



Justice at a Crossroads: The Legal Profession and the Rule of Law in the New Egypt

November 2011

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Glossary of Acronyms

ABA ROLI	American Bar Association Rule of Law Initiative
ACIJLP	Arab Centre for Independence of the Judiciary and Legal Profession
ANHRI	Arab Network for Human Rights Information
ARE	Arab Republic of Egypt
BENAA	UNDP Human Rights Capacity Building Project in Egypt
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CIHRS	Cairo Institute for Human Rights Studies
EBA	Egyptian Bar Association
ECESR	Egyptian Center for Economic and Social Rights
HMLC	Hisham Mubarak Law Center
HRW	Human Rights Watch
IBAHRI	International Bar Association's Human Rights Institute
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Commission of Jurists
IHRDA	Institute for Human Rights and Development in Africa
NDP	National Democratic Party
NGO	Non-Governmental Organisation
OHCHR	United Nations Office of the High Commissioner for Human Rights
SCAF	Supreme Council of the Armed Forces
SJC	Supreme Judicial Council
UK	United Kingdom
UN	United Nations
UNCAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNCRC	United Nations Convention on the Rights of the Child
UNDP	United Nations Development Programme

Executive Summary

On 25 January 2011, Egypt became the second country to join the democratic ‘Arab Spring’ movement, after Tunisia. The people of Egypt, led by a youth movement, took to the streets demanding change and a transition to democracy that would respect the rule of law and human rights. Today, Egypt is at a crossroads. President Mubarak – long associated with a regime that committed human rights abuses – is gone, but a new parliament, constitution and president are yet to be put in place. Since February 2011, Egypt’s transitional military administration has brought nearly 12,000 civilians before military courts. The state of emergency, almost continuously in force for 50 years, remains. At the same time, Egypt is breaking new ground. Cairo is hosting what has been called the ‘trial of the century’. Hosni Mubarak, a former Arab President, is answering to charges in an ordinary criminal courtroom. Top scholars debate a new constitution and bill of rights. Officials have committed to ratifying additional human rights treaties.

Following the International Bar Association’s Human Rights Institute’s (IBAHRI) mission to Egypt in June 2011, this report examines the challenges facing lawyers prior to and in the months immediately after Egypt’s revolution and makes recommendations for reforms that the IBAHRI believes will support the legal profession in upholding the rule of law in the New Egypt. Analysis is divided into three principal areas: the judiciary, the legal profession and the Egyptian Bar Association (EBA or ‘the Bar’). The conclusion is that although there are serious and wide-ranging challenges, there is also huge potential.

With respect to the judiciary (Chapter Three), the IBAHRI learned that military and emergency courts are both used to try civilians, although there is no guarantee of the independence of these courts. It also heard that there had been a dramatic rise in the number of civilians brought before military courts after the revolution. In the ordinary court system, the judiciary is generally well-respected. However, Egypt’s legal framework allows for potential executive influence in the appointment process for key judicial posts. Practicing lawyers also flagged a need for additional training opportunities within the judiciary, including on international human rights law.

When it came to challenges facing lawyers themselves (Chapter Four), the IBAHRI heard that lawyers faced major obstacles when trying to defend their clients before military courts. Overall, neither military nor emergency courts meet international due process standards. Some human rights lawyers reported they had been arrested or faced other forms of interference. Other obstacles related to an overpopulation of lawyers, slipping educational standards and the lack of a clear ethical code for the legal profession. Egyptian lawyers also highlighted that there was no bar exam regulating admission and that lawyers were not given adequate training, even during their early years.

As for the EBA (Chapter Five), the IBAHRI concluded from lawyers’ testimonials that in past years it had become politicised and that the organisation was not working effectively to represent, regulate or educate lawyers, or advance a pro-human rights agenda. In some ways, lawyers’ practices were over-regulated by the Bar’s rules while in other areas, such as ethics, they lacked sufficient guidance and training. Most urgently, problems with the election and voting process prevent the proper functioning of the Bar until new elections are held.

The IBAHRI sets out, at the end of its report, a range of suggested reforms to address these challenges and support the legal profession. Some can and should be implemented immediately. Trials of civilians before military courts should be stopped and emergency courts abolished. Re-trials should take place where possible before courts that respect fair trial standards. The EBA, currently being administered by a judicial committee, should clarify voting eligibility and procedures and hold fresh elections free from political interference.

Other crucial changes will take longer to bear fruit. Legislative and institutional reforms are needed, including improving due process guarantees for ordinary criminal defendants, especially at the investigation and pre-trial stages of a case. These should be complemented by reforms to legal education and training to address each step of a lawyer's professional life – university, entry to the profession and continuing legal education once in practice. This will take time.

The IBAHRI also believes that, once in place, the new management of the EBA should undertake major institutional reform to reduce over-regulation and increase efficiency. The EBA should be more active in the human rights arena, including by defending its members if they are harassed for doing human rights work. The EBA should provide for an adequate training and disciplinary process. Improvements need to be made to the system of assigning pro bono lawyers to represent indigent defendants, and lawyers should be encouraged to engage in such work. More generally, the new leadership should aim to prevent the association becoming divided along political lines and to present a vision for the organisation based on a new sense of professionalism and purpose.

The IBAHRI also encourages the new Egyptian Government to choose a path of increased engagement with international human rights systems, including by signing up to additional treaties that recognise international courts and UN human rights bodies.

Egyptian lawyers number almost half a million. It is hoped that, at this crossroads in Egypt's history, they will be a meaningful force for change that promotes the rule of law and human rights. To do otherwise would be to betray the goals of the Egyptian revolution, as well as the aspirations of those in the Arab, African or Muslim world who are inspired to follow Egypt's example.

Chapter One: Terms of Reference and Methodology

This report has been prepared following an International Bar Association's Human Rights Institute (IBAHRI) fact-finding mission to Egypt, from 18–25 June 2011, after historic popular protests led to the resignation of President Hosni Mubarak in February 2011. In light of protesters' demands for a transition to democracy that would respect the rule of law and human rights, the IBAHRI aimed to examine the challenges facing lawyers prior to and in the months immediately after Egypt's revolution and to make recommendations which would support lawyers who sought to uphold human rights in the New Egypt.

The mission's terms of reference were as follows:

1. to examine the role of lawyers in upholding the rule of law and human rights with reference to applicable domestic and international human rights standards;
2. to examine guarantees for the proper functioning of lawyers and access to legal services;
3. to examine the freedom of association of lawyers and assess the functioning of the Egyptian Bar Association (EBA) with reference to the UN Basic Principles on the Role of Lawyers;
4. to write and publish a report containing its findings; and
5. to make recommendations.

Methodology

Findings are primarily based on the 25 individual and group interviews and consultations conducted by IBAHRI delegates in Cairo from 19–24 June 2011. Delegates met a diverse group of Egyptian and international stakeholders, including: the Deputy Prime Minister; the Foreign Minister; two Supreme Constitutional Court Judges; the Treasurer and other members of the EBA; the Deputy Head of the National Council for Human Rights; numerous defence lawyers and lawyers in private practice; a professor from the American University of Cairo; representatives from eight leading Egyptian human rights NGOs; the Ambassador of the United Kingdom and other British Embassy staff; and officials from the Delegation of the European Union to Egypt. Given the subject matter of this report, the IBAHRI requested a meeting with the President of the EBA, Hamdi Khalifa, on more than one occasion. The IBAHRI received no response to its requests. The IBAHRI also submitted written requests in advance of its mission to meet the Minister of Justice and the Prosecutor-General but no response was received.

An analysis of applicable domestic and international legal instruments; secondary sources, including NGO and UN human rights reports; scholarly articles; and media reports was also undertaken. The main Egyptian laws and international standards referred to for the report were:

- 1971 Constitution of Egypt, as amended in March 2007;
- March 2011 Supreme Council of the Armed Forces Constitutional Declaration;
- Judicial Authority Law (Law No 46/1972), as amended by Law No 142/2006 and Law No 17/2007;
- Advocates Law (Law No 17/1983), as amended by Law No 197/2008;
- By-laws of the EBA, 6 October 1972;
- Military Code of Justice (Law No 25/1966) as amended by Law No 16/2007;
- Emergency Law (Law No 162/1958), as amended by Law No 50/1982;
- Law on Guarantees of the Democratic Trades Union Organisations (Law No 100/1993, as amended by Law No 5/1995);
- Supreme Constitutional Court decision on Law No 100/1993 of January 2011;
- International Covenant on Civil and Political Rights (1966);
- UN Basic Principles on Role of Lawyers (1990); and
- UN Basic Principles on the Independence of the Judiciary (1985);

Delegation Members

The IBAHRI would like to express its gratitude to the members of its fact-finding delegation. They were:

Amal Alamuddin, Rapporteur

Amal Alamuddin is a barrister at Doughty Street Chambers in London who specialises in international law, human rights, criminal law and extradition. She appears in both English and international courts and provides written advice to individuals and governments. She has particular expertise in international criminal law and the Middle East region. In addition to domestic work, she has recently acted as a legal advisor to the Royal Court of the Kingdom of Bahrain in connection with the Bahrain Independent Commission of Inquiry investigating alleged human rights abuses in Bahrain in 2011. She represented the government of Cambodia in the *Temple of Preah Vihear* case against Thailand before the International Court of Justice. And she was part of the legal team defending the head of WikiLeaks, Julian Assange, in extradition proceedings in the UK earlier this year. Amal has previously worked at several UN courts in The Hague, including as legal advisor to the presiding judge on the *Slobodan Milošević* trial at the International Criminal Tribunal for the former Yugoslavia. She was also a legal adviser to judges at the International Court of Justice and a senior legal adviser to the Prosecutor of the Special Tribunal for Lebanon, the first UN-sponsored tribunal with jurisdiction over the crime of terrorism. She studied law at St Hugh's College, Oxford University and has an LLM from New York University School of Law. She is also a qualified US lawyer and speaks fluent French and Arabic.

