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# Clash in Egypt



*The Government and the Bar*

Report of a Mission

May 1995

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Centre for the Independence of Judges and Lawyers  
Geneva, Switzerland

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- organizes support for judges and lawyers who are being harassed or persecuted.

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*The Government and the Bar*

by

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## Preface

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The judiciary and the legal profession have been traditionally held in high esteem in Egyptian society. For many years, the Egyptian regular judiciary has successfully played its rightful role as a protector of fundamental freedoms. Egyptian lawyers have also been on the forefront of defending rights and liberties. These two pillars of the Rule of Law in Egypt have been recently affected by the Government's fight against militant Islamist groups since 1991.

The death of lawyer Abdel Harith Madani following his arrest on 26 April 1994 has widened the already existing gap between the Government and the lawyers in Egypt. The Government asserts that Mr. Madani died of natural causes while his family and colleagues fear that he died as a result of torture. The matter remains in the hands of the Attorney-General of Egypt who until today has not revealed the result of his investigation on what caused Mr. Madani's death.

Tension has been building up following the results of the 1992 Bar elections. Fourteen out of the twenty four members of the Bar Council are currently sympathisers to Islamist groups.

The escalation of attacks by the Islamist groups in Egypt, which claimed the lives of civilians as well as security officials, made the Government re-activate its State of Emergency rules, create special courts, and refer cases of civilians to the military courts. Such rules, which often restrict due process rights, as well as freedom of expression and association, have become the source of more friction between the Government and human rights lawyers.

When hundreds of lawyers attempted to take to the streets protesting the death in detention of lawyer Abdel Harith Madani, the Centre for the Independence of Judges and Lawyers (CIJL)

decided to send a mission to Egypt to look at the causes of this serious friction between the Government and the Bar. As a component of the Geneva-based International Commission of Jurists (ICJ), the CIJL has been working since 1978 to promote and protect the independence of the judiciary and the legal profession throughout the world. The CIJL examines particular situations of concern in light of the 1985 UN Basic Principles of the Independence of the Judiciary and the 1990 UN Basic Principles on the Role of Lawyers. These Basic Principles are the product of the modern trend of articulating general human rights norms. They generally reflect the already established principles in international law to preserve the independence of the judiciary and defence rights.

Based on these Basic Principles and other human rights norms, this report attempts to examine the actions of the Government as well as of the Bar Association in Egypt. Drafted mainly by mission-coordinator Mr. Baher Alashhab, in close consultation with other members of the mission, the report outlines a threat to the independence and integrity of the legal profession in Egypt, addressing both the Government and the Bar. The report ends with conclusions and recommendations. The CIJL hopes that the report will help in advancing the cause of justice in Egypt.

Mona Rishmawi  
CIJL Director

May 1995



# Introduction

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On 26 April 1994, Egyptian lawyer Abdel Harith Madani, aged 32, was arrested at his office and died in questionable circumstances while in police custody. Soon after, a serious confrontation between hundreds of protesting lawyers and the police resulted in injury and detention. The Egyptian Bar Association, whose Council appeared to have spearheaded the protest action, was threatened with repressive government measures.

Egyptian Government officials, while denying police responsibility for Mr. Madani's death, have described him as a dangerous terrorist who acted as a conduit between his imprisoned militant clients and armed field operatives; a claim his family and colleagues have strongly denied. An official investigation by the office of the Egyptian Attorney-General has yet to produce any results.

The reaction of Egyptian lawyers to Mr. Madani's death was swift and determined. They held a general strike, a large demonstration that was violently quelled by police, and a hunger strike.

The Bar Association Council demanded an investigation into Mr. Madani's death and encouraged lawyers to stand against what its members perceived as an attack on the legal profession as a whole. The Council also demanded the termination of the State of Emergency which has been in effect since 1981 and is blamed for undermining the Rule of Law in Egypt. The Government responded by accusing the Bar Council of being sympathetic to militant groups, and threatened to take action against Council members. Since its creation in 1912, the Bar Council has been dissolved three times.

Since 1991, hundreds of civilians, police personnel, and foreigners have been killed as Egyptian Islamist groups began an

armed campaign to undermine the State. As a result, the Government resorted to a number of restrictive measures that have included arrests and searches without warrants, detention without trial, collective punishment and the trial of civilians in military and special courts. Credible sources state that torture is widespread in Egyptian prisons and holding centres.<sup>1</sup> Mr. Madani was the fifteenth individual to have died in police custody during this period.

The Centre for the Independence of Judges and Lawyers (CIJL) found it necessary to send a mission to Cairo to investigate these incidents. The mission's mandate comprised three parts:

- to examine the various threats affecting the independence of the Egyptian Bar Association and its role in upholding the Rule of Law in Egypt;
- to examine the causes and effects of the friction between the Government and the Bar; and,
- to investigate the death of advocate Abdel Harith Madani, and whether his death is connected with any act or omission of government officials.

The CIJL mission took place between 10-16 August, 1994. It was headed by Ms. Asma Khader, lawyer and ICJ Executive Committee member from Jordan, and included *Bâtonnier* George Flecheux, former President of the Paris Bar, Mr. Peter Wilborn, Assistant Legal Officer of the CIJL, and Mr. Baher Alashhab, a consultant with the ICJ Secretariat in Geneva who coordinated the mission.

During seven days, the mission met with Egyptian lawyers from various backgrounds and visited *Dar al Qada'a al Ali*, the seat

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<sup>1</sup> See, *Behind Closed Doors: Torture and Detention in Egypt*, Middle East Watch (1992); *Crime Without Punishment, Torture in Egypt*, Egyptian Organization for Human Rights (EOHR), (1993); *Annual Report*, Amnesty International (1994).

of several civil courts in Cairo. The mission paid particular visits to the Supreme Constitutional Court, and met with its president, as well as the Court of Cassation. The mission visited the headquarters of the Egyptian and Cairo Bar Associations, the Arab Lawyers Union, the Arab Organization for Human Rights and the Egyptian Organization for Human Rights (EOHR). The mission also met with Egypt's Attorney-General in his office. The schedule of the mission is attached to this report as Annex I.

Mission members would like to extend their appreciation to all who met with them. Special thanks are accorded to members of the EOHR whose efforts facilitated the task of the mission.

Upon their return to Geneva, and based on their recommendations, the CIJL issued a press release in which the mission's mandate and preliminary findings were outlined. The press release is attached to the report as Annex II. The Egyptian Government's response to the press release is attached as Annex III.

This report offers a more in-depth presentation of the mission's findings, together with background and some updated information. It is divided into four parts. Part One offers a brief background on the violent confrontation between the Egyptian authorities and Islamist militant groups, followed by a short history of the Egyptian Bar Association. Part Two comprises a descriptive listing of lawyers grievances *vis-à-vis* violations of human rights, the continued application of the State of Emergency, and the harassment and persecution of lawyers in the course of their duty. Part Three details the circumstances surrounding the death of lawyer Abdel Harith Madani, followed by an account of the street confrontation between lawyers and security forces. The final part comprises the CIJL mission's findings and conclusions.

# Part I

## *Background*

# Background

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## 1. Political Violence and the Rule of Law

Egypt, a country of 55 million, has not enjoyed a prolonged period of prosperity and peace since the early part of this century. It endured Ottoman rule, British colonial occupation, a weak monarchy, a military *coup d'état*, the assassination of a president, and a State of Emergency that has persisted since 1981. This country, which fought four wars during the last five decades and later became the first Arab country to sign a peace treaty with Israel, has in the past three years been dealing with an explosive internal situation that threatens the already precarious social and economic well-being of its civil society.

Islamic fundamentalist groups, well-funded and highly organised, have been wooing Egypt's Moslem majority to denounce secularism and to build a nation based on Islam's *Shari'a* law. Armed groups have since 1991 launched a painful and bloody confrontation against the Government and against persons they perceive as pro-western, leftist or infidel. This has resulted in the death of hundreds of Egyptians as well as foreigners and the destruction of businesses, homes, and churches. Tourism, once a major income-generator, has been badly hurt. The Egyptian Government has found its energy wasted on confronting internal security issues, rather than tackling an economy burdened by foreign debt, a population suffering from poverty and unemployment,<sup>2</sup> illiteracy and disease, and dilapidated communities and towns that lack basic services. Egyptian young men and women have been emigrating in large numbers to escape the present situation.

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2 A recent World Bank study reported a 17.5% unemployment rate in Egypt.

The armed confrontation has as well had a serious effect on the Rule of Law and fundamental rights and liberties. The drive by Islamic fundamentalists to achieve their goal by violent means has endangered the right to free expression, safety, and most of all the right to life. When Egyptian writer and intellectual Faraj Foda was assassinated in 1993 by the *Gama'a Islamiyeh*,<sup>3</sup> it was because his secular views were considered libel against Islam. On 14 October 1994, Nobel Prize winner Nageib Mahfouz was physically attacked apparently because of his secular views. In their attempt to undermine the Egyptian Government, armed groups have attacked government and parliamentary officials, security personnel, tourists and foreign-aid workers.

The Egyptian Government has so far acted with an iron fist and showed no desire to deal with the problem through dialogue. Government security forces have applied deadly force against suspected militants, a number of whom have been shot on site.

A State of Emergency was declared by President Husni Mubarak in 1981 following the assassination of the late President Anwar Sadat by Islamic militants. It continues to apply today. The Egyptian Government has applied State of Emergency laws persistently and repeatedly, undermining the country's civil legal system. Numerous suspected militants and their families were harassed, tortured and detained for long periods. Whole communities have frequently been put under curfew while labour or civil unrest was violently quelled.

State Security Courts and Military Courts have been granted jurisdiction over a wide range of acts and crimes which were under the jurisdiction of ordinary courts. Decisions handed down from these courts, including the death sentence, cannot be appealed

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3 The group had announced its responsibility for Foda's murder. The *Gama'a Islamiyeh* (the Islamic Group) is perhaps the most violent and uncompromising of Egypt's armed Islamist groups. The two other main groups are *Jibad Islami* (Islamic Jihad) and *Tala'e al-Fath* (Brigades of Conquest). Many of their members have reportedly trained in warfare in Afghanistan. The groups derive much of their support in Egypt's rural areas.

before higher courts. This has resulted in the deprivation of thousands of civilians of their right to a fair trial and the usurpation of some of the jurisdiction of the country's judicial system.

The Government, backed by a parliament composed mainly of members of the ruling National Democratic Party,<sup>4</sup> has shown little hesitation in promoting additional laws that allow for the violation of fundamental rights and liberties. These laws, known by human rights lawyers in Egypt as the *Laws of Bad Reputation*, grant the executive authorities wide powers to detain individuals, try them before military or special tribunals, confiscate their property, dismiss them from their work or ban them from their political and social functions. These and other laws have also been blamed for the monopoly of the ruling party over the political future of Egypt and the prohibition of effective by the opposition.

The end result is a society caught between militant groups and a Government that counters violence with violence.

## **2. The Egyptian Bar Association: A History of Confrontation**

Throughout the Arab World, lawyers have always been at the heart of political and ideological debates. While many lawyers participated in their respective countries' governments or parliaments, others opted for political opposition rendering themselves targets for various methods of control and restraint.

The internationally recognised lawyers' right to form or join independent professional associations<sup>5</sup> is not fully recognised in

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4 The National Democratic Party (NDP) currently occupies 383 seats in the 454-seat Parliament.

5 The right to association is recognised in Articles 20 and 23(4) of the Universal Declaration of Human Rights, in Article 22 of the International Covenant on Civil and Political Rights, and more specifically in Articles 24 and 25 of the 1990 UN Basic Principles on the Role of Lawyers.

some Arab countries.<sup>6</sup> And when lawyers' associations were permitted, they sooner or later became battlegrounds where the Government and the opposition groups competed for control. The independence of professional associations has thus been an uphill struggle that has not always succeeded.

The Egyptian Bar Association, together with the Union of Journalists, has perhaps more than any other professional association in Egypt participated in the numerous political and social debates that have characterised Egypt's turbulent modern history. It frequently took public positions that were seen as anti-government or that were thought to reflect the stance of one opposition group or another.

In 1912, it was the Egyptian Minister of Justice and respected lawyer, Sa'ad Zaghloul, who permitted the establishment of the first Bar Association in Egypt. Before the 1952 revolution, and with the exception of a brief tenure in the 1930's, elections to the Bar Council yielded members who were leading activists of the *Wafd*, the largest political party at the time. Lawyer Mokaram Obeid, the party's Secretary-General, was elected to the position of *Bâtonnier* three times in the 1930's.<sup>7</sup>

When the Free Officers took executive power from the Egyptian Monarchy in 1952, the Bar took a favourable position towards the new regime. Two years later, however, when it became clear that the military regime intended to retain absolute powers, the Bar's General Assembly met and issued a strong statement in which it denounced military rule and demanded a civilian Government. The ruling Revolutionary Command Council, headed

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6 For example, in Sudan, the Bar Association is under the control of the Minister of Labour and the Registrar of Trade Unions. In Syria, the Bar Association is obliged by law to work towards the realisation of the principles of the ruling Ba'ath Party and is required to allow government officials to attend its meetings. Saudi Arabia does not permit the establishment of a Bar Association.

7 Between 1923 and 1952, 26 out of 30 presidents of the Bar Council were members of the *Wafd*.



by Mr. Gamal Abdel Nasser, responded on 22 December 1954 by issuing Law N° 709 which dissolved the Bar Council and appointed a temporary council composed of seventeen loyalists headed by Mr. Abdel Rahman Rafi'i. In April 1958, prior to the election of a new Bar Council, Presidential Order N° 8 of 1958 was issued to condition the nomination to the Council to lawyers who were members of the only legal political party at the time,<sup>8</sup> the National Union (later transformed into the Arab Socialist Union Party). This occurred despite the fact that the law on the legal profession had forbidden the Bar Council and the Bar's General Assembly from dealing in politics or religious matters.<sup>9</sup>

In 1966, lawyer Ahmad Khawaja, the current *Bâtonnier* of the Egyptian Bar, was elected to lead the Bar. The Bar took definitive positions on the Arab-Israeli conflict, as well as other Arab nationalist issues. Two years later a new law was enacted in which the activities of the Bar Association were restricted to those that are carried out «within the framework of the Arab Socialist Union.»<sup>10</sup>

In 1971, following the death of President Abdel Nasser and the start of the term of Mr. Anwar Sadat as President of Egypt, a political struggle ensued between President Sadat and members of his government. In an attempt to undermine Mr. Sadat's leadership, several cabinet ministers and the Speaker of the Parliament resigned. Mr. Sadat, however, accepted their resignation and ordered their arrest. He then demanded that national institutions, including the Bar, support him. The Bar Council refused to render its support,<sup>11</sup> and soon, on 5 June 1971, the Bar Council was dissolved along with all other professional

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8 This condition remained in effect until May 1975.

