

Erosion of the Independence of the Legal Profession and Fair Trial Guarantees in Egypt

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Since the 2019 UPR review, Egypt lifted the long-standing state of emergency in October 2021, launched the National Human Rights Strategy 2021-2026, reactivated the Presidential Pardons Committee, and initiated a national dialogue. Despite such welcomed changes, authorities have continued to weaken judicial independence, due process, the rule of law, and unjust harassment of lawyers.

Independence of the judiciary

Since 2017, Egypt's President has been granted more control over the judiciary, undermining the independence of judges and blurring the separation of powers.

Law No. 13 of 2017 empowered the President to select the heads of the State Lawsuits Authority, the Administrative Prosecution, the Court of Cassation, and the State Council. Constitutional amendments passed in 2019 extended these powers to include other judicial entities such as the Supreme Constitutional Court and the Prosecutor General.

Changes in the composition of the judiciary have led to perceptions of some judges' independence being compromised by their ties to authorities. Judges in emergency and terrorism courts, in both pretrial and trial proceedings, have limited the ability of lawyers to defend their clients effectively, raising concerns that certain judges' personal and political opinions may influence their rulings.

Judicial independence is further hampered by the extension of military court jurisdiction to

non-military related offenses. Law No. 3 of 2024 retains the military's jurisdiction over cases concerning "public and vital facilities" and extends this power to acts that "undermine the work of the state's public facilities, or the services it provides." This vague articulation of the law extends the military's judicial powers over civilians indefinitely.

Emergency courts judges are appointed by the President and the ministries of justice and defense, and their decisions cannot be appealed. These courts have been authorized to continue to try cases initiated during the state of emergency, with reports of cases being moved to emergency courts to guarantee convictions in politically sensitive cases.

Lack of fair trial guarantees

The Anti-Terrorism Law (Law No. 94 of 2015 amended by Law No. 15 of 2020) grants law enforcement officers more exceptional powers than they had during the state of emergency. This includes the authority to detain accused persons on vague charges for up to 28 days, during which their right to contact family and legal counsel is systematically restricted under the pretext of maintaining "the interests of the investigation."

The Supreme State Security Prosecution regularly impedes lawyers' ability to defend their clients effectively. In state security cases, prosecutors prevent lawyers from accessing case files, using phones or taking notes during

investigations, and restrict communication with clients.

A 2017 amendment to the Code of Criminal Procedure gave Egyptian courts complete discretion in deciding whose testimony to hear, leading to courts generally hearing the prosecution's witnesses only, in stark violation of the principle of equality of arms.

The practice of mass trials persists. Sentences imposed by courts, including emergency courts where there is no right to appeal, can include the death penalty.

The practice of 'recycling' charges (or 'rotation' of cases) has seen pretrial detainees re-arrested on near-identical charges, which restarts the clock on pretrial detention, and violates the double jeopardy principle.

The Minister of Justice has authorized the remote extension of pretrial detention periods through videoconferencing, a practice which began during the COVID-19 pandemic. This policy undermines the rights of the accused to appear before the judge, speak freely and privately with their counsel, and freely submit complaints about their detention conditions.

Targeting of lawyers

Egyptian authorities have systematically targeted lawyers and prevented them from performing their duties through arrests, physical attacks, threats, and intimidation.

A trend has emerged whereby lawyers and human rights defenders are arrested without a warrant and subjected to enforced disappearance before being presented to the prosecution and detained pretrial pending investigation. Some lawyers have been forcibly disappeared multiple consecutive times, including for short periods between 10 and 45 days, following court orders for their release.

Several vaguely worded laws have been used to silence lawyers and human rights defenders, creating a chilling effect on the legal profession and freedom of expression. In addition to the

Anti-Terrorism Law, the Terrorist Entities Law (No. 8 of 2015 amended by law No. 14 of 2020) includes the imposition of travel bans, asset freezes, and disbarment, among other things.

The NGO Law (No. 149 of 2019) restricts political activities, which has a negative effect on organizations providing *pro bono* legal aid on sensitive or political cases. The Anti-Cybercrime Law (No. 175 of 2018) and Media Law (No. 180 of 2018) provide wide discretion in censoring content and have been used against lawyers when criticizing the State for its handling of cases or its division of powers.

Women lawyers, particularly those handling human rights cases, have reported harassment and intimidation by prosecutors and judges, including objectification and undermining their abilities, with no clear and effective mechanism for them to report such treatment. Women are severely underrepresented in the legal professions in Egypt, accounting for less than 0.5 percent of the judiciary.

Recommendations

- Ensure the independence and protection of the legal profession from any undue interference including harassment, arrest, or prosecution in connection with their professional activity.
- Repeal vague provisions in the Anti-Terrorism Law, Anti-Cybercrime Law, Media Law, and Penal Code, and end their politicized use against lawyers, human rights defenders, and dissidents.
- Ensure access to justice and due process for all, including immediately ending the practice of mass trials, recycling or rotation of cases, remote review of pretrial detention, and trials of civilians in military courts.
- Immediately cease the practice of enforced disappearance and ensure perpetrators are held accountable in trials conforming with international law.