Raji Sourani

Raji Sourani is the Director of the Palestinian Centre for Human Rights, the International Commission of Jurists (ICJ) Affiliate in Gaza. Raji is widely considered the Gaza Strip's foremost human rights lawyer. Raji has been dedicated to the promotion and protection of human rights in the Occupied Palestinian Territory throughout his professional career. He has been an active lawyer since his qualification in 1977, representing a wide variety of victims of human rights abuses both at a domestic and international level. From 1991–1995 he was Director of the Gaza Centre for Rights and Law. Prior to this, he established his own law firm in 1983 to defend Palestinians in Israeli Military Courts and in the course of his work was arrested both by the Israeli and Palestinian authorities numerous times. In 1988 he was an Amnesty International Prisoner of Conscience. He has received numerous awards for his work, including the Bruno Kreisky Prize for Human Rights in 2002 and a joint laureate of the Robert F Kennedy Memorial for Human Rights Award in 1991. He studied law at Beirut and Alexandria Universities. Raji continues to promote and protect human rights through the Palestinian Centre for Human Rights, which he founded in 1995 with a group of fellow lawyers and human rights activists in the Gaza Strip. Raji has spearheaded this award-winning centre since its establishment and continues to ensure that the centre provides legal and other services to victims of human rights abuses in the Gaza Strip, enabling them to seek justice and reparation.

Yeo Yang-Poh

Yeo Yang-Poh is a prominent Malaysian lawyer and is a founder member of the law firm Yeo, Tan, Hoon & Tee, where he currently practises a variety of civil and commercial litigation work. He was President of the Malaysian Bar from 2005–2007; and its Vice-President from 2003–2005. During his term as Bar Council President, he was an outspoken leader of society who strongly pushed for legal and social reforms, such as the setting up of an Independent Police Complaints and Misconduct Commission. He was the first Malaysian Bar Council President to organise peaceful assemblies and marches in defiance of Malaysia's repressive laws. Yang-Poh has represented the Malaysian Bar nationally and internationally in various capacities, and has led a range of initiatives relating to the justice system, law reform, legal practice and the rule of law. He has a track record of dedication and of taking an unwavering position on matters of principle. He is committed to issues of justice and equality, human rights, accountability and good governance. His past and present efforts in enhancing the role of the bar in the Malaysian society have helped to enhance the image of the bar in the eyes of the Malaysian public. He is a recognised commentator, author and columnist in Malaysia.

Caroline Howard

Caroline Howard is a Programme Lawyer at the IBAHRI where her portfolio includes management of the IBAHRI Egypt fact-finding mission. Since 2004, Caroline has worked on a range of human rights and humanitarian aid projects for the UN and local and international NGOs in Afghanistan, Brazil, Darfur and the UK. From 2007-2010, she was deployed as a Human Rights Officer with the UN Assistance Mission in Afghanistan, where she led UN research on civilian casualties in Southern Afghanistan. She later managed two legal aid and information centres assisting internally displaced persons and refugees in North Afghanistan for the Norwegian Refugee Council. Caroline holds an LLM in International Human Rights Law from Essex University, and a BA in History from Queens' College, Cambridge University. She speaks Portuguese.

Chapter Two: Background Information

1. Egypt is the heart of the Arab world, and in many ways the cradle of the Arabic language, culture and history. It is the most populous Arab country, with approximately 85 million inhabitants, most of whom live along a narrow strip of land on either side of the river Nile. Egypt borders the Gaza Strip, Sudan and Libya. It is a key member of both the Arab League and the African Union, and has the largest army in both these groups.
2. Ninety per cent of the population in Egypt is Muslim and almost all of the remaining ten per cent are Christian. An estimated 20 million Egyptians live at or below the level of poverty, and the economic situation is deteriorating.¹ Sixty six per cent of the population is illiterate,² and many live on less than US\$50 per month.
3. After years of British occupation and then domination, the independent Republic of Egypt was born in 1952. It has had three Presidents,³ Gamal Abdel Nasser, Anwar Sadat and Hosni Mubarak – who were all military men before they became rulers. Egypt briefly became the ‘United Arab Republic’ after it united with Syria for three years from 1958. It is now the Arab Republic of Egypt.
4. In theory, Egypt’s 1971 Constitution (suspended in March 2011) creates a multi-party presidential system of government including a People’s Assembly which has the authority to legislate. In reality, significant restrictions on political activities made Egypt a one-party state. President Mubarak’s ruling National Democratic Party (NDP) never, since its creation in 1978, failed to win less than a two-thirds majority of seats in Egypt’s parliament. As a result, Presidential power has been the only significant source of authority, with the military guiding foreign policy in the background.
5. Egypt became the first Arab country to make peace with Israel by signing a peace treaty at Camp David in 1980. The state of emergency that had been in place since 1967⁴ was briefly lifted after this treaty was signed. But after a fundamentalist army officer assassinated President Sadat in 1981, the state of emergency was re-imposed by his successor, President Mubarak. It has not been lifted since.
6. The ‘Mubarak era’ lasted almost 30 years and was characterised by strict, autocratic control over Egypt with heavy state control of media, a restrained opposition movement, the denial of fundamental liberties, and rampant corruption. Thousands of political opponents were allegedly arbitrarily detained and tortured under an Emergency Law which gave the Government the right to detain individuals indefinitely, without judicial safeguards.
7. On 25 January 2011, Egypt became the second country to join the democratic ‘Arab Spring’ movement, following Tunisia. The people of Egypt, led by a youth movement active on social networking websites, took to the streets demanding change. Initially, the protests were centred

1 M Cherif Bassouni, *Egypt Update No 9, August 4, 2011*, available at: www.mideastreports.org/blog/2011/8/10/ninth-bassiouni-update-on-egypt.html.

2 See UNICEF, *Egypt Statistics*, available at: www.unicef.org/infobycountry/egypt_statistics.html.

3 There was a fourth President, General Muhammad Naguib, who was in office for just under a year before being deposed by Gamal Abdel Nasser.

4 Law No 162 of 1958 imposing the state of emergency was activated in 1967.

in Alexandria and Cairo's Tahrir Square, and focused on the death of a young boy, Khalid Said, who was believed to have been tortured and killed by the police. Protests escalated, and over the next two-and-a-half weeks, at least 840 Egyptians lost their lives and some 6,467 were injured as a result of clashes between protesters, security forces and pro-Mubarak supporters.⁵

8. On 11 February, just 18 days after protests had started, President Mubarak stepped down. That same day, Egypt's Vice-President announced that all presidential prerogatives would pass to Major General Mohamed Hussein Tantawi, who had been the Minister of Defence since 1991. As head of a 24-member Supreme Council for the Armed Forces (SCAF), he has been running the country since then. The posts of president and vice-president remain vacant.
9. In March, Egyptian voters approved a set of amendments to the suspended 1971 Constitution in a national referendum that led to the adoption of an interim 63-article Constitutional Declaration.⁶ But the constitutional changes failed to calm the Egyptian streets. Protests continued over the summer and violent clashes erupted during the autumn, including clashes between protesters and the army after a Coptic rally in October 2011 that left up to 24 people dead.
10. The country's political path going forward has become clearer in recent weeks. The sequence of political change will be, first, a new parliament, then a new constitution, and finally a new president – not 'constitution first' as some would have preferred. Elections for the lower house (People's Assembly) will be held in three stages between 28 November 2011 and 10 January 2012. The upper house (Shura Council) will also be elected in stages between late January and March 2012. Both houses will then appoint a smaller body to draft a new constitution, to be approved by national referendum. Only then will a new president be elected, probably in 2013, to take over from the SCAF.⁷
11. Egypt's judicial process since the revolution has also come under the spotlight. On 3 August the world watched their television screens as former-President Mubarak was wheeled on a stretcher into a cage in an ordinary Cairo criminal courtroom.⁸ Crowds watching on a screen outside court could be heard cheering. For many, this image symbolised the accomplishments of the revolution: bringing to justice the once all-powerful ruler of Egypt who reigned for 30 years, along with his sons and Interior Minister.
12. But the trial has also raised awkward contrasts. First, while the Mubarak trial proceeds slowly in an ordinary court, nearly 12,000 civilians accused of other crimes have been brought before hasty military trials.⁹ Secondly, while the former-President Mubarak is being charged with corruption and responsibility for the killing of 847 protesters during the 18-day revolution, crimes committed during the three decades of his presidential rule have yet to be adequately

5 OHCHR, 'Report of the OHCHR Mission to Egypt' 27 March–4 April 2011, available at: www.ohchr.org/Documents/Countries/EG/OHCHR_MissiontoEgypt27March_4April.pdf (accessed 21 September 2011), p 6.