9 Article 110 of Law N° 96 of 1957. This provision was kept out of Law N° 61 of 1968.

10 Article 2 of Law N° 61 of 1968. This condition applied until the dissolution of the Arab Socialist Union Party in 1978.

11 CIJL mission's interview with *Bâtonnier* Ahmad Khawaja on 12 August 1994.

associations. New elections were held three weeks later that resulted in the return of most of the members of the dissolved Council. Mr. Mustafa Barad'i was elected to head the Council.

In 1978, Law N° 33 was issued to accord the Socialist Prosecutor-General<sup>12</sup> the right to object to certain candidates to the Bar Council.<sup>13</sup>

That year, the Bar took a position against Egypt's peace treaty with Israel. Egyptian lawyers actively participated in the numerous demonstrations and public meetings held as a reaction to the new developments. On 13 July 1981, President Sadat ordered the Parliament back from recess to investigate what he considered as provocative acts by the Bar Council. In a message broadcast through Egypt's official media outlets and presented to the Parliament, President Sadat accused the Bar Council of undermining his government and threatening Egypt's national interests. He demanded that the Parliament form a committee to investigate the Bar Council.

The Parliament formed an investigative panel which recommended that the elected Bar Council be dissolved, and on 21 July 1981, it issued Law N° 125 which dissolved the Bar and asked the Minister of Justice to appoint a temporary Committee to run

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12 A special prosecutor with the rank of minister. See Part Two, section 6 for more details.

13 Although this condition was not binding on the Bar and was made appealable before the Administrative Courts, another law, the *Law of Protection of Ethics from Shame* (N° 95 of 1980), made it binding and appealable only before the Court of Ethics, a special court that includes non-judicial government appointees on its bench.

the Bar's affairs and propose a new law governing the legal profession in Egypt.<sup>14</sup>

A year later, however, the new law on the legal profession, which the appointed council was entrusted to draft, was still not ready and democratic elections were not in sight. On 23 July 1982, the Parliament enacted another law, N° 109, which amended Law N° 125. In the new law, the Parliament dismissed the appointed Council, and asked the Minister of Justice to appoint a new Council composed of 11 lawyers. Elections were to be held in accordance with Article 3 of Law N° 125, which meant 60 days after the enactment of a new law on the legal profession, a law to be drafted by the appointed council.

The elected *Bâtonnier*, Mr. Ahmad Khawaja, along with ten colleagues filed a case before the Supreme Constitutional Court against the President of the Republic, the Minister of Justice and the Speaker of the Parliament, challenging the constitutionality of Law N° 125.

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14 This law, *inter alia*, stipulated the following:

- a. The term of office of the current *Bâtonnier* and members of the Bar Council shall end once this law is put into effect. (Article 1);
- b. The Minister of Justice shall appoint a new Bar Council composed of 35 members chosen from among presidents and members of local Bar branches and other lawyers known for their proficiency and their service to the profession. The Minister will appoint the *Bâtonnier*, his deputy, secretary, and treasurer. (Article 2);
- c. The appointed Council shall, within one year, prepare a draft law on the legal profession to ensure the interest of lawyers and the objectives of their Bar. Elections to the Bar shall be held within 60 days after the new law is enacted. (Article 3);
- d. This law shall cancel all the provisions of Law N° 61 of 1968 *Concerning the Legal Profession* and its amendments that contradict this law. It also cancels any other provision in any other law that contradict this law. (Article 5).

In order to preempt the decision of the court, the Parliament issued Law N° 17 of 1983 which cancelled the *Law of the Legal Profession* N° 61 of 1968, as well as Law N° 125 and its amendment N° 109 of 1982. This occurred while the Supreme Constitutional Court was about to render its decision. The Government then applied to the court requesting that the case be dismissed. On 11 June 1983, however, the court rejected the Government's request citing that the petitioners' interests were affected by Law N° 125 and that its cancellation did not reverse its effects. It then ruled that indeed Law N° 125 was unconstitutional as it violated Article 56 of the Constitution which stipulates that the establishment of trade unions and associations on a democratic basis is a right guaranteed by law.<sup>15</sup>

Egyptian lawyers speak with pride about this decision and consider it proof that they can depend on their civil courts to halt government interference.

The new law concerning the legal profession, N° 17 of 1983, is still applied today. It was reportedly drafted by a group of five lawyers who are members of the Parliament and the ruling party. Several articles of this law were successfully challenged before the Supreme Constitutional Court. Public calls for the amendment of the law can still be heard today.

New elections to the Bar Council were soon held and Mr. Khawaja and other nationalist lawyers were re-elected. The number of Council members was increased from 20 to 24 in accordance with the new law.

Egyptian political parties during the past decades were extremely weak. One method of acquiring ground support, however, was to mobilise party members during elections to national institutions. When in 1992 lawyers were preparing to hold

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<sup>15</sup> See the text of the decision of the Supreme Constitutional Court, case N° 47/1981, decided on 11 June 1983, published in full by the Union of Arab Lawyers in its publication, *Al-Haq*, N° 1 (1984).

elections to the Bar Council amidst political and partisan disunity, lawyers sympathetic to the banned Moslem Brotherhood group launched an aggressive and well-organised election campaign. The result was the election of 14 Islamist lawyers, thus making them, for the first time, a majority in the 24-member council. Mr. Khawaja, however, retained his position as *Bâtonnier*.

The elected Islamist lawyers publicly stated that they intended to side-step partisan differences and provide efficient leadership as well as continue the Bar's tradition of offering legal services to all sectors of society. They argued that the Bar's objectives will be better served now that one single group has a majority in the Bar Council. Other members, however, have challenged this claim and expressed their concern that the independence and professionalism of the Bar might be undermined by the majority members in the Council. Additionally, when Islamist militant groups intensified their military campaign against government and liberal targets, it was feared that the Bar would get entangled in the violence.

The Government, on the other hand, responded to the election of the Islamist lawyers to the Bar Council by enacting a legislation that many lawyers believe is meant to manipulate the results of future Bar Council elections. Law N° 100 of 1993, to be discussed below, is blamed by lawyers for widening the gap and fuelling the friction between members of the legal profession on the one hand and the executive and the legislature on the other.

## Part II

### *The Crisis and its Causes*

# The Crisis and its Causes

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*Abdel Harith Madani*

On 17 May 1994, a few weeks prior to the CIJL mission's arrival in Cairo, the world was shocked at the sight of Egyptian riot police tear-gassing and clubbing hundreds of demonstrating lawyers, right in front of the premises of the Bar Association.

Although it was the death in police custody of lawyer Abdel Harith Madani, following his arrest on 26 April, that sparked the protest march, many lawyers thought the time was ripe to bring forward other grievances and to involve Egyptian and world public opinion in their quarrel with the Government. Most lawyers who were interviewed by the CIJL mission said that their anger and frustration have been building up for several years, that dialogue with the Government was impossible, and that their only recourse was to take to the streets.

In a meeting with the CIJL mission at the Bar Association, lawyers from various ideological and political backgrounds conveyed similar grievances about the deep crisis between themselves as lawyers and a government preoccupied with the fight against Islamic fundamentalism. The following points represent the mission's understanding of the crux of the lawyers' grievances:

1. The independence of the legal profession in Egypt is threatened by continued government interference. This interference presented itself in 1993 by the passing of Law

N° 100 concerning elections to professional associations. This law has, *inter alia*, set up a judicial committee to oversee elections of the Bar Council and posted certain requirements for these elections to be validated.

2. The right of individuals to legal defence, and the right of lawyers to accord this defence, are threatened by systematic government intimidation, arrest and abuse of the lawyers, and the administrative detention and torture of their clients.
3. The imposition of the State of Emergency since 1981 has undermined the Rule of Law in Egypt. Additionally, civilians continue to be tried before military and special courts with no possibility of appeal before the country's civil courts.
4. The arrest without due process of lawyer Abdel Harith Madani and his subsequent death while in police custody is seen as a direct attack against the legal community.
5. The violent quelling by police of the lawyers' protest march has proven that the Government will continue to restrict the lawyers' freedom of expression and to ignore their legitimate demands.

The Government, on the other hand, has acknowledged through its official press outlets, that there is a crisis between itself and the lawyers. The only cause for this crisis, according to the Government, is the attempt by Islamist groups to undermine government authority and public order. The Government accused the Bar Council of sympathising with Islamist groups. It has repeatedly accused the Bar Association Council of taking advantage of the death of Mr. Abdel Harith Madani in order to inflame anti-government sentiments and advance militant causes.

This chapter details some of the issues that in the mission's opinion represent the main causes for the crisis between the lawyers and the Government. Section One reviews Law N° 100 concerning elections to professional associations. Sections Two and Three detail lawyers complaints about government harassment,



detention, and torture of their clients. Section Four discusses the thirteen year-old State of Emergency. Section Five offers a presentation of the military and special courts and their role in undermining the Egyptian judiciary. The final section offers an example of some of the repressive laws that continue to be applied today.

## **1. Law N° 100 Threatens the Independence of the Legal Profession**

The first cause of friction between the lawyers and the Government seems to be the inability of lawyers to safeguard the Bar Association from government interference. In the past, government interference manifested itself when the elected Bar Council was dissolved three times. The dissolution and the subsequent appointment of committees to run the Bar occurred despite constitutional guarantees for the independence of the Bar.



*Gathering at the Egyptian Bar Association's headquarters*

Article 56 of the Egyptian Constitution guarantees the right to form professional associations on a democratic basis. It provides that,

«The establishment of trade unions and associations on a democratic basis is a right guaranteed by law. These institutions shall have their own legal personality.

«The law shall organise the participation of the trade unions and associations in the execution of social plans and programmes, the raising of the standard of efficiency and the consolidation of the socialist behaviour of their members, and the protection of their funds.

«They are obliged to examine their members' conduct in the course of duty in accordance with codes of ethics, and to defend the rights and liberties accorded to their members by law.»

Based on this provision, Egyptian lawyers succeeded in 1983 to obtain a court ruling<sup>16</sup> against Law N° 125 of 1981, a law that dismissed their elected *Bâtonnier* and Bar Council and had them replaced by government appointees. This monumental decision was seen by lawyers as a victory in their struggle for democracy and a blow in the face of a government often accused of trying to neutralise politically active professional associations. It was also perceived as a legal precedent that would hold back future legislative or executive action to deprive Bar members of the freedom to elect their representatives.

On 17 February 1993, however, the Parliament passed a new law covering elections to all professional associations, including the Bar. This new law provides for registered members to elect their own representatives, but it requires certain conditions to be met for election results to be accepted. If these conditions are not met, the Government is free to appoint a committee to run the affairs of the associations in question. This law, N° 100 of 1993, is entitled

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16 *Id.*

*Guarantees for the Democracy of Professional Associations.* The following are the main provisions of this law:

- For the result of the election of the head and the executive council of a professional association to be valid, half of registered members must cast their votes. If such quorum does not materialise, another election will be held within two weeks with a minimum of one-third of registered members voting. If this condition is not met, the current President and Members of the Council will retain their functions for three months during which another election will be held under the same previous conditions.<sup>17</sup>
- If it is impossible to elect the President and the Members of the Council, then a temporary committee shall be appointed to run the professional association. This committee will be headed by the longest-serving President of Cairo's Court of Appeal, in addition to four of the longest-serving members of this court, as well as four of the eldest members of the association in question on condition that they had not been candidates in the elections. The temporary committee will have the same powers of the professional association's Council and will function for six months during which new elections will be held.<sup>18</sup>
- The elections may not be held on Fridays nor during official holidays.<sup>19</sup>
- The elections shall be supervised by a judicial committee composed of the President of the Court of First Instance and four of the longest-serving members of this court. The committee shall designate the location of the election

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17 Article 2 of Law N° 100.

18 Article 3 of Law N° 100.

19 Article 5 of Law N° 100.

and will make final decisions on all that concerns the election process.<sup>20</sup>

- For every 500 members of the association, there will be an election sub-committee, keeping in mind the members' residence and place of work.<sup>21</sup>
- Voting is a professional duty. Members of the professional associations who do not cast their vote without valid excuse will be fined.<sup>22</sup>
- Executive councils of professional associations are forbidden from raising funds, accepting grants or donations for purposes other than those for which the association was created. The association shall not carry out any activity that contradicts the purposes for which it was created. Any member of the professional association may petition the Administrative Court to halt any action or measure that contradicts the provisions of this Article.<sup>23</sup>

The reaction of the associations to the enactment of this law was resolute. Lawyers, engineers and journalists went on a general strike and held stormy conferences. A joint statement by 17 professional associations rejected the law and condemned the fact that they were not consulted by the Parliament before the law was drafted.<sup>24</sup>

Most lawyers interviewed by the CIJL mission believed that this law is yet another attempt by the Egyptian authorities to

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20 Article 6(1) of Law N° 100.

21 Article 6(2) of Law N° 100.

22 Article 7 of Law N° 100.

23 Article 8 of Law N° 100.

24 See *Human Rights in the Arab World*, annual report by the Arab Organisation for Human Rights (1994).

restrict their freedom of association. They argued that election regulations should be left to association members alone without the interference of the legislature. Regardless of the outcome of the last elections, they argued, their Bar Council is an elected one.

Imposing such conditions as a turnout of half of the Bar members is unprecedented, restrictive, and may prove to be impossible.<sup>25</sup> Some lawyers told the mission that the Government is well aware that the 50 percent quorum (estimated at 60,000 members) may be impossible to reach. Many lawyers might not be able to leave their cases, offices or other commitments to vote several times as might be the case if the quorum is not met the first time around; this is especially true given that elections may not be held on Fridays or public holidays.

If the quorum specified by this law is not met, the Bar Association will be run by an appointed committee. The appointment of an external committee to run the Bar Association violates Article 56 of the Constitution and the ruling of the Supreme Constitutional Court which in 1983 invalidated a law that replaced the elected Bar Council with an appointed one.<sup>26</sup> It also contradicts the 1990 UN Basic Principles on the Role of Lawyers<sup>27</sup> which state in Article 24 that the executive body of the professional association shall be elected by its members and shall exercise its functions without external interference.

Egyptian lawyers have immense respect for their judiciary. They fear, however, that the involvement of judges in the affairs of professional associations will distract them from their judicial

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25 When the government dissolved the Bar Council in 1981, it stated that it was impossible to hold a meeting of the Bar's General Assembly to vote on the dismissal of the Bar Council since the Law Concerning the Legal Profession, N° 61 of 1968, required a quorum of 50% of Bar members. See Abdallah Khalil, *The Laws that Restrict Civil and Political Rights*, EOHR, at 184 (1993).

