for rights, freedoms, justice, the rule of law, separation of powers and civil society rights, to individual and organized efforts to document, account and record human rights violations and fair trial guarantees, humanitarian action and providing moral support to victims of arbitrary detention and political repression in general. Rights lawyering became the only path to justice in the cases of tens of thousands of citizens whose political, economic and social rights and freedoms were invoked by the authorities.

In this regard, we would like to shed light on a research paper by CFJ that highlighted malpractices by the Egyptian Prosecution and the Judiciary targeting and harassing lawyers who defend human rights defenders and prisoners of conscience. The testimonies were unanimous that the judiciary and prosecutors do not respect lawyers while attending investigation sessions and court hearings. In the political nature cases, the Egyptian authorities prevent lawyers from attending investigations and interrogating the accused. Many incidents document the Egyptian state deliberately obstructing lawyers from performing their job in defending their clients, harassing them, and even assaulting them, not allowing them to attend hearings.

The right to seek assistance from a lawyer begins from the moment the accused is arrested and then interrogated before the prosecution or the competent investigating authority until referring the case to court and subsequently defending the accused. However, Article 42 of the Anti-Terrorism Egyptian Law violates the right to seek assistance from a lawyer after the arrest or detention of a suspect of a terrorist crime. Notifying the family of the person in custody or seeking the assistance of a lawyer was suspended as required by the interest of evidence.

On 20 December 2021, the Egyptian Ministry of Justice issued the administrative decision No. 8901/2021 to start implementing the system of remote renewal of pre-trial detention. The decision consists of two articles; the first allows pretrial detention renewal hearings to occur remotely using an unspecified technology, and the second article allows using conversion of speech into written text technology during hearing sessions.

The lawyers are attending the video conference sessions in court alongside the judge not with the defendant in their place of detention and this shows the intention of the Egyptian authorities to undermine the detainees' right to legal defense by preventing the lawyer from communicating



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privately with their clients⁴, and negates the purpose from remote hearings that aims to protect all parties including the lawyers and the court members. The Egyptian authorities are tightening restrictions on communication with the detainees, and not allowing lawyers to view case files. Moreover, the prosecution renewed the detention of hundreds of defendants in a mass reviewing hundreds of cases in a single hearing session. Thus, lawyers were unable to submit defenses for all the detainees.

Furthermore, according to several lawyers' testimonies, the Egyptian Front for Human Rights team has documented, the common practice of prosecutions and courts is ignoring to inform the lawyers of their clients' legal proceedings so most of the lawyers are spending valuable work hours in the prosecution building fearing that their clients will suddenly be brought for interrogations without being informed. Consequently, the same policy takes place with virtual detention renewal hearings which open the door to further eliminate the role of lawyers and automatically review and renew detention without legal guarantees or access to legal defense.

Considering the above-mentioned facts, we find that issuing administrative decision No.8901/2021 is utilized further to undermine fair trial standards and access to justice. In the absence of fair due process, regular and private communication between detainees and their legal counsel, and a design of a virtual court system that guarantees transparency, the practice of remote trial only contributes to the severe legal violations in Egypt.

In the same context, Egypt suffers from a fragile internet infrastructure, often leading to major internet disruptions. According to Speed test - by Ookla -There are more than 29.84 million internet users in Egypt, marking an internet penetration rate of 37.8 percent. Egypt ranks 94th out of 158 countries for fixed broadband download speeds and 107th for mobile, which is a very slow speed to conduct investigation sessions via the internet⁵. Therefore, implementing this decision is against the rights of the accused, as it is likely that the audio and video of the accused, the judge, and the lawyer will not be sufficiently clear to guarantee the right to be heard.

The Special Rapporteur on the independence of judges and lawyers asserted in the report which was issued in 2009 on the principle of the Independence of the judicial function from other branches of power as a prerequisite. He clarified that this principle of the separation of powers, together with the rule of law, opens the way to an administration of justice that provides guarantees of independence, impartiality and transparency⁶.

Applying the rules mentioned above shows that the decision is a violation of the independence of the judiciary. The judge must be in control of every aspect of a judicial hearing. Keeping the

⁴ <https://www.youtube.com/watch?v=nESGrRMBZPg>

⁵ <https://www.speedtest.net/global-index/egypt>

⁶ <https://undocs.org/A/HRC/11/41>



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defendants in prison while reviewing their detention without a judicial representative would fault the process, bringing other actors to control, such as security officers and wardens.

Regarding Lawyers being targeted by the authorities, Committee for Justice has documented and verified numerous campaigns, cases, incidents and violations. Among the most notable facts we have documented through the work of the various teams at the organization is in “[The Justice Watch Archive](#)“ which provides access to information about violations of the Justice System in Egypt. The archive has documented and monitored more than 31.850 violations involving more than 14.430 victims. The archive has a dedicated section for lawyers, which documented and monitored the cases of [706 lawyers](#). Most of these lawyers were abused and arrested for their human rights work defending political detainees and prisoners of conscience.

Conclusion:

Over the past decade, the Egyptian government has adopted policies to consolidate its authoritarian rule over the Prosecution and the Judiciary. Leading to numerous violations and the deprivation of people’s civil, political, economic, and social rights. Moreover, the Prosecution and the Judiciary have been hindering lawyers from fulfilling their duties and subjected them to numerous violations, including arbitrary arrest and detention, enforced disappearance, torture, execution, repeated detention, criminal prosecutions under politically motivated cases, exceptional “military trials”, exceptional “emergency State security” trials and arbitrary placement on terrorism lists. The Egyptian government used the Prosecution and the Judiciary to serve the goals of the ruling military elite by manipulating the law and the constitution, as mentioned above.