6 See Carnegie Endowment for International Peace, 'A Haphazard Constitutional Compromise', N Brown and K Stilt, 11 April 2011, available at: <http://carnegieendowment.org/2011/04/11/haphazard-constitutional-compromise/2q1> (accessed 21 September 2011).

7 See *New York Times*, 'Egypt's Military Expands Power Raising Alarms' 14 October 2011, available at www.nytimes.com/2011/10/15/world/middleeast/egypts-military-expands-power-raising-alarms.html?partner=rss&emc=rss&src=igw. See also, Middle East and North Africa International Foundation for Electoral Systems, 'Briefing Paper, November 2011, Elections in Egypt, Analysis of the 2011 Parliamentary Electoral System', 1 November 2011, available at: www.ifes.org/~media/Files/Publications/White%20PaperReport/2011/Analysis_of_Egypt_2011_Parliamentary_Electoral_System.pdf.

8 The court was sitting at the Police Academy in Al Tagamoa Al Khames District for security purposes but its personnel and jurisdiction are unchanged.

9 According to the Head of the Military Judicial Authority, Adel el-Morsi, military trials of civilians will end when the state of emergency is lifted. See Egypt State Information Service, 6 September 2011, available at: www.sis.gov.eg/En/Story.aspx?sid=57760.

addressed. Two national commissions of inquiry formed since the revolution¹⁰ have identified individuals, including members of the Ministry of Interior and other NDP leaders, who should be prosecuted for assaults on protesters. But such prosecutions remain limited.

13. Overall, caution and concern have been injected into the euphoria and optimism that followed the revolution. The spotlight is on the legal system more than ever, but it has largely been left untouched by the country's political earthquake. It is hoped that meaningful legal and institutional reform will occur as the New Egypt starts to take shape.

2.1 Egypt's human rights record

14. Egypt has ratified eight core international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). With the exception of both optional protocols to the UN Convention on the Rights of the Child (UNCRC) it has not, however, signed the protocols that allow individuals access to the international bodies that adjudicate complaints under these treaties.¹¹ Similarly at the regional level, Egypt has ratified the African Charter on Human and People's Rights in 1984,¹² but not the Protocol to the African Charter that would give individuals access to the African Court on Human and People's Rights.¹³ It has also signed (but not ratified) the Arab Charter on Human Rights.
15. Egypt's compliance with its reporting obligations under these treaties has wavered over the years. Its fifth report under the UNCAT has been overdue since June 2004. Its most recent report under the CEDAW was submitted in 2008 as a combined sixth and seventh report. Requests to visit Egypt under UN Special Procedures, including one made in 1999 by the UN Special Rapporteur on the Independence of the Judges and Lawyers, have gone unanswered.¹⁴
16. UN human rights reports on Egypt have found serious causes for concern. The UN has singled out Egypt's decades-long state of emergency and use of military and emergency courts to try civilians. In his report to the UN in 2009, the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, observed that 'Egypt has been almost continuously governed by emergency law, which includes far-reaching restrictions on fundamental freedoms, for more than 50 years [...] [S]uch exceptional measures can be used only as a temporary tool [...] A state of emergency almost continuously in force for more than 50 years in Egypt is not a state of exceptionality; it has become the norm, which must never be the purpose of a state of emergency.'¹⁵ The

10 One was established by the National Council for Human Rights (Law No 94 of 2003) and the other by the Arab Organization for Human Rights.

11 See OHCHR database on Egypt available at: www.unhcr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet; Egypt has made reservations to Articles 2, 9, 16 and 29 of CEDAW, Article 22 of the UN Convention on the Elimination of All Forms of Racial Discrimination and Articles 20 and 21 of the UNCRC.

12 Egypt entered three reservations concerning the guarantee of freedom of conscience, non-discrimination of women and children and the right to receive information. See CIHRS-IHRDA Statement before African Commission on Egypt – 4 May 2011, available at: www.ihirda.org/2011/05/cihrs-ihirda-statement-before-african-commission-on-egypt-may-4-2011/#_ftn1 (accessed 21 September 2011).

13 See African Court on Human and Peoples' Rights website www.african-court.org/en/home (accessed 21 September 2011).

14 According to the UN, the Government of Egypt did not agree to visit requests from six special rapporteurs and one working group, see US State Department 2010 Human Rights Report at www.state.gov/g/drl/rls/hrrpt/2010/nea/154460.htm (accessed 21 September 2011).

15 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin 'Mission to Egypt', 14 October 2009, UN Doc A/HRC/13/37/Add.2, paras 5–6.

Human Rights Committee has also concluded that, ‘military courts and Emergency courts [in Egypt] have jurisdiction to try civilians [...] although there are no guarantees of those courts’ independence.’ The use of these courts to try civilians was found on this basis to be a violation of Article 14 of the ICCPR.¹⁶

17. Egypt’s state of emergency has had far-reaching negative consequences for human rights in the country. National and international human rights groups have documented countless cases of alleged torture, arbitrary detention and police brutality under Egypt’s Emergency Law. In 2010, reports made to the UN Special Rapporteur on the Independence of Judges and Lawyers include complaints by several individuals alleging arbitrary arrest and detention by the Special Forces of the State Security Investigative Service, leading the Rapporteur to conclude that this ‘might point to a pattern of violations.’¹⁷ Assessing Egypt’s overall human rights record in 2010, the Human Rights Council’s Universal Periodic Review process also uncovered a need for reform in a number of other areas, such as the right to freedom of association, discrimination against women and religious minorities, guarantees against torture, and freedom of expression.¹⁸
18. There have been some signs of improvement after the revolution. Egypt’s Foreign Minister in the first cabinet after the revolution, Dr Nabil Elaraby,¹⁹ suggested that Egypt should: (i) accept the compulsory jurisdiction of the International Court of Justice; (ii) ratify the Statute of the International Criminal Court; and (iii) ratify all un-ratified protocols to human rights conventions.²⁰ At the time of the mission, Dr Elaraby informed a member of the IBAHRI delegation that a decision had been made within the Egyptian Ministry of Foreign Affairs that *all* international protocols in the human rights arena that had not been signed or ratified would be signed and ratified. There was also reported to be a positive commitment to ratify the ICC Statute, although this issue would ultimately have to be decided by the future parliament.
19. In the New Egypt, it will fall to parliament to decide on ratifying new treaties, but any increased on-paper commitments to human rights must be matched with institutional reform if the changes are to be meaningful.

16 UN Human Rights Committee: ‘Concluding Observations of the Human Rights Committee: Egypt’, 28/11/2002, UN Doc CCPR/CO/76/EGY, available at: [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.76.EGY.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.76.EGY.En?Opendocument).

17 UN Human Rights Council: ‘Report of the Special Rapporteur on independence of judges and lawyers, Gabriela Carina Knaul de Albuquerque e Silva’ (2010) UN Doc A/HRC/14/26/Add.1 www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.26.Add.1_AV.pdf (accessed 21 September 2011).

18 UN Human Rights Council ‘Report of the Working Group on the Universal Periodic Review’ (2010) UN Doc A/HRC/14/17 available at: www.ohchr.org/EN/HRBodies/UPR/PAGES/EGSession7.aspx (accessed 21 September 2011).

19 Dr Nabil Elaraby was appointed as Secretary General of the Arab League in May 2011 and formally took office in July 2011.

20 See HRW, ‘Egypt: Important Commitment to Ratify Rome Statute’, 29 April 2011 available at: www.hrw.org/news/2011/04/29/egypt-important-commitment-ratify-rome-statute; also, Ahram Online, ‘Egypt to join International Criminal Court: Foreign Minister’, 19 April 2011, available at: <http://english.ahram.org.eg/%7E/NewsContent/1/64/10377/Egypt/Politics-/Egypt-to-join-International-Criminal-Court-Foreign.aspx>, www.shorouknews.com/Columns/Column.aspx?id=392252 (accessed 21 September 2011).

Chapter Three: The Judiciary

20. Egypt has one of the most developed and influential judicial structures in the Arab world and Egypt's judges are generally well-respected by the population. In a year when the Egyptian people took to the streets to overthrow existing state structures, 'the judiciary has actually been seen by people on the whole as the most legitimate institution in Egypt.'²¹
21. Because Egypt's legal system developed early, many Arab countries have drawn on Egyptian texts when drafting or reforming their own laws. The Egyptian legal model has been exported to states as diverse as Libya, Iraq and Yemen, as well as the Gulf states.²² Egyptian case law is routinely cited by judges and lawyers in those countries' courts, and Egyptian judges often serve as judges in these jurisdictions.
22. The eyes of the world are now on Egypt's judges as they preside over the 'trial of the century'²³ against the former President Mubarak, who is being tried in an ordinary Cairo criminal court and detained in an ordinary Egyptian jail. Criticisms of the trial range from the fear that it will be a 'show trial', dispatching swift convictions to satisfy a public thirst for revenge²⁴ to the other extreme: that President Mubarak will be acquitted because the prosecutor is too 'soft' and victims are being denied adequate access to proceedings.²⁵ But as the case continues, Egyptian judges appear confident that the judiciary will be up to the task.²⁶
23. At the time of the IBAHRI's mission, President Mubarak's upcoming trial was placing renewed focus on the Egyptian judiciary. Moreover, a dramatic increase in the use of military courts to try civilians had put judicial independence at the top of the agenda for human rights lawyers and those still protesting on Cairo's streets. The continued functioning of state security courts established under Egypt's Emergency Law ('emergency courts') also remained a major cause of concern.
24. A detailed examination of Egypt's judiciary fell beyond the scope of IBAHRI's terms of reference. Nonetheless, given that the independence of the judiciary is a fundamental pillar of a society that respects the rule of law and human rights, and that it is a prerequisite for lawyers to effect meaningful change through the law, the delegation also sought to identify the key challenges currently facing judicial independence. The IBAHRI found that the use of military courts and emergency courts to try civilians in Egypt is currently the principal challenge to

21 'Mubarak Trial an "Extraordinary Moment" for Egypt', Video, Tariq Masoud, Assistant Professor, Harvard University. See <http://vodpod.com/watch/14489103-mubarak-trial-an-extraordinary-moment-for-egypt-middle-east> (accessed 21 September 2011). See also Negad El-Borai 'The Independence of the Judiciary, The Truth as it is' (2006).