26 Supreme Constitutional Court case N° 47/1981, decided on 11 June 1983.

27 G.A. Res. 166, UN GAOR, 45th Sess. (1990), reprinted in 25-26 *CIJL Bulletin* 27 (1990).

functions and cause unnecessary friction between judges and Bar members. Additionally, once a judicial committee takes over the functions of the Bar Council, it will not be able to reflect the opinions of the lawyers as has been the tradition. Cases of conflict of interest might arise. Also, Egyptian judges are forbidden by law to get involved in politics.<sup>28</sup>

Furthermore, Law N° 100 turned voting into a duty rather than a choice. Members who do not vote will be fined. This unusual condition, the CIJL believes, constitutes a serious intervention in the freedom of expression and association of lawyers.

The law requires professional associations to refrain from activities that do not form part of their original objectives. The aim of this provision seems to be to restrict the involvement of professional associations in political matters. In many parts of the world, however, professional associations are also concerned with public affairs. As previously mentioned, it has been a tradition in Egypt that professional associations issue statements on current political and social issues. The CIJL mission heard from several lawyers that the Government often encourages associations that are run by pro-government councils to speak out in favour of government policies, but will not tolerate criticism from the others.

The 1990 UN Basic Principles on the Role of Lawyers is clear when it states, in Article 23, that "lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion of human rights." The Basic Principles add that "in exercising their rights, lawyers shall always conduct themselves in accordance with the law and the recognised standards and ethics of the legal profession."

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28 Article 73 of the *Law Concerning the Judicial Authority*, N° 46 of 1972, stipulates that it is «forbidden for the courts to give political opinions. It is also forbidden for judges to carry out political work [...] unless they resign.»

The CIJL mission supports these provisions. The CIJL believes that it is the duty of lawyers in every country, both in conduct of their practice and in public life, to help ensure the existence of a responsible and democratically elected legislature, an independent judiciary, and that human rights are respected.<sup>29</sup> Indeed, lawyers have the duty to be active in law reform. They should give guidance and leadership in the creation of new legal concepts, institutions and techniques.<sup>30</sup> They should be concerned with the prevalence of poverty, ignorance and inequality in society and should take a leading part in promoting measures which will help eradicate these afflictions.<sup>31</sup>

These are all public matters of legitimate concern to lawyers. Egyptian lawyers are no exception. Such concerns, however, should not take precedence over professional matters. Proper Bar Associations should always first be concerned with their correct professional functioning and the role of individual lawyers.

## **2. Harassment and Detention of Lawyers**

The second cause of friction between the lawyers and the Government seems to stem from the problems faced by lawyers who defend security prisoners. Egyptian lawyers representing individuals held for security reasons face major obstacles in the pursuit of their work. The Egyptian authorities appear to identify the lawyers with their clients and their clients' causes. This impairs the lawyers' ability to carry out their professional duties and deprives their clients of proper defence.

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29 International Commission of Jurists, 1962 Congress of Rio (Committee III), published in 25-26 CIJL Bulletin 89 (1990).

30 *Id.*

31 *Id.*



*Arrest of Lawyers*

#### **a. Extra-Judicial Detention of Lawyers**

Egyptian lawyers and officials of the Bar voiced their concern to the CIJL mission that many Egyptian lawyers who treat security cases have been arrested and detained for various periods over the years. This has become part of the risk of working in the legal profession or in the human rights field in Egypt. There are currently 44 Bar members who remain behind bars despite some having won courts orders for their release.<sup>32</sup>

Egyptian human rights activists estimate that there are no less than 150 individuals who received administrative prison orders despite having been acquitted by the various Egyptian courts or

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<sup>32</sup> EOHR press release, 19 April 1995.



after their cases were dropped by the Attorney-General's office. These administrative orders are usually issued by the Ministry of Interior in accordance with the Emergency Law. Under this law, the Minister of Interior can order the detention of individuals for up to 90 days without indictment. The law provides for the detainees to be released or indicted before the end of this period. In practice, however, new detention orders are issued to avoid releasing the detainee following the elapse of the legal period. This constitutes prolonged detention without due process.

The 44 Bar members in question were arrested over the past five years. According to their colleagues, they were mostly accused of acting as conduits between Islamist prisoners and field operatives. Many were either released without indictment by the Attorney-General or acquitted by the courts. They, however, remained behind bars through administrative orders or due to the intervention of the executive authorities who, according to the State of Emergency law, have the power to overrule decisions of the State Security Courts.<sup>33</sup>

When asked about this matter by the CIJL mission, Attorney-General Raja' Al-Arabi confirmed that administrative orders have been issued to arrest individuals and that his office has no role to play after such orders are issued «except to ensure that the detainees are treated well.» He added, however, that when a lawyer is arrested, «he will not be sent to trial without my personal approval.»

According to a survey by the Egyptian Organization for Human Rights (EOHR), many of these lawyers were detained in the first place because of their defence on behalf of suspected Islamist activists. Bar officials told the CIJL mission that the arrest of lawyers is meant to intimidate other lawyers who might accept to defend Islamist activists and other political prisoners.

Such measures violate the 1990 UN Basic Principles on the Role of Lawyers which stipulates in Article 18 that lawyers «shall

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<sup>33</sup> In accordance to Article 14 of the *State of Emergency Law*, N° 162 of 1958.

not be identified with their clients or their clients' causes as a result of discharging their functions.»

Furthermore, the *Law of the Legal Profession*<sup>34</sup> included several guarantees for lawyers. Article 47 of this law states that lawyers shall not be held responsible for the contents of their oral or written summation. Article 51 adds that:

«It is prohibited to interrogate a lawyer or search his office without the knowledge of a member of the Office of the Attorney-General.

«The Office of the Attorney-General shall notify the branch of the Bar Association sufficiently before initiating an investigation of any complaint against a lawyer. The *Bâtonnier* or the President of a branch of the Bar can attend personally or a person delegated by him, the interrogation in cases where the lawyer was accused of a felony or offence related to his work.

«The Bar Council and the Council of the branch may request copies of the interrogation records without fees.»

These are important safeguards against police abuse, common in many domestic legal systems. These guarantees, however, are not always observed by the Egyptian authorities. As will be seen later, lawyer Abdel Harith Madani, who eventually died in detention, was arrested without the knowledge of the Attorney-General or the Bar Association.

## **b. Ill-Treatment of Lawyers During Detention**

When 36 lawyers were arrested following the confrontation with the security authorities on 17 May 1994, they were ill-treated. Lawyer Mukhtar Noun told the mission:

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34 Law N° 17 of 1983.



*Cairo Bâtonnier during hunger strike protesting detention of lawyers*

«We were all kept in one cell. It was small, dirty and infected with insects. In the beginning, they only allowed us half-an-hour per day to go to the toilets. Lawyers with health problems were denied medical treatment. It is only in the last twenty days and following the intervention of international human rights organisations that we were allowed some exercise. Representatives of the Ministry of Interior used to come in and inform us that our detention will be extended, they also told us when we were going to be released. This was a proof for us that the decisions of the Ministry of Interior stood above those of the Attorney-General. Perhaps they wanted to give us this message, but in any case we knew that the decision to detain us was political and had nothing to do with the Rule of Law.»

The EOHR has collected many complaints of maltreatment of lawyers during detention. On 6 July 1994, lawyer Ramadan Ahmad was arrested while attempting to visit detainees at Abu Za'bal prison. He was referred to the State Security authorities at Lazoughly Centre where he was accused of forging his prison visit permit, a claim he denied. According to an EOHR report, he was stripped naked, blindfolded, beaten, and given electric shocks. He was released without charges on 10 July 1994. Few months following our mission, the CIJL was informed that another lawyer, identified by EOHR as Ala' Eddin Hijazi, was arrested on 6 November 1994 after he lodged an official complaint that he was harassed by Tora prison officials while visiting his clients there. During his detention, he was allegedly blindfolded, beaten and tortured by electric shocks. He was released on 17 November 1994.

### **c. Measures Affecting Lawyer-Client Confidentiality**

Lawyer Montasser Zayyat was arrested at his house on 18 May 1994 following the lawyers' street confrontation with the Egyptian police. Although all other lawyers who were arrested in relation to the confrontation were released within two months, Mr. Zayyat remained in detention until 6 December 1994. According to the Attorney-General, a new detention order was issued against Mr. Zayyat on suspicion of his involvement in a terrorism-related case.

Mr. Zayyat is known for his defence of Islamists accused of sabotage activities against the Government. What came to be known later is that the security authorities had been tapping his phone and following his activities for over a year.

Although lawyers have always suspected that they are often watched by the authorities, the revelation of Mr. Zayyat's case frightened them. They now discourage their clients and their families from discussing their cases on the telephone. And

following several incidents in which the security authorities confiscated case files from lawyers' offices, the lawyers are weary of keeping files in their offices. «We feel that the legal profession is in real danger,» veteran lawyer Ahmad Nabil Hilali told the CIJL mission.

The tapping of lawyers' phones and the confiscation of their legal case files is a grave matter because it impedes the Rule of Law. It is a grave violation of several articles of the UN Basic Principles on the Role of Lawyers. Article 22 specifically states that governments shall recognise and respect that all communications and consultations between lawyers and their clients within their professional relationship remain confidential.

#### **d. Access to Clients**

Lawyers' access to their detained clients is not a matter that they take for granted. In practice, lawyers must obtain a prison visit permit from the Attorney-General, but, according to several lawyers, this permit does not automatically guarantee them access to prisons.

According to information relayed by lawyers interviewed by the CIJL mission and corroborated by Egyptian human rights organisations, Egyptian security authorities staffing roadblocks frequently prevent lawyers from reaching a prison site and confiscate the lawyers' visit permits. On occasions, lawyers who reach their destiny are not allowed entry into the prison compound, even though the visit was pre-arranged.

Lawyers also said that they frequently have to wait several hours before being allowed inside prison compounds. They are then subjected to thorough personal inspection which may include their papers and case files. At times, these files are confiscated from them. Furthermore, according to a report by the EOHR, the administrations of at least three prisons insist on marking lawyers' hands with a prison stamp, which the lawyers find humiliating.

When they object, however, they risk having their visit permit confiscated and their visit cancelled.<sup>35</sup>

Additionally, several lawyers reported that they cannot hold private meetings with their detained clients. Visits are frequently held in the officers' room in the presence of a police or intelligence officer. In some prisons, meetings are conducted through barbed wires in the main visiting area of the prison which is often crowded with detainees and visitors.

Human rights lawyers are particularly concerned about the Tora high security prison, also known as Al-Aqgrab, which lawyers as well as detainees' families have not been able to visit since December 1993. Lawyers concerns are compounded by frequent allegations of ill-treatment of prisoners, deteriorating conditions and outbreaks of contagious diseases. In April 1994, this ban was reviewed by Cairo's Administrative Court and was abolished. The authorities, however, circumvented the decision by allowing only one visit to a single prisoner in June 1994.<sup>36</sup>

### 3. Torture in Detention

Another major concern of lawyers is the widespread use of torture. Egypt signed the *UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* in May 1986. The Egyptian Constitution prohibits physical and mental harm to detainees.<sup>37</sup> Also, the Constitution as well as the Law of Criminal Procedures provides that courts may not accept evidence extracted by force or threats.<sup>38</sup>

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35 EOHR report, *Violations of Lawyers' Rights in the Performance of their Professional Duties*, 20 December 1994.

36 EOHR press releases, 19 July 1994 and 28 February 1995.

37 Article 42 of the Constitution.

38 Article 42 of the Constitution and Article 302 of the *Law of Criminal Procedures*, Law N° 150 of 1950.

The Penal Code which dates back to 1937, however, only provides punishment for acts of torture if the torture was carried out for the purpose of extracting confessions from detainees.<sup>39</sup> This means that ill-treatment that is not aimed at extracting confessions may go unpunished. Additionally, only the Attorney-General can move the criminal case against State agents and his decision not to move the case is not subject to appeal.<sup>40</sup> According to an EOHR report, from 1986 to 1993 not a single case has been moved against suspected perpetrators of torture in political cases.<sup>41</sup>

Lawyers told the CIJL mission that they have repeatedly complained to the Egyptian authorities that torture of detainees in the various prisons, detention centres and police stations throughout Egypt is common and systematic. Additionally, several judgements by Egyptian courts judges severely criticised government tolerance in the face of solid proof of physical and mental harm done to numerous detainees.

In 1987, for example, the President of a State Security Court, after reviewing proof of severe beatings, electrocution and sexual assault, wrote in his decision that the court expresses «fright and anxiety» at the «savage manner in which the defendants were tortured.» He called on the legislator «to enact serious guarantees for the protection of prisoners from physical and mental torture while in the hands of the State and under the protection of the Constitution.»<sup>42</sup>

Such guarantees still do not exist, and as a result, many individuals have been maltreated or tortured in clear violation of Egypt's obligations under international law.

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39 Article 126 of the *Penal Code*, Law N° 58 of 1937.

40 Article 210 of the *Law of Criminal Procedures*.

41 EOHR report, *Crime Without Punishment, Torture in Egypt*, *supra* note 1, at 30 (1993).

42 Case N° 2830 of 1986 against 16 defendants accused of working for the Libyan government against the interest of Egypt. The defendants were all acquitted.

More recently, on 14 August 1993, a judge presiding over the High State Security Court in the case of suspected Islamic militants who were accused of assassinating the Egyptian Speaker of the Parliament in 1991, said in his ruling that all 16 defendants were tortured. He said that he was presented with medical proof that the defendants received electric shocks on their genitals, were beaten and were hung by their feet.

According to lawyers, torture is carried out in order to force defendants to confess to their alleged crimes, and to force them to become informers inside the prisons or in their communities. Torture comes in many forms: beating and hanging by the feet, the application of electric shocks, immersion in water and then application of further electric shocks, sexual humiliation and rape.<sup>43</sup> In April 1994, the UN Committee Against Torture expressed its concern that torture is apparently still widespread in Egypt.<sup>44</sup>

Additionally, Egyptian law allows for certain physical and mental disciplinary action against convicted prisoners. *Prison Law* N° 369 of 1956 allows prison officials to order the flogging of prisoners or their solitary incarceration for up to six months without judicial review. The majority of torture cases investigated by human rights activists occurred, however, in police stations and special detention camps set up by the State Security apparatus.

The Attorney-General denied that torture is widespread and systematic in Egypt. He told the CIJL mission that his office

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43 See EOHR report, *Crime Without Punishment, Torture in Egypt*, *supra* note 1, at 40.