22 NJ Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge Middle East Studies), (New York: Cambridge University Press, 1997), p 1.

23 NJ Brown, 'The Trial of the Century', Foreign Policy, 3 August 2011, available at http://carnegieendowment.org/publications/index.cfm?fa=view&id=45264&solr_hilite and Radio Netherlands Worldwide, 'Mubarak Trial: History in the Making', 4 August 2011, available at www.rnw.nl/english/article/mubarak-trial-history-making (accessed 21 September 2011).

24 The Christian Science Monitor, 'Why Mubarak's trial may not bring Egypt full justice', 3 August 2011, available at: www.csmonitor.com/World/Middle-East/2011/0803/Why-Mubarak-s-trial-may-not-bring-Egypt-full-justice-VIDEO (accessed 21 September 2011).

25 Human rights organisations, lawyers, judges and families of victims have expressed doubts about investigations carried out by the general prosecutor since President Mubarak's downfall. This can be attributed to a number of factors, not least that President Mubarak himself appointed the prosecutor overseeing inquiries before leaving power. Under President Mubarak's rule, the prosecutor's office was regularly criticised for being used as a tool to silence opposition. According to human rights activists, the office was complicit with the policy of impunity.

26 NJ Brown, 'The Trial of the Century', Foreign Policy, 3 August 2011, available at http://carnegieendowment.org/publications/index.cfm?fa=view&id=45264&solr_hilite (accessed 21 September 2011).

judicial independence and the rule of law. In the ordinary court system, Egypt's laws allow for potential executive influence over judicial appointments. Finally, there is a need to increase opportunities for professional training. Each of these challenges is discussed below.

3.1 Relevant international standards

25. The independence of the judiciary is an essential aspect of the right to a fair trial enshrined in Article 14(1) of the ICCPR, Article 13(1) of the Arab Charter on Human Rights and Article 26 of the African Charter on Human and Peoples' Rights.²⁷ Judicial independence relates to several aspects of a court system, including the procedure and requirements for the appointment of judges, their security of tenure, the conditions governing promotion, transfer and suspension and the rules on judicial immunities.
26. Although the ICCPR does not prohibit the establishment of either military or special courts per se, the UN Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly in Resolutions Nos 40/32 and 40/146 of 1985, guarantee the right to trial 'by ordinary courts or tribunals using established legal procedures' and prohibit the creation of tribunals not meeting such requirements to displace ordinary courts.
27. The UN has found that trials of civilians by emergency or military courts should therefore be exceptional and limited to cases in which a state can prove both that regular civilian courts are unable to conduct the trial and also that the fairness of proceedings will be guaranteed.²⁸ Fairness includes the right to independent and impartial judges as well as due process guarantees granted to defendants,²⁹ even during a state of emergency.³⁰
28. Regional courts have reached similar conclusions. The Inter-American Commission on Human Rights has reminded member states that 'their citizens must be judged pursuant to ordinary law and justice and by their natural judges.'³¹ The European Court of Human Rights has found that 'the power of military criminal justice should not extend to civilians unless there are compelling reasons justifying such a situation and if so only on a clear and foreseeable legal basis.'³² The African Commission on Human and Peoples' Rights has taken an even stronger stand, stating that '[military courts] should not, in any circumstances whatsoever, have jurisdiction over civilians. Similarly, Special Tribunals should not try offences that fall within the jurisdiction of regular courts.'³³

27 These treaties, ratified by Egypt, have legal force domestically under Articles 151 of the 1971 Egyptian Constitution.

28 UN Human Rights Committee, General Comment No 32, 'Article 14: Right to equality before courts and tribunals and to a fair trial', 2007, UN Doc CCPR/C/GC/32, 23 August 2007, para 22 available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/437/71/PDF/G0743771.pdf?OpenElement>.

29 UN Human Rights Committee General Comment No 13 'Equality before the courts and the right to a fair and public hearing by an independent court established by law (Article 14)' (1984) available at: [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/bb722416a295f264c12563ed0049dfbd?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bb722416a295f264c12563ed0049dfbd?OpenDocument). See also: UN Human Rights Committee Concluding Observations concerning Chile (UN Doc No CCPR/C/79/Add.104), para 9; Concluding Observations concerning Poland (UN Doc No CCPR/C/79/Add.110), para 21; Concluding Observations concerning Cameroon (UN Doc No CCPR/C/79/Add.116), para 21; See also: UN Human Rights Committee *Abbassi Madani v Algeria*, Communication No 1172/2003 (2007) (UN Doc A/62/40); *Akwanga v Cameroon*, Communication No 1813/2008 (2011) (UN Doc C/101/D/1813/2008).

30 UN Human Rights Committee, Communication No 263/1987, *M Gonzalez del Rio v Peru*; and see also General Comment No 29 (2001) para 11 UN Doc CCPR/C/21/Rev.1/Add.11 available at: [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/71eba4be3974b4f7c1256ae200517361?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/71eba4be3974b4f7c1256ae200517361?OpenDocument).

31 Annual Report of the Inter-American Commission on Human Rights 1998, available at: www.cidh.oas.org/annualrep/98eng/Chapter%20VII.htm.

32 Judgment of 4 May 2006, Case of *Ergin v Turkey* (Application No 47533/99), May 2006, paras 46–49.

33 African Commission on Human and Peoples' Rights, *Media Rights Agenda (on behalf of Niran Malaolu) v Nigeria* (Communication No 224/98), 62.

29. International human rights law also requires states to adopt constitutional or statutory guarantees of judicial independence in the regular courts. Although a complete detachment of the judicial branch from the other state powers is at times unrealistic, violations of the right to a fair trial have been found where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former.³⁴ The dismissal of judges by the executive – other than for serious misconduct and in compliance with fair procedures provided for by the law, for instance – has also been held to violate Article 14(1) ICCPR.³⁵ The UN Basic Principles on the Independence of the Judiciary also require that ‘[a]ny method of judicial selection shall safeguard against judicial appointments for improper motives.’³⁶
30. Judicial ethics and professionalism are the subjects of a multitude of national, regional and international instruments.³⁷ According to the Bangalore Principles of Judicial Conduct adopted by the Judicial Integrity Group in 2001³⁸ and subsequently endorsed by several UN organs,³⁹ the core values of the judiciary include integrity, propriety, equality, competence and diligence, as well as independence and impartiality. These core values are reflected at the regional level.⁴⁰
31. The importance of continuous professional training and rigorous evaluation of judges has also been noted by the UN Special Rapporteur on the Independence of Judges and Lawyers,⁴¹ who has stated that judges: ‘should receive continuing education on human rights principles, norms, jurisprudence, declarations, guidelines and rules as a means of strengthening the national systems of administration of justice. [Moreover,] the specific role of judges within the State structure confers upon the judiciary the obligation to provide for stringent entry exams for admission as judges and subsequently for a continuing scheme of legal education.’

3.2 Egypt's judges and courts

32. The principal legislation governing Egypt's judiciary is the Judicial Authority Law (Law No 46 of 1972), most recently amended by Law No 17 of 2007. It provides for judges to be independent, and guarantees, with narrow exceptions, appointment for life.
33. Egypt's judicial system is broadly divided into four branches: (i) regular courts; (ii) constitutional courts; (iii) administrative courts; and (iv) religious courts dealing with matters

34 UN Human Rights Committee, Communication No 814/1998, *Pastukhov v Belarus*, para 7.3; UN Human Rights Committee, Communication No 933/2000, *Mundy Busyo et al v Democratic Republic of Congo*, para 5.2.

35 *Ibid.*

36 UN Basic Principles on the Independence of the Judiciary (1985), Principle 10, available at: www2.ohchr.org/english/law/indjudiciary.htm.

37 See, for example, International Criminal Court Code of Judicial Ethics (2003); European Charter on the Statute for Judges of the Council of Europe (1998); Code of Judicial Conduct by the House of Delegates of the American Bar Association (1972).

38 Judicial Group on Strengthening Judicial Integrity, Bangalore Principles of Judicial Conduct 2002, available at: www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.

39 UNCHR Res 43 (Commission on Human Rights Resolution 2003) ‘Independence /43 on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers’ UN Docs [E/CN.4/Sub.2/2003/43; UN ECOSOC Res 22]; UN Economic and Social Council Resolution 2007/22 on Strengthening basic principles of judicial conduct UN Docs E/RES/2007/22 ; UNODC; ‘UN Office on Drugs and Crime Commentary on the Bangalore Principles of Judicial Conduct’ 2007, available at: www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf.

40 African Commission on Human and People's Rights, ‘Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa’, adopted by the African Commission on Human and People's Rights in 2001, available at: www.afrimap.org/english/images/treaty/ACHPR_Principles&Guidelines_FairTrial.pdf.

41 UN Human Rights Council ‘Report of the Special Rapporteur on the independence of judges and lawyers’, 9 April 2010 UN Docs – (A/HRC/14/26 para 36). See also Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Principle I(a).

such as divorce and inheritance. The Court of Cassation serves as the final court of appeal in the ordinary court system for all criminal, civil and commercial matters. The Supreme Constitutional Court is the judicial body that maintains jurisdiction over the constitutionality of laws and regulations, and the interpretations of legislative texts. There is also the State Council that adjudicates administrative disputes and disciplinary claims. The latter has, so far, not accepted any women to judicial positions within its ranks, though no formal prohibition currently applies.

34. There are approximately 17,000 sitting judges.⁴² Roughly 3,000 lawyers apply to join the judiciary each year and 150–250 of these are successful. Generally, a new judge will work in the office of the public prosecutor until he is thirty years old, after which he is eligible for appointment as a sitting judge.⁴³ Although in theory it is possible to enter the profession as a legal academic or from private practice as a defence counsel,⁴⁴ the vast majority of judges are former prosecutors.
35. Emergency and military courts exist in parallel to Egypt's ordinary court system.
36. Emergency courts originate under Egypt's Emergency Law (Law No 162 of 1958).⁴⁵ There are two levels of emergency courts: first-tier courts composed of a High Court judge with whom the President of the Republic can appoint two military judges⁴⁶ and higher-level emergency courts composed of three Appeal Court judges, two of whom the President can replace by appointing military judges.⁴⁷ During a state of emergency, the President may refer civilians accused of crimes under the Penal Code or the Emergency Law to these courts.⁴⁸ Emergency courts can impose the death penalty; and there is no right of appeal.
37. Although there was a promise in Presidential Decree No 126 of 2010 that emergency courts would only be used for cases involving drug dealing and terrorism,⁴⁹ in September 2011 the Supreme Council of the Armed Forces (SCAF) broadened the Emergency Law to cover offences that include 'thuggery, sabotage, road blocking, and circulating or broadcasting false news, statements or rumors deliberately.'⁵⁰ Moreover, promises to lift the state of emergency have not yet been realised.
38. Military Courts are governed by the Military Code of Justice (Law No 25 of 1966), amended by Law No 138 of 2010. Their jurisdiction is based on Articles 5–6 of the Code, which provide:

42 Reuters, 'Factbox: Egypt's Constitutional Reform', 20 March 2011, available at: www.reuters.com/article/2011/03/20/us-egypt-referendum-constitution-factbox-idUSTRE72J2TT20110320 (accessed 21 September 2011).

43 See Euro-Mediterranean Human Rights Network, 'Egypt, The Independence of the Judiciary', July 2010, p 17. The requirement of 30 years of age as the minimum to be appointed judge is set out in Article 38(2) Judicial Authority Law, No 46 of 1972.

44 Chapter I of Judicial Authority Law No 46 of 1972, particularly Article 38–43.

45 Permanent state security courts were abolished in 2003. See also Euro-Mediterranean Human Rights Network, 'Egypt, The Independence of the Judiciary', July 2010, p 19 (accessed 21 September 2011).

46 Article 7 Law 162/1958, The President appoints them after consulting with the Minister of Justice and the Minister of Defence.

47 *Ibid.*

48 Law No 105 of 1980 conferred jurisdiction on these courts over crimes which constitute a threat to internal and external security of the State, the crime of possessing and using arms and explosives, bribery and embezzlement of public funds. See also Law 25 of 1966, Article 6.

49 See Egypt State Information Service, 12 May 2010, available at: www.sis.gov.eg/en/Story.aspx?sid=48275.

50 See Egypt State Information Service, 12 September 2011, available at: www.sis.gov.eg/En/Story.aspx?sid=57850.

Article 5

This Law shall apply to anyone who commits one of the following crimes:

- (a) the crimes that happen in the camps or barracks, institutions, factories, ships, aircraft or vehicles or places or shops operated by the military for the armed forces wherever they exist.
- (b) crimes that happen on equipment, supplies, weapons, ammunition and documents and the secrets of the armed forces and all Accessories.

Article 6

There shall be referral to the military justice by the President of the Republic:

- (a) Where the crime is one of the crimes set forth in sections (I and II) the book of the Penal Code and associated crimes [for example terrorism, cooperating with a foreign state] [or]
- (b) When the President has declared a state of emergency, he can transmit to the military justice any of the crimes that are punishable under the Penal Code or any other law.⁵¹

- 39. Under Article 48 of the Military Code of Justice, military judges themselves decide whether an offence is within their jurisdiction or not. This Article is currently the subject of a constitutional challenge filed by a national NGO, the Egyptian Center for Economic and Social Rights, before the Supreme Constitutional Court.⁵²
- 40. In March 2011, the Egyptian military amended the Penal Code to add the crime of ‘thuggery’, defined as ‘displaying force or threatening to use force against a victim’ with the ‘intention to intimidate or cause harm to him or his property.’⁵³ Since then, military courts have been able to try civilians for this crime.

3.3 Current challenges

- 41. The IBAHRI has identified three principal challenges in relation to the independence of the judiciary in Egypt: first, and most urgently, the practice of using military and emergency courts to try civilians; secondly, the potential for executive influence in judicial appointments and, finally, insufficient opportunities for judicial training.

(I) THE USE OF MILITARY AND EMERGENCY COURTS

- 42. During its mission, the IBAHRI learned of a dramatic increase in the number of civilian suspects being brought before military courts by the SCAF in the months immediately after the revolution.

51 Article 6(2) Law No 25 of 1966 (as amended by Law No 5 of 1970); www.redress.org/downloads/country-reports/Egypt.pdf (accessed 21 September 2011).

52 Al-Masry Al-Youm, ‘Court to Decide if Military Trials for Civilians Constitutional’, 10 September 2011. Available at: www.almasryalyoum.com/en/node/494297. Youm7.com, ‘Supreme Constitutional Court to Rule on Military Trials’, 10 September 2011. Available at: <http://english.youm7.com/News.asp?NewsID=344838b> (accessed 21 September 2011). To date, no ruling has been rendered by the Supreme Constitutional Court concerning the constitutionality of Law No 25 of 1966 or any of its Articles.

53 HRW, ‘Egypt: Military Trials Usurp Justice System’ 29 April 2011, www.hrw.org/en/news/2011/04/29/egypt-military-trials-usurp-justice-system. In July 2011, the SCAF announced that military courts would be restricted to trying civilians for a limited number of alleged offences: ‘thuggery’, rape, and assault against police officers. See www.eip.gov.eg/upload/CouncilMessages/80/68_ar.pdf (accessed 21 September 2011).

43. The SCAF has acknowledged that since February 2011, more than 12,000 civilians have been brought before hasty military trials and that the overwhelming majority have been convicted.⁵⁴ Human rights groups point out that more civilians have been put on trial in military courts since the revolution than in the 30 years before it.⁵⁵
44. There has also been a renewed use of emergency courts since the SCAF takeover. On 3 July 2011, shortly after the delegation returned from its mission, the trial of 48 defendants accused of sectarian violence in Imbaba was sent to an emergency court.⁵⁶ Media reports also suggest that following the attack on the Israeli embassy in Cairo on 9 September 2011, the SCAF announced that the persons who incited or took part in the violence will be tried before emergency courts.⁵⁷
45. The SCAF appears to justify the use of military and emergency courts to try civilians on the basis of increased crime rates and lack of security.⁵⁸ Even if this were accepted, however, the trials at these courts would have to be shown to comply with international human rights standards.
46. Based on the fact that military court judges are appointed by the Deputy Head of the Armed Forces, the IBAHRI believes that the use of these courts to try civilians undermines Egypt's ordinary judicial system and fails to meet international standards guaranteeing the right to an independent and impartial judiciary under the ICCPR. Military officers who assume the role of judges while at the same time being subject to the command structure of the armed forces lack independence from the executive.
47. Emergency courts present the similar concerns, since their judges – even if civilian – are appointed by the executive, and verdicts are subject to review by the President. The use of these courts also raises serious concerns regarding due process and the rights of the defence, and these are documented more fully in the next chapter.

(ii) POTENTIAL FOR EXECUTIVE INFLUENCE IN JUDICIAL APPOINTMENTS

48. Judicial independence in Egypt's ordinary courts is guaranteed under Articles 46 and 47 of the March 2011 Constitutional Declaration ('the Declaration').⁵⁹ Under Article 47 of the Declaration, '[j]udges are independent, cannot be [removed] and the law regulates their disciplinary accountability. [...] Judges are subject to no authority but that of the law and no authority can interfere in cases or judicial affairs.'⁶⁰ The Supreme Constitutional Court of

54 In a 5 September news conference, General Adel Morsy of the SCAF said that between 28 January and 29 August 2011, military courts tried 11,879 civilians. The courts convicted 8,071. A further 1,225 convictions are awaiting ratification by the military.