44 While waiting to be cleared by the intelligence authorities at Cairo Airport, a member of the CIJL mission overheard an officer in plain clothes warning a young Arab man who had no travel documents, «If you don't answer my questions correctly I will take you upstairs, hang you by your feet and beat you to death.» A uniformed officer later told the same young man, «You had better talk to me before the *Mababeth* [Arabic for intelligence] officer returns. I may be nice to you, but he will have no mercy on you.»



manages to investigate 99 percent of all incidents involving cruel treatment of detainees and that those found guilty are sent to court or disciplined. He stated that he pays special attention to torture cases and has established a special unit in his department to investigate torture allegations. He said that recently an Egyptian court sentenced an officer to six months in prison for torture. He will not, however, provide any details concerning the number of officers charged with torture. He said, «it is not possible that while there is a confrontation between security and terrorism, I publicly announce that I am sending police officers before the courts.»

#### **4. Thirteen Years under a State of Emergency**

The State of Emergency, in place in Egypt almost constantly since 1967, presents an enormous challenge to members of the legal profession. While acknowledging that public order has been threatened by a campaign of terror by Islamist militants, it is believed that the prolonged application of the State of Emergency has only worsened the situation and contributed to the cycle of violence.

The State of Emergency was declared in November 1956 and remained in effect until March 1964. It was imposed anew in June 1967 by President Gamal Abdel Nasser in anticipation of the Six Day War with Israel. With the exception of an 18-month reprieve in 1980-81, the State of Emergency has been in force ever since. After the assassination of President Anwar Sadat in 1981, the State of Emergency was re-declared and has been routinely extended for two or three years at a time. The latest extension was on 30 June 1994.

Given the fact that the State of Emergency has been in effect for almost twenty-seven years, a parallel set of laws has been created under the State of Emergency in order to bypass the Constitution and, in wider terms, to legally undermine the Rule of Law. In fact, State of Emergency legislation, Law N° 162 and its

amendments, is referred to by Egyptian lawyers as Egypt's second constitution.<sup>45</sup>

### a. Under Domestic Law

There are several domestic legal provisions governing the State of Emergency in Egypt. Similar to many constitutions, Article 148 of the 1971 Egyptian Constitution states that the President of the Republic may declare a State of Emergency in accordance with the law and then present the declaration to the Parliament within 15 days for its approval.

The law that regulates the application of the State of Emergency preceded the 1971 Constitution however. The *Law Concerning the State of Emergency*, N° 162, was enacted on 27 September 1958 and remains in force today.<sup>46</sup> Article 1 of this law states that

«A State of Emergency can be declared whenever security or public order in the whole or part of the Republic are threatened whether because of war or a condition that can cause a war, or in case of internal disorder, or general disasters or epidemics.»

Additionally, Article 2, as amended by Law N° 37 of 1972, states:

«The declaration of the start and end of the State of Emergency is decided by the President, and shall include a citation of the reasons for the declaration, specification of the area; and specification of the date of commencement. The decision [to declare the State of

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<sup>45</sup> See *Face to Face, The EOHR's Reply to the Egyptian Government's Report to the UN*, EOHR, at 10, 41 (1993).

<sup>46</sup> The law was amended twice in 1958 and 1967, and once during Sadat's presidency in 1972.

Emergency] shall be presented to the People's Assembly (Parliament) within 15 days. If it is not presented or is not approved by the Assembly, the State of Emergency shall be considered terminated and its duration cannot be extended without the approval of the Assembly.»<sup>47</sup>

While there is the formal requirement that the legislature give its approval, legislative support of executive action has been routinely forthcoming. In reality, declaring a State of Emergency, as well as terminating it, is a tool in the hands of the executive authority.

Law N° 162 of 1958 grants sweeping powers to the executive authority. Article 3 of this law, as amended by Law N° 37 of 1972, authorises the President of the Republic of Egypt after declaring a State of Emergency to take necessary measures to protect security and public order. More specifically, adds the Article, he can take the following measures:

- a- impose restrictions on the freedom to gather, relocate, reside, or pass through specific areas or during specific periods; arrest and detain people who are suspected of being a threat to security and public order, and allow the search of individuals or places, without regard to the Penal Law;
- b- order the surveillance of letters, regardless of type; and censor newspapers, newsletters, publications, editorials, drawings, and all forms of expression, propaganda and publicity before publication, as well as controlling, confiscating, and closing down the location in which they were printed; as long as censorship of newspapers, publications and media outlets is restricted to matters that concern public safety or for national security reasons;

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47 Since multi-party elections were permitted in Egypt in 1978, the National Democratic Party has sustained an overwhelming majority in the Parliament.

- c- designate opening and closing hours of public locations and order locations, all or partial, to close down;
- d- order any individual to carry out any act and confiscate any property or real estate, in accordance to the Mobilisation Law concerning appeal and compensation;
- e- withdraw permits to carry weapons and explosives, and to control and store them;
- f- evacuate or isolate certain areas and control or restrict movement among areas.

Additionally, it is allowed, by a presidential decree, to widen the scope of the President's rights, as long as the Parliament is duly notified. When immediate situations require that orders to carry out any of the above mentioned acts are issued orally, then a written order must be made within eight days.

The powers contained in these emergency laws limit the basic freedoms and rights granted by the *Egyptian Constitution*. Constitutional provisions guarantee the right of liberty,<sup>48</sup> the sanctity of the home,<sup>49</sup> the right to free movement,<sup>50</sup> freedom of assembly,<sup>51</sup> the right to privacy,<sup>52</sup> freedom of expression,<sup>53</sup> the freedom to carry out scientific and literary research,<sup>54</sup> in addition to property rights.<sup>55</sup> While, most of these rights are not absolute, as they are limited in accordance with the law, the emergency

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48 Article 41 of the Egyptian Constitution.

49 Article 44 of the Egyptian Constitution.

50 Article 50 of the Egyptian Constitution.

51 Article 56 of the Egyptian Constitution.

52 Article 45 of the Egyptian Constitution.

53 Article 48 of the Egyptian Constitution.

54 Article 49 of the Egyptian Constitution.

55 Articles 34, 35, and 36 of the Egyptian Constitution.

provisions grant the executive wide powers, beyond what is acceptable in international law. These rights are, therefore, emptied of content.

As is discussed immediately below, international law standards provide that laws imposing limitations on the exercise of human rights should not be arbitrary or unreasonable.<sup>56</sup> These limitations must not jeopardise the essence of the right concerned.<sup>57</sup> In addition, the limitations must be interpreted strictly and in favour of the rights at issue and they should be necessary and proportionate.<sup>58</sup> The limiting clauses should be clear and accessible to everyone.<sup>59</sup> The provisions of the Egyptian emergency legislation, stated above, fail to meet these criteria.

## **b. Under International Law**

International law, specifically the International Covenant on Civil and Political Rights (ICCPR), regulates the form, nature and existence of states of emergency. The ICCPR, which has been signed and ratified by Egypt,<sup>60</sup> recognises the right of States to derogate from certain of their obligations under the Covenant when faced with exceptional circumstances. In Article 4(1), the ICCPR provides:

«In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations

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56 The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Document E/CN.4/1984/4.

57 *Id.*

58 *Id.*

59 *Id.*

60 Egypt signed the ICCPR on 4 August 1967.

under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.»

This Article is the basis of analysis of the present State of Emergency in Egypt, and its provisions and requirements need to be examined in greater depth. First, the antecedent to any exceptional measures is the phrase «in time of public emergency which threatens the life of the nation....» This condition is a clear expression of the types of situations that may warrant a State of emergency.

Even if the present struggle against terrorism does warrant the State of Emergency, there are limitations on the government's power. Under Article 4(2) of the ICCPR, the Government may not violate certain provisions of the Covenant, including the right to life and the freedom from torture.<sup>61</sup> As a signatory to the ICCPR, the Egyptian Government has undertaken to respect these rights absolutely. It may not derogate from them for any reason, circumstance, or emergency.

These rights, however, are not always respected in Egypt, and in large measure because of the State of Emergency. Torture is widespread in Egypt. As outlined above, the State of Emergency legislation allows for the systematic use of arbitrary detention, a practice that has facilitated widespread violations of the freedom from torture and the right to life.

Second, while the Government may restrict the enjoyment of certain human rights (not including, *inter alia*, the right to life and the freedom from torture), it may do so only to the extent strictly required by the exigencies of the situation. This test of strict

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<sup>61</sup> Articles 6 and 7 of the ICCPR, respectively. Nor may the State derogate from Articles 8(1-2), 11, 15, 16 and 18 of the ICCPR.

necessity is to be applied to each governmental action, each derogation from the Covenant. Furthermore, it is the government's responsibility under the ICCPR to make the reasons for such derogation known to the States Parties to the ICCPR, through the intermediary of the Secretary-General of the United Nations.

Third, the State of Emergency has seen the establishment of a parallel judicial system, the State of Emergency courts. In many cases, defendants, particularly those accused of terrorism, have been sentenced to death and executed. It has been argued that the application of the death penalty in these cases also runs counter to the ICCPR. As noted elsewhere in this report, the proceedings of the State of Emergency courts violate the due process rights of the accused. While due process itself is not non-derogable under the ICCPR, the right to life is. In these cases, a violation of the right to due process may lead to a consequent violation of the right to life, a right that must be respected absolutely.

More specifically, Article 6(2) of the ICCPR provides that:

«In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law.... This penalty can only be carried out pursuant to a final judgement rendered by a competent court.»

The question that arises is whether the State of Emergency Courts are indeed «competent» in accordance with the spirit and purpose of this Article. While the State of Emergency Courts are competent in the sense that they have lawful jurisdiction over the cases before them, it is State of Emergency legislation that accorded the jurisdiction. It can be argued that «competence» is more than an easily satisfied formal requirement. The 1985 UN Basic Principles of the Independence of the Judiciary shed light on the matter by stating in Article 5:

«Everyone has the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunal that do not use the duly established procedures of the legal

process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.»

«Competent,» then, means more than a court given jurisdiction by an emergency decree; it means a court, independent and impartial, that is able to give effect to the right to life and to other non-derogable human rights.

Finally, many Egyptian lawyers argue that the requirements set forth in Article 4 of the ICCPR are not met by the present situation, that during many of the years since 1981, the situation in Egypt has not required the imposition of a State of Emergency. As stated above, the State of Emergency was originally declared because of the war with Israel. Since the assassination of President Sadat in 1981 by a militant Islamist group, the fight against Islamists has been its primary focus. While Egypt has suffered terribly from terrorism, including attacks on civilians, many lawyers doubt that, at the present, these violent activities give rise to a public emergency which threatens the life of the nation, as required by the ICCPR. And even if it has, they argue, the measures taken by the Government exceed those which are «strictly required by the exigencies of the situation.»

Moreover, the State of Emergency seems, in fact, to have made the situation worse. When the Egyptian people are held in the crossfire between armed militant groups and the Government, the prolonged application of the State of Emergency seems to have developed a readiness to exercise violence in political conflicts and poses a situation where political groups have a vindictive attitude toward the security apparatus.

The internal political problems faced by Egypt have obviously not been solved during almost 27 years under the State of Emergency. The CIJL mission heard from lawyers that the latest wave of violence may have come as a result of years of governmental policy that deprived the citizens of their basic rights and accorded the authorities extensive powers that were readily abused. This may be a situation where a State of Emergency has caused a public emergency rather than the other way around as stipulated in the ICCPR.



## 5. Military and Special Courts Undermine the Regular Judiciary

Another cause of concern raised by lawyers is the Government's attempt to undermine the regular judiciary through the establishment of special jurisdictions with wide power.

The regular judiciary enjoys high esteem in Egyptian society. The Independence of the Judiciary has its roots in the Egyptian Constitution. Articles 165 to 173 provide that the judges are independent and immune from removal, and forbid interference by other authorities in the exercise of their judicial functions.

The regular judiciary is composed of civil and criminal courts, a separate administrative court structure, and a constitutional court. The High Council of the Judicial Authorities, a constitutional body headed by the President of the Republic supervises and co-ordinates the regular judicial bodies. It is composed of the Minister of Justice, the Attorney-General, and other senior judges. The CIJL mission was highly impressed by the integrity and wisdom of the Egyptian civilian judges it met. The mission particularly appreciated its meetings with Justice Awad el-Mur, the President of the Supreme Constitutional Court,<sup>62</sup> Judge Adel Sharif, Judge at the Supreme Constitutional Court, and the Judge Mohammed Abu El-Leil Secretary-General of the High Council of Judicial Authorities.

On the other hand, Egyptian governments have frequently resorted to the use of special courts to try political opponents. These courts are either presided over by military officers, as is the case in military courts that try civilians, or by appointed members of the judiciary. Lawyers and human rights advocates repeatedly voiced their opposition to the formation of these courts on the basis that they are not independent of influence by the Government, and that their use constitutes a violation of a person's right to be tried

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62 The President of the Constitutional Court, according to the Constitution, is third in line for the presidency of the Republic after the President of the Republic and the Speaker of the Parliament.

by the country's normal civilian legal system as provided in the ICCPR and the Egyptian Constitution. This section briefly reviews the Egyptian regular judiciary and discusses military courts as well as temporary and permanent special courts which are widely used in Egypt today.

### **a. The Military Courts**

In a country that respects the Rule of Law, the judicial system enjoys jurisdiction over all its citizens. Military tribunals may be formed to try members of the armed forces for specific crimes related to their military function. An appeal system is set up to ensure that sentenced soldiers are not disadvantaged or that their human rights violated.

The Egyptian Constitution accords Egyptian civilians the right to be tried by their civil judiciary. Article 68 stipulates that «every citizen has the right to resort to his ordinary judge.»<sup>63</sup> Until 1993, military courts had some limited jurisdiction over civilians. With the rise of Islamist attacks and the stepping up of governmental crackdown, the military courts were given wider jurisdiction over civilian matters. Hundreds of Islamist militants have been tried before military tribunals. As of 4 December 1994, 59 individuals have been sentenced to death. Forty civilians have actually been executed.

*Law of Military Rules*, N° 25 of 1966, regulates the functioning of the military courts. The law allows three categories of individuals to be tried before military courts. These are: military personnel; students in military schools and all civilian employees of the Ministry of Defence; and any individual who commits a crime inside military installations or against military targets irrespective of whether he is military or civilian person.<sup>64</sup>

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63 The word «ordinary» could also be translated as «natural.»

64 Article 4 of Law N° 25 of 1966.

Moreover, Article 6 of this law allows the President of the Republic, during a proclaimed State of Emergency, to refer any crime punishable by the Penal Code, or any other law, to the jurisdiction of the military courts. This particular provision has been the subject of legal controversy in Egypt.