55 See UN Special Rapporteur on Counter Terrorism and Human Rights, 'Mission to Egypt' (2009), para 32; HRW 'Egypt: Retry or Free 12,000 After Unfair Military Trials', 12 September 2011, available at: www.hrw.org/news/2011/09/10/egypt-retry-or-free-12000-after-unfair-military-trials.

56 The hearing was postponed several times. See Al-Masry Al-Youm 'Imbaba incident suspects trial adjourned' 4 September 2011, available at: www.almasryalyoum.com/en/node/492186 (accessed 21 September 2011).

57 Al-Masry Al-Youm, 'Egypt to try those behind Israel mission violence in emergency court', 10 September 2011, available at: www.almasryalyoum.com/en/node/494353. BBC News, 'Egypt Vows Protection after Attack on Israeli Embassy', 10 September 2011, available at: www.bbc.co.uk/news/14864411 (accessed 21 September 2011).

58 See for example Global Issues, 'Egypt: After Mubarak, Military Trials on the Rise', 30 August 2011. www.globalissues.org/news/2011/08/30/11002 'The SCAF [...] said military trials were necessary due to the spiralling crime rates that accompanied the uprising that led to Mubarak's ouster. It insisted [...] ' [...] in this emergency situation... military courts took the place of civilian courts until they were able to work.' (Citing SCAF member Major-General Mamdouh Shaheen).

59 Articles 65, 165, and 166 of the 1971 Constitution also guarantee independence.

60 See also Article 165 and Article 107, Judiciary Authority Law (No 46 of 1972). However, there is no similar article for the Supreme Constitutional Court.

Egypt has delivered a number of decisions⁶¹ interpreting these provisions and emphasising the importance of judicial independence as a binding constitutional principle.⁶²

49. But the protection and guarantees of judicial independence provided by the Constitution are expressed to be subject to other laws. This leaves room for the executive to chip away at the broad protections under these provisions.
50. Historically, there have been notorious attempts by the governing power to suppress judicial independence. One example is the 'Massacre of Judges' in 1969. While no judges were killed, President Nasser made sure that 'those agitating politically about the rule of law' were fired or transferred to alternative administrative jobs.⁶³ Delegates heard that such explicit interference in the functioning of judges has not occurred since this time but the Judges' Club – Egypt's professional association of Judges – and other commentators have highlighted that there is still a need for reform of the appointment and disciplinary process in order to fully safeguard judicial independence in the future.⁶⁴
51. Procedures for appointments vary depending on the type of court. Generally, when a vacancy arises, the president of the court selects a judge from a list drawn up by the senior judges of that court. This choice is reviewed and approved by the Supreme Judicial Council (SJC), a seven-person board of the country's most senior judges, as well as the Attorney General, and presided over by the Chief Justice of the Court of Cassation. The SJC prepares a decree of appointment, which is signed by the President of the Republic.⁶⁵
52. Laws that allow a role for the executive in appointing judges include the following:
 - a. The President appoints the Chief Justice of the Court of Cassation, who is also the head of the SJC, from among the vice-presidents of this court, with the agreement of the SJC (Judicial Authority Law Article 44(2)).
 - b. The President appoints the Public Prosecutor from among the vice-presidents of the appeal courts, the counsellors at the Court of Cassation or prosecutors at his discretion (Judicial Authority Law Article 119).⁶⁶
 - c. The President appoints the Head of the Supreme Constitutional Court from the oldest three Deputy Heads of the Court, after the approval of the Court's general assembly (Law on the Supreme Constitutional Court No 48 of 1979, amended by Law No 48 of 2011).

61 In a landmark decision concerning the powers of a bankruptcy judge, the Supreme Constitutional Court of Egypt reviewed the principle of judicial independence and explained its importance to a democratic society (Case No 34 for the 16th Judicial Year, decided on 15 June 1996, published in The Official Gazette No 25, 27 June 1996).

62 *Judicial Independence in the Arab World*. Prepared by Adel Omar Sherif and NJ Brown for UNDP-POGAR. 2002, English version, para 9.

63 A Shalakany, 'I Heard it All Before – Egyptian Tales of Law and Development', 27(5) [2006] *Third World Quarterly*, 833, at 847.

64 See, for example, B Rutherford, *Egypt After Mubarak: Liberalism, Islam, and Democracy in the Arab World*, (Princeton University Press, 2008), p 50, n 72; www.almasryalyoum.com/en/node/497953; <http://thedailynewsegypt.com/people/judiciary-independence-law-is-a-public-demand-says-lobby-group.html>; www.almasryalyoum.com/en/node/497953.

65 For the ordinary judiciary, see Law No 46 of 1972 as amended by Law No 35 of 1984; for the administrative judiciary, see Law No 47 of 1972 as amended by Law No 136 of 1984; for the Supreme Constitutional Court, see Law No 48 of 1979. The exception to this procedure is the presidency of the Supreme Constitutional Court. In this case, the President of the Republic can choose the appointee without input from other judges provided the candidate has appropriate training and professional experience. See Law governing the Supreme Constitutional Court (Law No 48 of 1979).

66 Article 119 of the Judicial Authority Law also provides that the appointment of other members of the prosecution shall be by virtue of a decree to be issued by the President of the Republic after the agreement of the SJC.

- d. The Minister of Justice appoints the presidents of the High Courts from among the judges of the appeal courts, with the agreement of the SJC (Judicial Authority Law Article 9).⁶⁷
53. While these provisions grant the executive discretion that is sometimes limited to a pre-determined pool of candidates and the need for approval from another body, there is still the potential for unacceptable influence by the President or the Minister of Justice in the selection process.
54. The Judicial Authority Law Article 62 also authorises the temporary transfer of a judge to work in a judicial or legal post other than his usual office, by a decision of the Minister of Justice, after hearing – but not necessarily following – the opinion of the SJC. It has been pointed out that this provision enables the Minister of Justice to move the judges he wants to the courts where specific lawsuits will be examined or, conversely, to banish judges with whom he disagrees.
55. In developing proposals for reform, it is the view of the IBAHRI that Egyptian legislators should closely examine the provisions that currently allow for potential executive influence in the judicial appointment and transfer processes, to determine how the role of the executive could be reduced to an acceptable minimum. Media sources suggest that the Egyptian Judges Club, and the committee appointed by the head of the Supreme Judicial Council, propose reform and recommend that the appointment process for the Public Prosecutor and the head of the SJC should be changed to reduce the role of the executive.⁶⁸ The IBAHRI fully supports such proposals, and believes it is also necessary to modify Judicial Authority Law Article 62 and any other laws that allow for the transfer or allocation of judges, by executive action, to particular courts or cases.

(III) INSUFFICIENT OPPORTUNITIES FOR JUDICIAL TRAINING

56. A corollary to the independence of the judiciary is the need to guarantee judicial professionalism. During the IBAHRI's mission, lawyers and human rights NGOs reported that opportunities for judicial training were not sufficient.⁶⁹
57. Judicial training in Egypt is arranged by several organisations including the UN Development Programme (UNDP) and Egypt's National Council for Human Rights. The Council of State was also reported to have created the National Center for Judicial Studies to provide members of the judiciary, especially young judges, with training.⁷⁰
58. Whilst this was viewed by some as a positive step forward, delegates were left with the impression that judicial training was not fully adequate, with a particular scarcity of training on international human rights norms. One senior judge observed how members of the judiciary,

67 In addition to these provisions on appointment, the Judicial Authority Law provides at Article 93 that 'The Minister of Justice has the right to supervise all the courts and judges'. However, the text of this article was amended in 2006 to specify that the supervision of courts by the Minister of Justice is purely administrative. After amendment, the article reads: 'the Minister has the right to administrative supervision on courts'. See The Arab Center for the Development of the Rule of Law and Integrity 'Promoting the Rule of Law and Integrity in the Arab Countries', Project Report on the State of the Judiciary in Egypt, 2007.

68 See, for example: www.thedailynewsegypt.com/egypt/judges-club-drafts-judicial-authority-law-amendments.html; www.almasryalyoum.com/en/node/497953; and <http://thedailynewsegypt.com/people/judiciary-independence-law-is-a-public-demand-says-lobby-group.html>.

69 IBAHRI Interviews on 19 June, 20 June, 21 June and 24 June 2011.

70 Nasser Amin, *Egypt's Court System: a study of court divisions and training of judges* (Maadi: Amin Law Firm, 2003), pp 220–221, and 229.

accustomed to being held in high esteem by the general population, were rarely receptive to international training initiatives unless delivered by at least one senior expert Egyptian trainer. This suggests that reform in this area needs to be accompanied by a cultural shift in judges' perception of the benefits and appropriateness of educational and evaluation processes, particularly if these initiatives are not made compulsory.

3.4 Conclusion

59. The revolution presents a historic opportunity for Egypt to reform and update its Constitution, laws and institutions. Judicial reform is at the top of the reform agenda, with several proposals to strengthen the framework for judicial independence and professionalism circulating.
60. For any broad reform of the judiciary to be meaningful, an immediate halt must be brought to the use of exceptional courts to try civilians. To achieve this, the state of emergency must be lifted and the legal framework existing under it, including emergency courts, ended. The Military Code of Justice must also be amended to ensure that civilians are not subjected to military trials. In addition, legislation should be adopted to minimise the role of the executive in appointing the ordinary judiciary.
61. Lawyers and judges should be central to this reform debate, and instrumental in the drafting and implementation processes. At the same time, reformers must remember that paper reforms are not a magic solution to achieving either full independence or a more professional cadre of judges. Among other things, law reform should be complemented by more specialised training. Reform of the judiciary should also be considered in tandem with reforms of the legal profession, as discussed in the next chapter.

Chapter Four: The Legal Profession

62. Historically, the Egyptian legal profession has played an important role in advancing law reform and fighting against government abuses. In the 1930s and 1940s, Egypt's lawyers were among the most highly educated in the Arab world.⁷¹ Despite this proud history, Egyptian human-rights lawyers and defenders today face wide-ranging challenges in advising and acting for clients and advocating for human rights.
63. During its mission, the IBAHRI noted the following main challenges for lawyers in Egypt today: (i) lack of respect for basic due process guarantees in military and emergency courts; (ii) inadequate protection of due process in the ordinary criminal courts; (iii) interference with human rights lawyers work; (iv) the poor quality of legal education and training; (v) a lack of detailed ethical regulation; (vi) tensions between lawyers and judges; and (vii) low pay. Other obstacles relate specifically to the EBA, and will be discussed in Chapter Five.

4.1 Relevant international standards

64. The ICCPR provides that all persons shall be equal before the courts and tribunals, and are entitled to a fair and public hearing. Lawyers are essential to the delivery of this right. In explaining what these provisions mean in criminal cases, the UN Human Rights Committee issued General Comment 32 in 2007 which provides in paragraph 34 that 'lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter'.
65. International fair trial guarantees include the right of a defendant to free assistance from counsel of his own choosing.⁷² The defendant must be able to communicate with counsel confidentially. Defence counsel must also receive adequate and timely disclosure of the case file, and have adequate time and facilities to prepare the defence.⁷³
66. The UN Human Rights Committee has emphasised that these provisions will 'apply to all courts and tribunals [...] whether ordinary or specialised', and that civilian trials before military or special courts should 'take place under conditions which genuinely afford the full guarantees stipulated under Article 14.'⁷⁴
67. The UN Declaration on Human Rights Defenders also makes clear in Article 12 that: a '[s]tate shall take all necessary measures to ensure the protection by the competent authorities of everyone,

71 Donald M Reid, 'The National Bar Association and Egyptian Politics, 1912–1954', available at: www.jstor.org/pss/216598.

72 Article 14(3) (b) of ICCPR. Communications No 282/1988, *Smith v Jamaica*, para 10.4; Nos 226/1987 and 256/1987, *Sawyers, Mclean and Mclean v Jamaica*, para 13.6. See also UN Human Right Committee General Comment No 32, Article 14: Right to equality before courts and tribunals and to a fair trial (2007) UN Docs CCPR/C/GC/32 paras 32 and 34 available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CCPR/C/GC/32&Lang=E>.

73 Communication No 1125/2002, *Quispe Roque v Peru*, para 7.3; Communication No 1128/2002, *Morais v Angola*, para 5.6. Similarly Communications No 349/1989, *Wright v Jamaica*, para 8.4; No 272/1988, *Thomas v Jamaica*, para 11.4; No 230/87, *Henry v Jamaica*, para 8.2; Nos 226/1987 and 256/1987, *Sawyers, Mclean and Mclean v Jamaica*, para 13.6. On the right to 'adequate facilities', see UN Human Rights Committee, Concluding observations, Canada, CCPR/C/CAN/CO/5 (2005), para 13.

74 UN Human Rights Committee, General Comment No 13 'Equality before the courts and the right to a fair and public hearing by an independent court established by law (Article 14)' 1984, para 4, available at: [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/bb722416a295f264c12563ed0049dfbd?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bb722416a295f264c12563ed0049dfbd?OpenDocument).

individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.’⁷⁵

68. The UN Basic Principles on the Role of Lawyers also provide that: ‘in exercising their rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession’. Codes of professional conduct for lawyers should be established by the legal profession through its associations, or by legislation (Principle 26). Disciplinary proceedings against lawyers should be brought before an impartial disciplinary committee (Principle 28) and be determined in accordance with a code of professional conduct (Principle 29).

4.2 Current challenges

(I) LACK OF DUE PROCESS IN MILITARY AND EMERGENCY COURTS

69. In addition to concerns regarding independence and impartiality discussed in Chapter Three, the lack of basic due process in military and emergency courts present a fundamental obstacle to lawyers. This issue had assumed particular relevance in light of the significant increase in the use of military courts to try civilians in the months following the revolution.
70. Defence attorneys interviewed by the delegation spoke of the difficulty of locating clients being detained by the military. One lawyer recalled how there had been no declaration of martial law or initial public statement by the SCAF about the arrests being made. There was therefore confusion amongst lawyers as to which authority had ordered an arrest and where the arrested individual was taken to, with lawyers sometimes spending hours or days trying to locate clients being held incommunicado.
71. Delegates heard from lawyers that during the investigation stage, defence counsel did not always have the right to attend their client’s interview by the military prosecutor.⁷⁶ Often, lawyers would arrive at a distant military facility only to find that the interview had been completed in their absence. Military personnel would sometimes allegedly obstruct lawyers’ entry to the facility, further delaying access to clients. In one case involving protesters outside the Israeli Embassy on 15 May 2011, an interrogation was reportedly conducted in a military prison instead of at the military prosecution headquarters (as it ought to have been).
72. Some interviewees reported the inadequacy of court-appointed defence counsel in these cases. They explained that the military court maintains a list of lawyers paid by the Ministry of Defence for this purpose and once in court the military prosecutor asks the detainee if he has a lawyer. If he does not, the court designates one present in court at that time from the list. Unprepared, and in some cases lacking the relevant experience, these lawyers were alleged to often simply plead for mercy on behalf of their client, without first examining the propriety of the charges or the strength of the evidence against them.

⁷⁵ Basic Principles on the Role of Lawyers Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

⁷⁶ IBAHRI interview, 21 June 2011.

73. The IBAHRI was told that military trials could last as little as five minutes; and that the longest trials took just one week, a period inadequate for a complex multi-defendant trial. One such trial allegedly took place in the kitchen of a military prison at 4am.⁷⁷ Interviewees stated that a session would typically run for about an hour-and-a-half at most, though sometimes the judges would agree to adjourn the session until the next day. Observers needed government permission to attend court sessions, and human rights activists were generally excluded from the public gallery.⁷⁸
74. Delegates were also alerted to problems with the sentencing process. Some sentences were allegedly handed down minutes after the end of a trial. Sometimes, by the time the lawyer gained access to the court, the sentence had already been announced. Most sentences were read out *in absentia*. Defendants were reported to have received disproportionately harsh sentences with some taken to prisons very far from Cairo (for instance 1,200 km south, close to the border with Sudan) to serve these sentences, making it very difficult for families to visit.
75. Some defence lawyers did report a few improvements in the conduct of military trials. Delegates heard how non court-appointed defence counsel had been able to attend more investigations and hearings, and had better access to their clients' case file in some cases.
76. Although interviewees spoke specifically of trials before military courts, the IBAHRI notes that the UN has found that due process concerns apply equally to emergency courts.
77. After his 2009 mission to Egypt, the former UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin concluded that 'deep concerns' remain regarding due process in the Egyptian emergency court system. These include the fact that there is no right to appeal convictions or sentences, and the failure to respect the principle of *non bis in idem* enshrined in Article 14 of the ICCPR.⁷⁹ And, as in the military courts, the death penalty may be imposed.
78. Lawyers defending clients before both types of exceptional courts therefore face significant challenges in trying to secure a just outcome for their clients. Lawyers have so far also been unable to challenge the very existence of these courts through a judicial review of their constitutionality. According to judges at the Supreme Constitutional Court, there have been challenges to the constitutionality of trials of civilians by military and emergency courts, but none has so far managed to satisfy procedural requirements. The IBAHRI was, however, informed that a prominent NGO, the Egyptian Center for Economic and Social Rights, planned to seek a judicial review of trials of civilians by military courts on the basis that they failed to provide due process guaranteed in the constitution.⁸⁰ It is hoped that this will happen soon.

77 IBAHRI interview, 22 June 2011.

78 See also HRW, 'Egypt: Military Trials Usurp Justice System', 29 April 2011, available at: www.hrw.org/en/news/2011/04/29/egypt-military-trials-usurp-justice-system (accessed 21 September 2011).

79 *Ibid*, Scheinin, paras 33–34.

80 On 10 September, the Administrative Judiciary Court handed down a ruling authorising lawyer Kh lid 'Al , Chairman of the Egyptian Center for Economic and Social Rights (ECESR), to submit a challenge to the Supreme Constitutional Court.