On 26 October 1992, the President of the Republic decided to transfer specific files, known as the «tourism cases»,<sup>65</sup> to the Supreme Military Courts in Alexandria and Cairo.<sup>66</sup> Lawyers challenged the legality of this presidential decision before the Supreme Military Court and the Administrative Court. While the Supreme Military Court accepted the jurisdiction in these cases, the Administrative Court attempted to limit the scope of Article 6. To resolve the conflict, the Supreme Constitutional Court of Egypt was asked, on 30 January 1993, to interpret this provision. The Constitutional Court said that the President of the Republic may refer specific crimes, or particular cases after the crimes have been committed, to be tried before military courts.<sup>67</sup> In other words, the Constitutional Court supported the President's decision.

The military court system has sole jurisdiction to decide whether a certain crime falls within its competence or not.<sup>68</sup> This obviously affects the role of the civilian judicial system and makes it appear as if it was a system of exception that treats crimes which the military court system does not want to treat.

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65 These cases concern attacks by Islamist groups on tourists.

66 The trial of civilians by military courts has been opposed by Egyptian lawyers as well as by judges. In their First Justice Conference on 20 April 1986, Egyptian judges recommended that «Law N° 25 of 1966 be reviewed in order to limit the jurisdiction of military justice to military crimes which are committed by army personnel in violation of military rules.» On 14 March 1987, the First Conference for the Egyptian Association of Criminal Law recommended that «the jurisdiction of military justice system be limited to military crimes. Military judges should possess the necessary qualifications and decisions by military courts should be appealed before the Cassation Court.»

67 This referral was made in accordance with Article 6 of Law N° 25 of 1966.

68 Article 48 of Law N° 25 of 1966.

Lawyers fear the trial of civilians before military courts because there is a risk that military judges are neither qualified nor independent. They are appointed from among the ranks of the military officers<sup>69</sup> upon the recommendation of the Director of the Military Justice System and by a decision of the Minister of Defence.<sup>70</sup> The appointment is for a renewable two-year period.<sup>71</sup>

Additionally, the military courts may pass penalties including the death penalty. The decisions of these courts are subject to the confirmation of the President of the Republic. While there is a possibility of limited review by a military department, there is no possibility of appealing the decisions of the military courts. In fact, Article 117 clearly states that these decisions cannot be challenged before a judicial or administrative authority.

Complaints about the manner in which trials are conducted in the military courts are numerous. According to lawyers interviewed by the CIJL mission, defending an individual who is arrested on order of the military prosecutor is a painful task. The difficulty arises when the lawyers first try to locate their clients. There is often confusion as to what authority ordered the arrest and where the arrested individual was taken. Once the lawyer locates his client, which could take several days, he will most probably face obstacles to meet with him; when this is possible, the interview is often held in the presence of an officer who often intervenes to stop the detainee from complaining about maltreatment, or to terminate the visit altogether. Finally, the lawyer is often not accorded enough time to study the prosecution file and prepare the defence.

The Attorney-General told the CIJL mission that the authorities are required by law to respect a detainee's request for legal representation and that lawyers may reach their clients

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69 Article 55 of Law N° 25 of 1966.

70 Article 54 of Law N° 25 of 1966.

71 Article 59 of Law N° 25 of 1966.

without any difficulty. In practice, however, the law is not respected, many lawyers said.

Once in court, the military prosecutor asks the detainee if he has a lawyer. If not, the court will designate an officer or a civilian lawyer from a list of lawyers available to the court. Unprepared for the case, these lawyers will only plead for mercy on behalf of the detainees.

The International Commission of Jurists observed the first trial of civilians before a military court following the aforementioned presidential decision of 26 October 1992. In March 1993, Dr. Anis Kassim attended the trial of 49 defendants who were accused of contacting foreign countries for the purpose of damaging Egypt's interests and of forming armed groups for terrorist purposes.

Dr. Kassim observed that the lawyers were given one week to examine the case files which contained 4000 unnumbered and unorganized pages. Unable to accord their clients a proper defence, the lawyers withdrew from the case. The court appointed other lawyers, and on April 22, sentenced seven defendants to death by hanging (they were hanged on 8 July). Seventeen defendants were acquitted while the remainder received sentences ranging from two years to life in prison.

Dr. Kassim concluded in his report that the proceedings were dubiously swift and hastily conducted. The defence lawyers were not given the adequate time to prepare their defence and rebuttals. And when the defence council withdrew from the court, the court-designated alternative defence lawyers were not prepared; their defence was rhetorical and, sometimes, theatrical. It would be difficult for any objective observer to believe that due process was observed.

Egyptian human rights lawyers face a great dilemma here. While they are opposed to the trial of civilians before military courts, they cannot boycott them because they believe that it is their duty as lawyers to offer their services to defendants. *Bâtonnier*

Khawaja told the CIJL mission that as a Bar official he would move to discipline lawyers who refuse to defend civilians under any circumstances. Lawyer and veteran leftist Nabil Hilali believes, however, that to continue to accept cases in military courts is analogous to providing a fig leaf to cover governmental wrongdoing before world public opinion. Other lawyers believe that there should be more internal debate to solve this predicament.

## **b. The State Security Courts**

There are two types of State Security Courts in Egypt: one temporary and the other permanent. The temporary courts are established pursuant to the State of Emergency. The permanent ones are recognised by the Egyptian Constitution and operate on a regular basis.

### ***1. Under the State of Emergency Law***

The State of Emergency Law, N° 162 of 1958 (mentioned above), created an exceptional judicial system to deal with the violations of its provisions. In accordance with this law, Supreme and Magistrate State Security Courts for major and minor offences were established. As stated earlier, these courts operate during declared states of emergency.

Article 7 (1) stipulates that the Supreme and Magistrate State Security Courts deal with crimes that violate the decrees of the President of the Republic or of his representative. Article 9 adds that the President of the Republic or his representative may transfer to the State Security Courts crimes punishable by the regular criminal code. Following the declaration of the State of Emergency in 1967, a presidential decree transferred the jurisdiction over several crimes to the Emergency Courts.<sup>72</sup> These include: threatening the internal security of the State, bribery and

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<sup>72</sup> Presidential Decree N° 7 of 1967.

embezzlement, and possession and use of explosives. In other words, these courts have original jurisdiction over violations of presidential decrees, as well as exceptional jurisdiction when ordered to over-take the competence of normal courts over certain crimes during the State of Emergency.

According to the same law, the Magistrate State Security Court is seated in the Courts of First Instance. It is normally composed of one judge from the Court of First Instance and deals with crimes punishable by imprisonment or fines.<sup>73</sup> The President of the Republic may order, however, that the court be composed of one judge and two military officers. The Supreme State Security Court is seated in the Courts of Appeal and has jurisdiction over major crimes. It is normally composed of three judges.<sup>74</sup> The President of the Republic, however, may add two high-ranking military officers to the composition of the court. In any case, the President appoints all members of these courts after consulting the Minister of Justice regarding judges and the Minister of Defence regarding the military officers.<sup>75</sup>

Additionally, Article 8 allows the President of the Republic, in certain areas and in certain cases, to form State Security courts that are composed of military officers only. In this case, civilian judges are eliminated and an officer or a member of the Attorney-General's office prosecutes.<sup>76</sup> In other words, these courts can turn into *de facto* military courts.

The law does not specify the procedures to be used by these courts. Moreover, the President of the Republic may within 15 days overrule a State Security Court decision to release a defendant,<sup>77</sup> may prevent a case from being heard by these courts,

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73 Article 7(2) of Law N° 162 of 1958.

74 Article 7(2) of Law N° 162 of 1958.

75 Article 7(3) of Law N° 162 of 1958.

76 Article 8(2) of Law N° 162 of 1958.

77 Article 6(3) of Law N° 162 of 1958.

and may order the release of detainees before their cases are transferred to these courts.<sup>78</sup>

Such procedures depend on the decrees of the President of the Republic. Moreover, the judgements passed by these courts may not be appealed or reviewed by any other judicial body.<sup>79</sup> The execution of sentences requires the ratification of the President of the Republic.

The above raises serious concerns about the ability of these courts to conduct a fair trial. Article 5 of the UN Basic Principles on the Independence of the Judiciary states:

«Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.»

The fact that the judges and military officers are appointed and dismissed by the President of the Republic renders them partial and dependent. Such military officers do not necessarily possess legal training. They belong to the military hierarchy which may transfer, demote or promote them. When the independence of judges is in question, so is the fairness of a trial. The fact that the President of the Republic may change or annul court decisions favourable to the defendants seriously undermines the entire system. Thus the judiciary and the executive merge into one authority. This poses a major threat to the Rule of Law.

## *2. Under the Constitution*

The Egyptian legal system endorses the concept of special justice for security matters even in normal times. Article 171 of the

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<sup>78</sup> Article 13 of Law N° 162 of 1958.

<sup>79</sup> Article 12 of Law N° 162 of 1958.



Constitution states that «the law shall organise State Security Courts and specify their jurisdiction and the conditions that must prevail in its judges.»

On 1 June 1980, Law N° 105 was enacted to establish permanent State Security Courts. This took place fifteen days following the termination of the 13 year-old State of Emergency on 15 May 1980.<sup>80</sup>

For major offences, Article 1 of this law establishes a Supreme State Security Court in the seat of every Court of Appeal. The provision also states that Magistrate State Security Courts that deal with minor offences are to be established in the seat of the normal Magistrate Courts.

The Supreme State Security Court is composed of three judges from the normal Court of Appeal. The president must be of the rank of the president of the Court of Appeal. Article 2, paragraph 2, adds, however, that the President of the Republic may appoint two high-ranking military officers. This renders this court vulnerable to the influence of the executive authority. Court decisions are not subject to appeal. They may, however, be reviewed by cassation for errors in law.

The 1980 law grants these courts permanent and exclusive jurisdiction over a number of matters. Article 3 gives these courts competence over crimes listed in the Penal Code concerning major offences and felonies damaging the internal and external security of the State, crimes involving explosives, bribery, and embezzlement of public funds. The provision also lists other laws and presidential decrees that deal with political parties, economic crimes, and national unity.

The Magistrate State Security Court on the other hand has exclusive jurisdiction over certain economic matters in violation of

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<sup>80</sup> The State of Emergency was abolished by Decree N° 207 of 1980. See Mohammed Obeid, *The Independence of the Judiciary - A Comparative Study*, at 683 (1991).

decree N° 95 of 1945, decree N° 163 of 1950, as well as over crimes specified in Law N° 49 of 1977 concerning the leasing of properties and landlord-tenant relations. Their decisions may be appealed before a specialised chamber within the Court of Appeal. Decisions of this latter court are not subject to appeal but may be reviewed by cassation.

The President of the Republic may order a retrial in other courts of cases decided in these courts as well as object, alter or nullify their decisions. Such powers are granted to him by Law N° 105 as long as the State of Emergency is in force.<sup>81</sup>

In general, these courts offer better guarantees than the Emergency Courts. Additionally, as mentioned above, some State Security Courts rendered important judgements nullifying confessions on the basis that they were extracted under torture. However, the fact that military officers may be appointed to the bench and that the executive authority can alter their decisions renders them dependent and external to the regular judiciary.

## **6. The «Laws of Bad Reputation»**

The last cause of friction between the Government and the Bar is the body of laws that human rights lawyers and activists in Egypt label «Laws of Bad Reputation.»<sup>82</sup> These laws were enacted under the pretext of preserving the nation's well-being and consolidating democracy; however, human rights lawyers suspect them to help consolidate the powers of the executive authority and restrict individual freedoms.

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81 Article 10 of Law N° 105 of 1980.

82 These laws include, *inter alia*, the *State of Emergency Law*, the *Law Concerning Political Parties*, the *Law Concerning the Protection of the Internal Front and Social Peace*. Although there were changes to some of these laws in late 1994, their content and effect remain largely the same.

One of the more bizarre of this genre is the *Law Concerning the Protection of Ethics From Shame*, N° 95 which was enacted on 15 May 1980. The declared purpose of drafting this law was, inter alia, to find a balance between the protection of the rights of individuals and the protection of the security of society «in order to move the democratic system to perfection.»<sup>83</sup>

The law invents the concept of political responsibility to hold individuals accountable for acts that could be considered to undermine religious, political and social values of the Egyptian society. Violators of this law are deprived of certain political rights and banned from their political and social functions for a period of six months to five years.

A special prosecutor, known as the Socialist Prosecutor-General,<sup>84</sup> prosecutes cases before the Courts of Ethics, which are special courts that include public personalities and appointed judges.

Article 1 of Law N° 95 states that:

«The protection of basic ethics is the duty of each citizen, its breach is a shame conferring political responsibility in accordance with the provisions of this law.

«All State institutions as well as political, unionist, social and other institutions must work to protect and strengthen these values.»

Article 2 adds:

«For the purpose of applying this law, basic ethics are those principles specified in the Constitution and the law

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83 Quoted from the official transcript of the Parliament's explanatory note on this law, by Mohammed Obeid, *supra* note 80, at 701.

84 This post was first established during President Sadat's rule by virtue of Law N° 43 of 1971. This position was later confirmed by the Constitution.

which aim at protecting the rights of the people and its religious values and the political, economic, social and moral foundations, and which protect the authentic manner of the Egyptian family and the values it represents, and the protection of national unity and social peace.»

Article 3 defines the following to be crimes that carry political responsibility:

- To call for what may include a denial of divine doctrine or what may contradict its laws.
- To incite young people<sup>85</sup> to delinquency by calling for abandoning religious values or loyalty to the nation.
- To distribute or broadcast news abroad, declarations, or false, conspicuous or inciting rumours for the purpose of damaging national interest.

Violation of any article in this law can result in the following punishments, imposed for a minimum of six months to a maximum of five years:

- Banning the convicted person from candidature for the Parliament or local assemblies;
- Banning from candidature or appointment to a chair, or membership in the board of public companies, institutions, professional associations, clubs, media institutions, cooperatives and all other institutions;
- Banning from establishing political parties or participation in their administration or membership;

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85 Young people, according to this Article, are under 25 years old.

- Banning from positions or jobs which influence public opinion or the raising of young people. The convicted may be transferred to another job while maintaining his salary and right to pension and promotions as long as they were not taken away from him by law.

Needless to say, these provisions incriminate what can mostly be considered an exercise of freedom of speech, in violation of Egypt's obligation under its own constitution, as well as the ICCPR. Also, these provisions are vague and do not adequately specify the acts that they intend to incriminate. The clarity of the specification of the crime is an essential requirement of the principle of legality, which is the backbone of criminal law. Moreover, individuals suspected of breaking this law will be prosecuted not by the Attorney-General, but by the Socialist Prosecutor-General who is a government official and a presidential appointee with the rank of minister. He presents his case in front of the Court of Ethics. Both are discussed briefly below.

#### **a. The Socialist Prosecutor-General**

The position of the Socialist Prosecutor-General was created in June 1971, seven months after late President Anwar Sadat came to power. It was created as part of a law that provided for government confiscation of the funds and properties of convicted individuals under this law.<sup>86</sup> Later on, this prosecutor was given wider authority to prosecute violations of a number of laws including the aforementioned law.

On 11 September 1971, the Egyptian Constitution recognised the office of the Socialist Prosecutor-General among its articles. Article 179 states that «the Socialist Prosecutor-General shall be

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<sup>86</sup> The *Law concerning the Imposition of Guardianship and the Protection of Public Safety*, N° 34 of 1971. It provided for the confiscation of the funds and properties of individuals found guilty of gaining wealth by means of bribery, drug-dealing, etc.

responsible to take measures that guarantee the rights of the people and the safety of society and its political system, as well as the maintenance of socialist gains and the adherence to socialist behaviour.» *Law N° 95 of 1980 Concerning the Protection of Ethics from Shame* granted the Socialist Prosecutor-General wide and exclusive investigative and prosecutorial authority outside the regular judicial system.<sup>87</sup>

The President nominates the Socialist Prosecutor-General to the Parliament which must approve the appointment by a majority vote.<sup>88</sup> Additionally, the Parliament can dismiss him by a majority vote given that the motion of dismissal is backed by ten members.<sup>89</sup>

## **b. The Court of Ethics**

The Court of Ethics and the Supreme Court of Ethics have exclusive jurisdiction over violations of the *Law Concerning the Protection of Ethics from Shame*. As mentioned above, the Socialist Prosecutor-General, not the Attorney-General, prosecutes cases before these courts. In addition, public personalities share the bench with civilian judges.<sup>90</sup>

The Court of Ethics is composed of seven members. It is presided over by a vice-president of the Court of Cassation, and includes three members of the Court of Cassation or of the Courts of Appeal. and three public personalities.

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87 Article 16 stipulates that no criminal suite can be filed due to any act specified in this law except by order of the Socialist Prosecutor-General.

88 Article 5 of Law N° 95 of 1980.

89 *Id.* at Article 6(3).

90 Reacting to this law, the administrative board of the Judges Club declared on 3 February 1980 that «this law represents a virulent attack on the independence of the judiciary, and it allows for the participation of non-jurists in the process of judging citizens thus depriving them and members of the judiciary of the constitutional guarantees concerning the principle of the independence of the judiciary.»

The High Court of Ethics serves as an exclusive appeal court to the decisions of the Court of Ethics. It is composed of nine members, four of whom should come from the Court of Cassation or Courts of Appeal. Four public personalities are also added to the panel.

Legislators used a loosely worded article in the Egyptian Constitution to justify the inclusion of public personalities in the process of handing down sentences against offenders of Law N° 95 of 1980. This Article stipulates that the People will participate in establishing justice in accordance with the law.<sup>91</sup> The public personalities are appointed for non-renewable term of two years.

The CIJL mission noted that many lawyers and human rights advocates it met in Egypt believe that the Rule of Law is better served if the legislative and the executive authorities do away with the special laws and courts reviewed above. They believe that these laws and courts have contributed to the deterioration of the state of human rights in Egypt and may cause the population to lose faith in the system of the administration of justice. While recognising the danger that armed militant groups pose to society and to the Rule of Law, lawyers believe that the problem of extremism and intransigence must be tackled humanely and in accordance with the Egyptian Constitution and relevant international human rights law.

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91 Article 170 of the Constitution.

# Part III

*Death in Detention  
Sparks Protest*



# Death in Detention Sparks Protest

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## 1. The Case of Abdel Harith Madani

Lawyer Abdel Harith Madani specialised in taking cases of suspected Islamist fundamentalists who were arrested by the Egyptian authorities and accused of carrying out terrorist activities. A religious man, he was known to associate with Islamic fundamentalist groups and to speak out in favour of Islam as a way of life. He was often in contact with international human rights organisations who quoted him at times in their publications.<sup>92</sup>

On the night of 26 April 1995, Egyptian security personnel arrested Mr. Madani and took him away to an unidentified location. About ten days later, the authorities notified his family that he had died as a result of an asthma attack and demanded that they take the body for burial. Mr. Madani was buried in the presence of the police and his burial site was put under 24-hour surveillance.

Mr. Madani's family and colleagues at the Bar Association and the EOHR feared that Mr. Madani died as a result of torture or that he was intentionally killed. They asked to see the official autopsy report which was held by the Attorney-General. The Attorney-General refused their request as well as another demand by them to have a second autopsy performed by an impartial pathologist. Their suspicion was based on the following:

- Fourteen Egyptian men have died in questionable circumstances in police custody since 1993. Lawyers believe that these men died as a result of torture.

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<sup>92</sup> See for example the Middle East Watch report on Egyptian military courts (July 1993).

- While the Egyptian authorities claimed that Mr. Madani had died within 24 hours of his arrest, they announced his death eight days later.
- Mr. Madani was not known to have suffered from asthma or other chronic illnesses prior to his arrest.

Suspicion turned into outrage when the Attorney-General, who opened an investigation into the death, rejected requests from Bar officials and lawyers to provide them with copies of the official autopsy and medical reports. He also rejected the performance of a second autopsy in the presence of a pathologist designated by the Bar and Mr. Madani's family. According to the Attorney-General, the reason behind these decisions was the desire to keep the press out and to protect the investigation.<sup>93</sup>

But, as described below, the Egyptian official press quoted government officials at length as they described Mr. Madani as a dangerous terrorist with a history of anti-government activities, an allegation which lawyers saw as a justification for a murder. The press was also allowed to publish a medical report which states that Mr. Madani died from a natural cause, a report lawyers claim to be fake.

## **Two Contradicting Versions on the Cause of Mr. Madani's Death**

Until the Attorney-General publishes the conclusions of his investigation, we may never know what really happened the day following Mr. Madani's arrest. The following, however, is a presentation of two contradicting versions as investigated by the CIJL mission.

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<sup>93</sup> CIJL mission's interview with the Attorney-General, Mr. Raja' Al-Arabi, on 14 August 1994.

### a. The Official Version

A lengthy article that appeared in the government-run *Al-Mosawwer* on 27 May 1994 described the events leading to Mr. Madani's death as follows:

An officer and three soldiers arrived at the office of lawyer Madani at 11 p.m. on 26 April 1994 and informed him that the State Security Prosecutor had issued an order for his arrest, on the suspicion that he was involved in Security Case N° 235/94.<sup>94</sup> The order also allowed the search of the lawyer's office and two residences. Mr. Madani requested to see the order and was able to do so. The search of his office lasted approximately an hour and a half. The officer uncovered papers that incriminated Mr. Madani in the aforementioned case. The search was quiet and orderly.

Mr. Madani was then taken in a police vehicle to his house which was also searched. As they moved on towards his second house, Mr. Madani suddenly had breathing problems and muscle spasms, losing consciousness. Upon contacting his superiors, the officer was ordered him to take Mr. Madani to the University Mynial Hospital and keep him in the prisoner's ward in case he needed continued treatment.

At the hospital, doctors' efforts to resuscitate Mr. Madani were in vain. He died at 2 p.m. on 27 April, 14 hours after he was checked into the hospital.

The writer then quotes Dr. Mona Hijazi as saying that she first received Mr. Madani at 2 a.m. She stated that «patient Abdel Harith Madani suffered from breathing difficulty and we suspected that he had a severe asthma attack. After performing a medical check-up we noted heavy breathing and low heart activity. Despite efforts to rescue him, he did not respond positively nor did he respond to heart massages. He died at 2 p.m. on 27 April.»

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94 A case involving an Islamist leader named Talaat Mohammed Hammam, who was killed by the security authorities on 25 April 1994.

*Al-Mosawer* also published a photocopy of a medical report signed by Dr. Suheir Abdel Fattah who, the paper claimed, examined the body of Mr. Madani following his death. The report states: «an examination of the above-mentioned has proved that he has died at 2:30 p.m. on Wednesday 27 April 1994 as a result of a severe deterioration in his breathing cycle and a failure of his lungs due to a severe asthma attack. There were no signs of wounds, broken bones or bruises on the body. The body will be transferred to the pathology department in two hours following death.»

In the journalist's telephone interview with an unidentified doctor, the physician allegedly said that nobody had forced the doctors to sign false reports. However, fearing terrorist groups, she would not comment on the case of Mr. Madani.

On 14 May, the Ministry of Interior issued a statement<sup>95</sup> in which it declared that it has recently arrested several leading members of terrorist cells who are involved in case 235/94. The statement added that lawyer Abdel Harith Madani was among the dangerous terrorist elements who played a principal and important role in recent terrorist incidents.

In an interview with the government-run *Al-Akbbar* on 21 May 1994, Minister of Interior Mr. Hassan Al-Alfi was quoted as saying that Mr. Madani held an important leading position within extremists groups, acting as a liaison between extremist leaders in the prison and those on the outside. He allegedly carried operational orders back and forth, as well as distributed foreign financial support. The Minister insisted that Mr. Madani died of natural causes, adding that the pathology report rested in the hands of the Attorney-General.

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<sup>95</sup> As published in the government-run *Al-Abram* daily newspaper on 18 May 1994.

## **b. The Version of the EOHR, the Egyptian Bar and the Bar of Cairo**

Within 24 hours of Mr. Madani's arrest, the EOHR, the Bar Association and the Cairo Bar contacted the Attorney-General to protest the arrest without due process and to locate him and provide him with legal defence. The following is an outline of their efforts:

### ***1. The Intervention of the EOHR***

On 27 April, a day after Mr. Madani's arrest, EOHR officials sent the Attorney-General an urgent appeal to investigate the arrest by police of Mr. Abdel Harith Madani and another lawyer. The appeal stated that the EOHR has received information that «policemen had the night before smashed into Mr. Madani's office, ripped through his files and confiscated all his case files and papers. The policemen held Mr. Madani's clients and co-workers for two hours, then blindfolded and took him away to an unknown location.» The other lawyer who was mentioned in the appeal, Mr. Ali Hassan Sabbaq, was arrested on the morning of April 26 from his home along with two relatives who happened to be there at the time. The appeal stated that the EOHR believes that these incidents, if proven to be true, represent a grave violation of human rights and contradict international conventions and local law.

On 5 May, the EOHR sent another urgent appeal to the Attorney-General saying that it had received information on the whereabouts of Mr. Madani. He was seen inside the prisoner's ward in the Kasr Al-Eini hospital. This raised the suspicion that Mr. Madani has been tortured, the appeal said.

On May 6, Mr. Madani's family received a phone call from an officer of the police station of the *Sayida Zeinab* quarter in Cairo. The officer told them that Mr. Madani had died and that they must come to collect his body.

The next few days witnessed an active campaign by lawyers and human rights activists in search for the truth. The EOHR

interviewed an individual who was present at the burial and allegedly saw clear signs of torture on the body. The eyewitness claimed to have noticed wounds and puss on the chest and back, traces of metal cuffs around the legs, and puss all over the body. The EOHR transmitted this information to the Attorney-General and demanded that a second autopsy be performed on Mr. Madani's body to determine the cause of his death. The Organisation said that delay in taking this decision would help destroy evidence of damage to the body, which would make the determination of the cause of death impossible. If the death resulted from criminal behaviour, the delay would allow those responsible to go unpunished, the appeal said.<sup>96</sup>

The Egyptian twice-weekly *Al-Sha'ab* published a report on 13 May 1994 in which a man called Mr. Midhat Khalil Jalal claimed he had shared a detention cell with Mr. Madani on April 26, the night of his arrest. The witness gave the following testimony:

«I was taken to the headquarters of the State Security Police on *Jaber Ibn Hayan* street [...] I was locked up, along with 25 others, in a cell that is not fit for humans. On the night of Tuesday 26 April I met lawyer Abdel Harith Madani. He stayed with us in the cell for one hour. When we asked him why he was arrested, he said he didn't know. But he appeared steadfast. He was then summoned away and that was the last time we saw him.»<sup>97</sup>

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<sup>96</sup> EOHR letter to the Attorney-General, 16 May 1994.

<sup>97</sup> Mr. Jalal claimed in the same interview that violent interrogations had occurred in the building while he was in detention. He said: «Torture was often carried out at two sessions at noon and 11 p.m. When our cell door is opened at those times we are filled with fear. After men are blindfolded, they are taken to a room upstairs and hung at the door before torture begins. There would be electric shocks and whipping until the tortured stop crying, then we know that they lost consciousness. They come back to us in a miserable shape and cannot even drink water. Many come back bleeding.»

## 2. *The Intervention of the Cairo Bar*

The *Bâtonnier* of the Bar of Cairo, Mr. Abdel Aziz Mohammed, told the CIJL mission that he met with the Attorney-General the day after Mr. Madani's arrest and filed a protest on behalf of the Cairo Bar. The Attorney-General, who by law should be informed when lawyers are arrested, had apparently not been informed and, upon learning the details, appeared upset. He promised to look into the matter, according to *Bâtonnier* Mohammed.<sup>98</sup>

On May 6, *Bâtonnier* Mohammed met again with the Attorney-General and protested the fact that his promise to investigate the arrest was not followed through. *Bâtonnier* Mohammed was especially concerned that the police may have acted independently and with total disregard to the Attorney-General.

When *Bâtonnier* Mohammed met with the Attorney-General two days later for the third time, he wanted to file a suit on behalf of the Cairo Bar against the Minister of the Interior because of Mr. Madani's death. The Attorney-General responded, however, that the Bar has no right to intervene in this case. *Bâtonnier* Mohammed argued that according to the *Law Concerning the Legal Profession*, the representative of the Cairo Bar has the right to file the suit. The Attorney-General said, according to *Bâtonnier* Mohammed, «you have the right to intervene when police action affects a lawyer's integrity, not his life. What happened to Mr. Madani does not damage his integrity.»<sup>99</sup> The Attorney-General added, however, that he would accept the case if it was filed by Mr. Madani's family.

A lawyer was immediately appointed and a case against the Minister of the Interior was filed. The lawyer demanded copies of

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98 CIJL mission's interview with *Bâtonnier* Mohammed on 14 August 1994.

99 Article 138 of the *Law Concerning the Legal Profession*, N° 17 of 1983, stipulates that the *Bâtonnier* may file a court case in situations in matters related to the integrity of the Bar or one of its members.

the medical and pathology reports pertinent to Mr. Madani's case, but until the date of publication of this report, neither report has been delivered to the lawyer.

When the CIJL mission asked the Attorney-General, Mr. Raja' Al-Arabi, why he would not release those reports to the lawyer, he said that he feared that by releasing the reports, they will be leaked to the press, prejudicing his investigation.

### 3. *The Intervention of the Bar Association of Egypt*



*Ahmad Khawaja*

After learning of Mr. Madani's death, Egyptian *Bâtonnier*, Ahmad Khawaja, sent the Attorney-General an appeal stating that the Bar suspects that Mr. Madani was tortured in order to force him to confess and that he died as a result of torture, which constitutes a crime in accordance to Egyptian law.<sup>100</sup> He asked the Attorney-General to halt the burial of Mr. Madani's body and to order a second autopsy in the presence of an expert chosen by Mr. Madani's wife or by the Bar. *Bâtonnier* Khawaja also complained that Mr. Madani was arrested without due process. According to Article 51 of the *Law Concerning the Legal Profession*, the Bar Association should have been informed prior to

the arrest of a Bar member. Another reason for his protest was that the police force that arrested Mr. Madani also locked his office,

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100 Article 126 of the Penal Code, Law N° 58 of 1937 provides that if the torture victim dies, the perpetrator shall be convicted of premeditated murder.



took away the keys, and prevented his colleagues from returning to the premises. «This,» *Bâtonnier* Khawaja's appeal said, «endangers the interest of their clients.»

*Bâtonnier* Khawaja also went to meet the Attorney-General and demanded a second autopsy to be performed on Mr. Madani's body. According to *Bâtonnier* Khawaja, the Attorney-General told him that there was no need for a second autopsy since he had enough incriminating evidence.<sup>101</sup> The Attorney-General then showed *Bâtonnier* Khawaja the autopsy report.

Speaking to the CIJL mission, the Attorney-General confirmed that he had shown part of his investigation to *Bâtonnier* Khawaja. «He saw what is needed to see and he told everybody about it,» Mr. Al-Arabi said. He, however, refused to give more details adding that «the investigation is progressing, without procrastination. It will soon come to a conclusion.» Mr. Al-Arabi also refused to comment on the public allegations by the Minister of the Interior that Mr. Madani was involved with militant groups and that he transmitted messages from detained militants to field operatives.

#### 4. *The Concerns of a Member of Parliament*

Finally, the CIJL mission tried unsuccessfully to meet with a member of the Egyptian Parliament who had publicly accused the Egyptian police of killing Mr. Madani because he possessed damaging information on police wrongdoing. Following Mr. Madani's death, Mr. Kamal Khaled, an independent Parliament member and a lawyer, had announced that he had met Mr. Madani some ten days prior to his arrest. Mr. Madani had told him that imprisoned, leading members of the militant *Jihad Islami* group and others sentenced had requested that Mr. Khaled transmit a message to the Egyptian political leadership in utmost secrecy. In the message, the Islamist leaders accused unnamed security and

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101 CIJL mission's interview with *Bâtonnier* Khawaja on 12 August 1994.

political officials of conspiring with a foreign government to increase the violence and to cause further instability within Egypt. The message contained the following:

«The imprisoned Islamic leaders have recently discovered, beyond doubt, that some foreign elements have been collaborating with certain political and security officials in Egypt for the purpose of flaming the fire of terrorism in Egypt, targeting tourism and destroying the national economy. In order to prevent this conspiracy, the leaders were willing to call on their followers to halt all vindictive and avenging action. They also request that the practice of torture and the taking of hostages be halted.»<sup>102</sup>

Mr. Khaled reportedly transmitted the message to a high-ranking security official but without revealing Mr. Madani's identity. After Mr. Madani had died, Mr. Khaled wrote to the Speaker of the Parliament and the Minister of Interior requesting that the issue be discussed in Parliament.<sup>103</sup> Mr. Khaled made his interaction with Mr. Madani public during a large meeting of lawyers at the Bar Association on 12 May 1994. He also revealed that a few days earlier, the security official contacted him to see if he had received any feedback from the Minister of Interior. Mr. Khaled replied that it was too late because Mr. Madani had died.<sup>104</sup>

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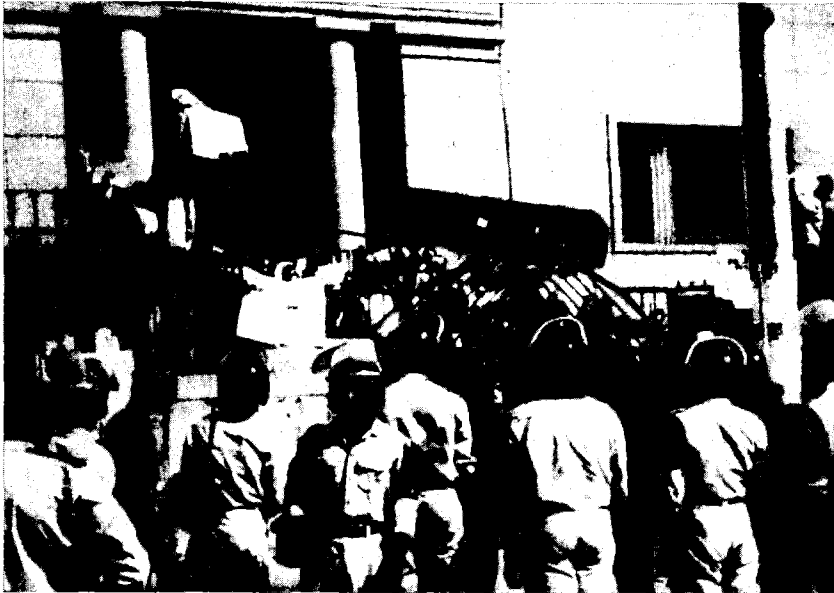
102 The CIJL has a copy of Mr. Khaled's letter to the Speaker of the Parliament and the Minister of Interior in which he quoted the contents of the message.

103 *Id.*

104 Reported in *Al-Sha'ab* newspaper, 13 May 1994.

## 2. The Confrontation

The reaction of Egyptian lawyers to Mr. Madani's death was one of anger and bitterness. Calls for legal as well as popular action came from many lawyers. On Tuesday 8 May, a large meeting was held inside the premises of the Bar Association while large police forces stood on alert outside. Lawyers from various and often conflicting political and ideological backgrounds convened to draft a common strategy to confront what they saw as an attack on justice.



In the presence of Mr. Madani's wife and two children and several representatives of political parties, speakers blamed the Government for the death of Mr. Madani, declared him a martyr and demanded punishment for those responsible for his death. The *Bâtonnier of Cairo*, Mr. Abdel Aziz Mohammed, was quoted as saying:

«The murder of Abdel Harith Madani is not merely a crime against every lawyer and the Bar, but against the whole population. The martyr's only crime was to defend the victims, and his punishment was kidnapping and murder in order to frighten the lawyers and sway them from performing their duty. This incident will however give them strength and persistence to continue to defend the people's rights.»<sup>105</sup>



Several methods of action were discussed, including a general strike and marches. Lawyers encouraged Bar officials to take up legal action against the Government and to increase their pressure on the Attorney-General to allow the performance of a second autopsy and to publish the results of his investigation.

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105 *Al Sha'ab*, 13 May 1994.

The Bar Council called for a general strike by lawyers on 15 May. The strike was observed throughout Egypt as lawyers stayed away from the courts or held sit-ins inside court houses. Some judges reportedly showed their symbolic solidarity with the lawyers by postponing hearings on pending cases.

The Bar Council, encouraged by the success of the strike, announced that the lawyers would hold a peaceful march on 17 May from the Bar building to the presidential palace where written demands were to be handed to the President. *Bâtonnier* Ahmad Khawaja objected to this plan, preferring quiet dialogue with the Government.<sup>106</sup>

On the morning of 17 May, as hundreds of lawyers flocked to the Bar from all over Egypt, Egyptian police and anti-riot security personnel closed off the area and placed themselves outside the premises of the Bar in a show of force. At noon, lawyers held a joint prayer inside the Bar and on adjacent streets.

At 1:45 p.m., as crowds of onlookers began to assemble behind police barricades, the lawyers began to chant. The subject matter of their chanting perhaps reflected the deep gap between the lawyers as citizens and their government: «The Government is terrorist,» and «Freedom, freedom, where are you?» And directing their chanting at the armed riot-police, «Shame, shame, Egyptians are about to shoot their fellow Egyptians.»<sup>107</sup>

When a dozen or so lawyers stepped outside the Bar gate, the police were given orders to fire. Several tear-gas canisters were fired directly into the lawyers. Within minutes the area around the Bar was empty, as even policemen ran away to avoid the tear-gas they had fired.

For two hours, lawyers made several attempts to reorganise and march but each time the police responded by charging into

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106 CIJL mission's interview with *Bâtonnier* Khawaja on 12 August 1994.

107 The CIJL mission was able to obtain video footage of the events described above.

them and launching canisters of tear-gas in all directions. A contingent of gun and club wielding civilian-clothed security personnel was seen beating and arresting demonstrators.

The confrontation threatened to turn into a major riot when passers-by joined in and a group of students from the nearby Sadat Academy for Administrative Science marched out chanting anti-government slogans. At one point, hundreds of people were seen running in all directions amid shouts of *Allah Akbar* (God is great). The police, however, succeeded in dispersing the crowds by late afternoon. By evening the only signs of the confrontation were empty tear-gas canisters and marks where stones had fallen on the streets just outside the Bar building.

Twenty-nine lawyers and ten other persons were detained and hurried away to police stations. An order was issued to detain them for 15 days on charges of demonstrating without a police permit, rioting, attempting to undermine the regime, and inciting against the Government. Early next morning, security forces arrived at the houses of several lawyers and detained them, including Bar Council members Mr. Mukhtar Nough, Mr. Khaled Badawi and Mr. Jalal Sa'ad.

For the next several weeks, lawyers gathered at the courts where remand hearings for those arrested were held. When the detainees were brought in or out of the courts under heavy police guard, lawyers chanted in unison «God is great.» The detainees raised their fists and flashed the victory sign.

In light of hardening government positions, the *Bâtonnier* of Cairo, Mr. Abdel Aziz Mohammed, and several of his colleagues announced a hunger strike. They sat in at the Bar and promised to continue their hunger strike until all lawyers who were arrested were released. Soon more than 30 lawyers joined in the hunger strike. Within a week several were hospitalised, increasing public sympathy as well as press coverage and government embarrassment. Lawyers told the CIJL mission that the hunger strike as well as threats of more strikes and street action forced the Government to order the release of detained lawyers and to drop the charges against them.

Reacting to the lawyer's protest campaign, Egypt's official press began to label lawyer activists as terrorists and the Bar Association as a terrorist stronghold. In one article, Mr. Seif Al-Islam Al-Banna and Mr. Mukhtar Noub, the Secretary-General and the Treasurer of the Bar Council respectively, were depicted as ex-terrorists who funnel Bar funds to terrorist organisations. Government newspapers and magazines published interviews with Minister of Interior Al-Alfi and other officials who claimed that the street confrontation was another episode in the ongoing conflict between terrorists and the security forces. Mr. Al-Alfi went further by accusing lawyers of having carried arms during the march, an accusation the lawyers fervently denied.

Meanwhile factionalism seems to have set in following at least two weeks of unity. The Bar Council appeared not to support the hunger strike led by the *Bâtonnier* of Cairo, Mr. Mohammed. *Bâtonnier* Ahmad Khawaja spoke out against his Islamic colleagues at the Council saying that they have undermined the Bar by calling for street demonstrations. Division was also noticed inside the Islamic camp at the Bar apparently because one group argued for more confrontational measures while the second wanted dialogue.

When the CIJL mission arrived in Cairo on 10 August, the atmosphere was still largely charged with tension and anxiety. The lawyers seemed adamant in their wish to resolve the issue of the death of Mr. Madani. They spoke in detail about government violations of local and international laws and the lack of personal security and basic human rights. They were dismayed by the Government and the Parliament and feared that both will enact legislation to dissolve the Bar Council. The lawyers were united in as much as they wanted to see justice done in the case of Mr. Madani. Their desire to safeguard the Bar against government interference was a shared goal. But it was clear that they were divided along factional and ideological lines, which may have had an awkward effect on their ability to advance the cause of Mr. Madani and other just causes.

# Part IV

## *CIJL Mission Conclusions and Recommendations*



# CIJL Mission Conclusions and Recommendations

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## 1. Conclusions

It is evident to the CIJL mission that the crisis between the Egyptian governments and the lawyers and human rights activists revolves around the issue of the Rule of Law. The Egyptian Government has been actively fighting a dangerous wave of armed attacks by militant Islamist groups and in the process violating the rights and liberties of Egyptian citizens. Despite Egypt's obligations under international law, the Government has imposed a State of Emergency on the country's population since 1981 and utilised military and special courts to speedily try civilians and sentence them to various terms of prison or to death without recourse to appeal before the civilian courts.

The lawyers, on the other hand, are politically active. While dedicated to the Rule of Law, they sometimes do not draw the line between political activism and the legal profession. It was encouraging, however, to note that many lawyers were exerting every effort to offer their legal services and expertise to all defendants regardless of their political or ideological backgrounds.

The Bar Association, meanwhile, continues to play its historic role as a defendant of the Rule of Law and human rights, but also as a battleground for political competition among the ruling party and opposition parties. This competition has added to governmental interference and appears to have hurt the Bar's ability to function in total independence and proficiency.

The death of lawyer Abdel Harith Madani in detention has widened the gap between the Government and the lawyers and has added to the apprehension and anxiety of lawyers attempting to uphold the Rule of Law. Mr. Madani was evidently arrested

without due process. His arrest was related to his defence of militant Islamists and possibly to his transmission of messages of dialogue and reconciliation from imprisoned militant leaders to the Government. Noting that the Attorney-General has promised the CIJL mission that the results of his investigation of Mr. Madani's death would soon be published, the mission regrets that several months have passed and that the results have not been published.

The CIJL mission is concerned about the manner in which lawyer Madani was arrested without due process. Egyptian law is clear in setting guidelines for the arrest of lawyers. Article 51 of the *Law of the Legal Profession* stipulates that lawyers cannot be investigated or their offices searched without the knowledge of the Attorney-General and the Bar Association. If in fact Mr. Madani was arrested and his office searched by an order of the police or the security apparatus, then it is clear that the law was violated, and those responsible must be investigated and brought to justice. It is also regrettable that Mr. Madani's colleagues were apparently roughed up and insulted and that his office was locked by the police, possibly preventing people seeking legal advice from obtaining it. These claims should be thoroughly investigated.

If in fact Mr. Madani underwent an asthma attack while in the police vehicle and was transferred immediately to the hospital, the CIJL mission believes that his family should have been immediately notified. The Attorney-General is also encouraged to investigate eyewitness reports that Mr. Madani was seen at the headquarters of the State Security Police, as was published in *Al-Sha'ab* newspaper. The eyewitness stated that Mr. Madani was incarcerated in what seems to be a prison cell and was tortured or maltreated. Many individuals who were screened by Egyptian human rights organisations have complained of police brutality. Many have also complained of having been tortured and raped by intelligence or State Security personnel. The CIJL mission reasserts that such behaviour violates Article 42 of the Egyptian Constitution on the treatment of arrested individuals and their imprisonment in places protected by the law.

Since Mr. Madani's family has appointed a legal counsel and filed a court case against the Minister of Interior, the appointed

lawyer should have access to all information pertinent to the case, including medical reports and the autopsy report.

## **2. Recommendations**

- The CIJL mission calls on the Egyptian Government to ensure that the measures taken under the State of Emergency are strictly required by the exigencies of the situation in accordance to Egypt's obligations under international law, particularly under the International Covenant on Civil and Political Rights.
- The Egyptian legislature should enact laws to prevent the trial of civilians before military courts. The laws allowing for the establishment of special courts should be reviewed in order to respect the right of Egyptian citizens to be tried by ordinary judges in accordance with international law.
- The legislature is also encouraged to draft forceful guarantees for the protection of detained persons against torture and other humiliating treatment. State Security personnel should be prevented from interrogating, intimidating and torturing detainees under the protection of the Prisons Service.
- Lawyers must be allowed free contact with their detained clients without intimidation or interference. The confidential contacts with their clients and their families must be respected. All lawyers who were detained for reasons related to their profession should be set free at once.
- Law N° 100 of 1993 concerning professional association should be reviewed to preserve the independence, the right to free association and the right to self-governing of professional associations, including the Bar Association

as required by the UN Basic Principles on the Role of Lawyers.

- Egyptian Bar members are encouraged to adhere to the UN Basic Principles on the Role of Lawyers in order to enhance their professionalism, independence, freedom of association and freedom of expression.
- The CIJL mission calls upon the Egyptian Government to appoint an independent judicial committee to investigate all cases of death of civilians in detention, including the case of lawyer Madani, and if found that these deaths have resulted from official acts or omissions, to prosecute those responsible.

# Annex I

## *Itinerary of the CIJL Mission to Egypt*

## *Itinerary of the CIJL Mission to Egypt* *10 -16 August 1994*

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- Wednesday 10 August      Arrival of mission members.
- Thursday 11 August
- 11 a.m.      Justice Mohammed Abu El-Leil,  
Secretary-General of the High Council  
of the Judicial Authorities.
- 1 p.m.      Advocate Seif El-Islam El-Banna,  
Secretary-General of the Bar  
Association Council, and other  
members of the Bar.
- Friday 12 August
- 2 p.m.      *Bâtonnier* Ahmad Khawaja, President  
of the Egyptian Bar Association.
- Saturday 13 August
- 11 a.m.      Mr. Mohammed Fayek, Secretary-  
General of the Arab Organisation for  
Human Rights.
- 12:30 p.m.      Justice Awad El-Mur, President of the  
Supreme Constitutional Court.
- 5 p.m.      Advocate Ahmad Nabil Hilali, human  
rights activist.
- Sunday 14 August
- 10 a.m.      Advocate Mohammed Elwan, Deputy  
Secretary-General of the Arab  
Lawyers Union and other Union  
members.
- 12:30 p.m.      Judge Raja' Al-Arabi, Attorney-  
General of Egypt.

- 5 p.m. *Bâtonnier* Abdel Aziz Mohammed,  
President of the Bar Association of  
Cairo.
- 7 p.m. Advocate Mokhtar Nouh, Treasurer of  
the Bar Association Council.
- Monday 15 August
- 11 a.m. Members of the Centre for the  
Independence of Lawyers at the Arab  
Union of Lawyers.
- 3 p.m. Advocate Nigad El-Bor'i, Secretary-  
General of the Egyptian Organisation  
for Human Rights (EOHR) and  
members of the EOHR's field research  
unit.
- Tuesday 16 August Departure of mission members.

# Annex II

*CIJL Press Release  
of 22 August 1994*



## *CIJL Press Release of 22 August 1994*

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### *CIJL Mission Evaluates the Independence of the Legal Profession in Egypt*

The death in detention of Egyptian lawyer Abdel Harith Madani following his arrest on 26 April 1994, and the subsequent friction between Egyptian lawyers and the Government of Egypt have caused much concern to members of the legal profession and human rights organisations.

Mr Madani, who defended members of Islamist groups that oppose the Egyptian Government, was arrested without due process and held *incommunicado*. He died within 48 hours of his arrest, apparently due to torture. He has become the fifteenth civilian to have died in detention in Egypt since 1993.

Egyptian lawyers expressed their anger at the incident by organising a general strike, a march that was violently quelled by the Egyptian authorities, and hunger strikes. At least thirty six lawyers were subsequently detained for various periods.

In light of these developments, the Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ) decided to conduct a fact-finding mission to Egypt with the following mandate:

1. to examine the various threats affecting the independence of the Egyptian Bar Association and its role in upholding the Rule of Law in Egypt;

2. to examine the causes and effects of the friction between the Government and the Bar; and,
3. to investigate the death of advocate Abdel Harith Madani, and whether his death is connected with any act or omission of government officials.

The mission took place between August 10 and August 17, 1994 and was composed of: Ms Asma Khader, Jordanian lawyer and ICJ Executive Committee member; Bâtonnier Georges Flecheux, former head of the Paris Bar; Mr Peter Wilborn, Assistant Legal Officer of the CIJL; and Mr Baher Alashhab, a consultant with the ICJ Secretariat.

Mission members met with representatives of the Egyptian Bar and of the Cairo Bar as well as with many members of the judiciary and the legal profession, including the president of the Constitutional Court, deputy president of the Cassation Court, members of the Arab Lawyers Union, and the General Secretary of the Arab Organisation for Human Rights. They also met with Egypt's Attorney General.

The mission would like to thank all who have met with us. We greatly appreciate the effort of our colleagues at the ICJ affiliate, the Egyptian Organisation for Human Rights, who were instrumental in our work.

The mission's preliminary findings and conclusions are as follows:

## **I In General**

Mission members found that there is a serious lack of respect for the Rule of Law in Egypt. Political violence by opposition groups, in addition to the wide use of the State of Emergency regulations since 1981, the trying of civilians in military and state security courts, and the imposition of the death sentence by these courts, have eroded people's confidence in their legal system and

spread fear and anxiety among members of the legal profession and human rights activists.

Under the State of Emergency regulations, thousands of civilians, including many lawyers, have been arrested and tried in military and state security courts. The military courts are presided over by officers without recognised legal expertise who are appointed, promoted and dismissed by the Defence Ministry. Their decisions cannot be appealed to a higher tribunal.

According to information received by mission members, military courts have since December 1992 imposed the death penalty on 55 men, including three lawyers. A single military judge imposed 26 death sentences.

Lawyers appearing before these courts complained that they are not granted sufficient time to prepare their cases, nor are they allowed to hold private meetings with their detained clients.

The apparent unlimited authority enjoyed by the State Security apparatus in Egypt has severely affected the proper administration of justice. State Security officers are known to be present inside police stations and detention centres, and to carry out violent interrogations in violation of Egyptian law.

## **II Threats Affecting the Independence of the Bar Association**

Noting that the Bar Council was dissolved three times by previous Egyptian governments, Bar members fear that the prevailing tense atmosphere might offer the Government an excuse to dissolve the Bar. The Bar Council, which has a majority of Islamist members, has been attacked repeatedly by Egypt's official press.

On 16 February 1993, Egypt's parliament passed Law N° 100 concerning professional associations. This law calls *inter alia* for the election of the Bar Council by a minimum of 50 percent of Bar

members. According to this law, if this condition is not met, another election would be held within two weeks by at least a third of the members present. If this is not possible, the Government itself eventually appoints a temporary committee to run the Bar. Bar members believe that this law was passed in order to restrict their freedom of choice and eventually force government appointees upon the Bar.

Lawyers have complained of repeated harassment by State Security authorities, including arrest while performing their duties, physical searches and verbal abuse, as well as long waiting periods before visiting their detained clients. They recount the case of detained lawyer Montaser Zayyat whose telephone conversations over a period of two years were recorded by the State and used against him during interrogations.

The members of the Egyptian Bar Association, mission members found, though united on the principle of the Rule of Law, are politically divided and appear unable to set aside their political differences in order to confront the deterioration of the state of human rights in their country. The independence of the legal profession appears threatened, not only by government action, but also by political affiliation and disunity.

### **III The Case of Abdel Harith Madani**

Lawyer Abdel Harith Madani was arrested by State Security officers from his office on 26 April 1994. His office was searched and many documents confiscated. Contrary to Egyptian law, the Bar Association was not notified of the raid nor was a representative of the Attorney General present during the arrest and search operation.

Mr. Madani was then taken to his house which was also searched and then taken to an undisclosed location. For the next ten days, attempts by his family and colleagues to locate him were met with failure.

On 6 May, his family was notified by Egyptian police to collect his dead body. He was then buried under police watch. His family demanded an independent autopsy but the Attorney General's office refused.

Official statements by the Egyptian Interior Ministry claim that Mr. Madani died as a result of an asthma attack. His family, as well as his colleagues of the Bar Association, have raised concern that he may have died as a result of torture. The Attorney General, while promising to announce the results of his office's investigation, has yet to do so.

The CIJL mission has received a copy of a written question by Egyptian parliament member, Mr Kamal Khaled, to the Egyptian Prime Minister and Interior Minister in which he stated that a few weeks before his arrest, Mr Madani had transmitted an oral message to him from leaders of the outlawed *Jihad* group who are serving prison sentences.

According to the written question, Mr Madani told Mr Khaled, that *Jihad* leaders possessed reliable information to the effect that «foreign elements» have been co-operating with certain Egyptian security and political leaders in order to «inflame the fire of terrorism in Egypt and to target tourism and destroy the national economy.»

The *Jihad* leaders were willing to call for an end to «revenge attacks» against state targets in order to abort the plans of «the foreign elements and their Egyptian collaborators.» Mr Madani had asked Mr Khaled to transmit this message to the Egyptian political leadership.

Any investigation of the death of Mr Madani should consider whether this fact had anything to do with his detention and alleged torture.

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## **Preliminary Recommendations:**

- The CIJL mission calls on the Egyptian Government to ensure that the measures taken under the State of Emergency are «strictly required by the exigencies of the situation» in accordance with Egypt's obligations under international law, particularly the International Covenant on Civil and Political Rights. Also, a halt must be put to trials of civilians in military and state security courts and to the imposition of the death penalty.
- The CIJL mission calls on the Egyptian authorities to ensure the separation of the legislative, executive and judicial authorities, and to respect the 1985 U.N. Basic Principles on the Independence of the Judiciary.
- Lawyers must be allowed free contact with their detained clients without intimidation or interference. Their confidential contacts with their clients and their families must be respected.
- Law N° 100 should be reviewed to preserve the independence, the right to free association and the right to self-governing of the Bar Association as required by the 1990 UN Basic Principles on the Role of Lawyers.
- Egyptian Bar members should adhere to the UN Principles on the Role of Lawyers. They must continue to co-operate with other members of the judiciary and legal profession to enhance their independence, freedom of association, and freedom of expression.
- The CIJL mission calls on the proper authorities to appoint an independent judicial inquiry, in accordance to article 65 of the Criminal Procedures Law, to investigate all cases of death of civilians in detention, including the case of Mr Madani, and if found that these deaths have resulted from acts or omissions, to prosecute those responsible. The authorities must ensure that torture and

*incommunicado* detention by State Security authorities is no longer a tolerated practice.

The mission report will be published in the near future.

# **Annex III**

*Comments  
by the Egyptian Government  
on the CIJL Press Release  
of 22 August 1994*



*Comments by the Egyptian Government  
on the CIJL Press Release  
of 22 August 1994*

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- 1- In its introductory part, the CIJL press release described its delegation as a «fact-finding mission;» a matter that we cannot possibly accept. [Our] rejection also entails the jurisdiction that the CIJL had accorded to its delegation as well as all its conclusions. Additionally, when the CIJL informed the Egyptian Government, through the [Egyptian] Permanent Mission in Geneva, as well as in later communications, of its intention to send a delegation, it did not point out to this unacceptable description as a framework for the visit.
- 2- The attempt by the CIJL press release to shed doubt on the degree of the respect for the Rule of Law is an unacceptable interference in the function of the judicial authority, in as much as it referred to judicial decisions and litigation as stipulated in the Constitution and national laws, in a manner that lacks the necessary respect for relevant standards by a party that is expected to be aware of them.
- 3- The press release, despite its reference to the meetings the delegation had with representatives of the Egyptian judiciary, did not explain what occurred in those meetings, but only adopted the allegations made by terrorists or those who prescribe to their inclinations, and in doing so it failed to show neutrality, accuracy and objectivity, and did not show the necessary balance in its presentation of the subject to a point where it borders on equivocation and distortion of facts. It also ascertained its support for the allegations of terrorist groups which violate human rights and basic freedoms.

- 4- An example of the aforementioned is the allegation made in the press release that the Bar Association was dissolved three times in the past. This did not happen. The incident is limited to the fact that the Bar Association resorted to the Supreme Constitutional Court, which in 1983 ruled unconstitutional the legislation which terminated the period of membership of the elected members before it had ended naturally without the consent electing body represented by the General Assembly, in violation of Article 56 of the Constitution which stipulates that syndicates and professional associations be formed on a democratic basis. This is proof of the constitutional legitimacy, the Rule of Law, and the total guarantee for freedom of opinion and expression in Egypt.
- 5- It is noteworthy to point out that representatives of the judiciary who read the CIJL press release have expressed their surprise and utter indignation because it did not conform to what went on during their meetings with the members of the delegation. The members of the delegation did not discuss any substantial matters and their questions were general, which does not correspond to the serious criticism of the function of the judicial authority and the Rule of Law that appeared in the press release.
- 6- The so-called initial recommendations listed in the CIJL press releases are totally unacceptable. They represent a clear interference in the affairs of the judicial authorities. Additionally, the CIJL has no jurisdiction to send a fact-finding mission, as previously mentioned. This is implausible within the framework of Egypt's relationship with non-governmental organisations. Furthermore, a short visit lasting a few days is, naturally, insufficient in order to produce such conclusions objectively.
- 7- The Egyptian Government has in the past years been eager to establish a serious, objective and constructive dialogue with numerous non-governmental organisations concerned with human rights, to receive their representatives and answer their inquiries. It also continues to adopt a position that supports dialogue and the exchange of opinions within the

framework of full respect for the pillars of political and parliamentary life in the country. [These pillars] are: the independence of the various authorities in the State, and the Rule of Law, in accordance to the supreme constitutional principles.

*Ministry Of Foreign Affairs  
Human Rights Affairs*

*2 November 1994*

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