(II) INADEQUATE DUE PROCESS GUARANTEES IN ORDINARY CRIMINAL COURTS

79. In the ordinary criminal court system, lawyers told the IBAHRI that a gap existed between the protection of due process rights under the law and their patchy implementation in practice. Particular concerns were reported at the investigation stage of a case. In theory, the right of the lawyer to attend interviews at the pre-trial stage of a case is guaranteed under the law. However, delegates heard that they were often not allowed to attend interrogations by the Public Prosecutor's office.⁸¹ Civil society groups have also repeatedly reported that indigent defendants have inadequate access to defence counsel, including at police stations upon arrest.⁸²
80. The problem appears to be largely one concerning the proper implementation of Article 124 of the Criminal Procedure Code. Under this provision, the prosecutor is permitted to begin an interrogation if the lawyer is not there in 'exceptional circumstances'.⁸³ In practice, what may amount to 'exceptional circumstances' is susceptible to subjective interpretation by individual prosecutors.⁸⁴ In addition, in misdemeanour cases, which are *not* punishable by mandatory imprisonment, the investigator is not obliged to notify the lawyer of the accused before beginning the investigation, and therefore, the questioning can take place in the lawyer's absence. Rephrasing this law; providing published guidance as to how the right to access to counsel should be interpreted so as to conform to applicable human rights standards; and/or ensuring that interviews that took place improperly without counsel are not admissible as evidence, would all be helpful steps to improve the position of criminal defendants in this regard.
81. Another challenge for defence counsel in criminal cases is their restricted access to clients more broadly. Under Article 53 of the Advocates Law, a lawyer who is 'authorized by the Prosecution' to visit a detained person at a prison 'may visit such person at any time and meet him or her in private in decent surroundings inside the prison'. But a number of lawyers explained that in practice access was restricted. Their accounts are supported by a study published by Egyptian lawyer Negad El-Borai in 2006, based on interviews of 523 lawyers from 11 Egyptian Provinces. This concludes that approximately 30–60 per cent of lawyers were able to meet their clients, while 40–70 per cent could not.⁸⁵
82. A further problem identified in relation to safeguarding defendants' human rights in criminal cases is the legal aid system. Although Article 64 of the Advocates Law provides that a 'lawyer must provide legal aid' to those 'unable to bear the costs', one lawyer remarked that the concept of pro bono work is alien to the vast majority of lawyers in Egypt. Most lawyers, the

81 See Article 124 of the Criminal Procedure Code, amended by Law No 145 of 2006 and Law No 74 of 2007.

82 See, for example, Open Society Justice Initiative, 'Call for Proposals: Pre-trial Detention and Access to Legal Aid in Egypt', 14 December 2010, available at: www.soros.org/initiatives/mena/news/egypt-legal-aid-20101214 (accessed 21 September 2011).

83 Article 124(1) Criminal Procedure Code (Law No 145 of 2006) 'With respect to felonies and misdemeanors punishable by mandatory imprisonment, the investigator may not interrogate the accused or confront him with other accused persons or witnesses except after inviting his lawyer to attend the investigation, with the exception of the case of in-flagrante-delicto and cases of urgency resulting from the fear of losing evidence, in the manner established by the investigator in the minutes of the investigation. The accused must declare the name of his lawyer in writing in the court's register or to the prison's officer, or to notify the investigator thereof.'

84 The Court of Cassation ruled that the investigator's determination of the existence of a case of urgency is subject to the review of the court that hears the merits of the case and, therefore, the investigator is required to demonstrate the elements of urgency and the reasons behind it (judgment rendered on 15 February 1976). However, it is not clear whether the result of any such review would affect the admissibility of the interview as evidence.

85 See The United Group 'Crime and Punishment: The Vision of Egyptian Lawyers on the Phenomenon of Torture and the Means to Fight it', 2006, available at: www.ug-law.com/downloads/crime-and-punishment-en.pdf (accessed 21 September).

delegation was told, would be surprised to hear that a leading lawyer might choose to take on a case for free, unlike in many developed systems where this would be routine.

83. Lawyers told the IBAHRI that what happens in many legally-aided cases is that in court the judge will appoint defence counsel on the spot, and then simply put the case to the end of the day's list, meaning that counsel only has about two hours (or less) to prepare the defence. This would mean that in practice, the system may restrict criminal defendants' right to select a lawyer of their choice, as well as the right to effective legal representation.
84. The IBAHRI was also told by practising defence counsel that their access to case files is unsatisfactory. Sometimes, defence counsel was not permitted to photocopy files in the possession of the prosecution. The IBAHRI heard from one lawyer that, since the revolution, public prosecutors' offices are more open, and there is better access for lawyers. Others did not agree. The matter still appears – unacceptably – to be left to individual prosecutors' discretion.
85. Some lawyers highlighted the challenge of inadequate technology in the courts and of patchy access to legal documents. Although some legislation is available online,⁸⁶ a fully searchable database that also includes case law is only available by subscription. This means that smaller law offices and solo practitioners may not have adequate and affordable access to the law in defending their clients' interests.

(III) INTERFERENCE IN HUMAN RIGHTS LAWYERS' WORK

86. Although human rights litigation remains a niche field in Egypt, lawyers and other individuals working in the human rights arena are extremely active. Human rights organisations report that human rights defenders are subject to harassment, stigmatisation and restrictions on freedoms of expression and association.⁸⁷ During its mission, the IBAHRI heard that physical attacks and arrests of human rights lawyers were relatively uncommon and had become less frequent in 2011. However, a number of arrests and attacks on lawyers were reported to have occurred in the aftermath of the revolution.
87. In one incident that took place in February 2011, human rights lawyers involved in documenting violence against civilians and providing legal advice to demonstrators arrested in Tahrir Square were themselves arrested and detained by military police. Those arrested included lawyers from the Hisham Mubarak Law Center (HMLC), the Egyptian Center for Economic and Social Rights (ECESR), the Front to Defend Egyptian Protesters, and the Cairo Institute for Human Rights Studies (CIHRS).⁸⁸ The IBAHRI learned from lawyers who were targeted by these actions, as well as eyewitnesses to the events, that on 3 February 2011, the offices of the HMLC and the ECESR were raided by military police accompanied by unidentified men in civilian clothes. They searched both offices, and confiscated the equipment and the mobile phones of several staff. More than thirty persons working for both centres, as well as for Human Rights Watch (HRW) and Amnesty International, were arrested,

86 See Egypt's Information Portal at: <http://eip.gov.eg/Documents/StudiesList.aspx?DocType=6>.

87 See, for example, Frontline Defenders, 'Egypt', available at: www.frontlinedefenders.org/egypt.

88 IBAHRI phone interview with the HMLC, 29 September 2011; and see HMLC press statement 'Kidnapping rights activists from Hisham Mubarak Law Center, The Egyptian Center for Economic and Social Rights, and Volunteers from the Front to Defend Egypt Protesters', 4 February 2011, available at: <http://hmlc-egy.org/node/1656>.

beaten, and taken to an undisclosed location. The premises of HMLC were later ransacked by armed ‘thugs’.⁸⁹

88. That evening, Mr Amr Salah, a researcher at the CIHRS, was arrested along with activists Ms Shadi Al Ghazali Harb, Mr Nasser Abdel Hamid, Mr Mohamed Arafat, Mr Ahmed Douma, Mr Amr Ezz, and Mr Ahmed (surname unknown) in El Haram area, Giza, Cairo. Unidentified men in civilian clothes also entered the El Nadeem Center for Rehabilitation of Victims of Violence, an NGO which provides legal assistance to victims of torture, and threatened staff.⁹⁰
89. The IBAHRI also met Ms Ragia Omran, an Egyptian lawyer, who was monitoring the referendum on the constitutional amendments in the South Cairo Primary Court when she was arrested by military police on 19 March 2011. Ms Omran was in possession of an official permit from the Supreme Judicial Committee that allowed her to be present in the court during the referendum, but this was disregarded by the military police. After being insulted and accused of acting as a ‘traitor acting against national interest’, Ms Omran and an American journalist who was with her were assaulted by six military officers, arrested, and brought to the Cairo Security Directorate. Their property was confiscated, and they were put through more than one strip search. Eight hours after their arrest, they were transported to the Military Prosecution building on charges of insulting a public official on duty. Finally, at 1am, they were released due to lack of evidence.⁹¹
90. Also, the IBAHRI spoke with Mr Gamal Eid of the Arab Network for Human Rights Information (ANHRI), who told the IBAHRI that he and one other well-known human rights lawyer and blogger had been charged ‘in seven or eight fabricated cases’ with alleged offences such as criminal defamation and blackmail.⁹²

(IV) DECLINING QUALITY OF LEGAL EDUCATION AND INADEQUATE TRAINING

91. With the exception of a small number of private institutions, and despite an elite standing in legal education in decades past, the system of legal education in Egypt appears to be in crisis. The admissions policy for public Egyptian law schools is clearly problematic.⁹³ Since 1961, the Egyptian Government has provided free higher education to all Egyptians who possess a secondary certificate. With the increase in population, the number of students admitted to public Egyptian universities has likewise increased. In the 1960s, Alexandria University’s College of Law admitted approximately 300 students. This number increased to approximately 7,000 by 1997.⁹⁴ Now, up to 38,000⁹⁵ students are enrolled at the Cairo University law faculty at any

89 This was also reported by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Human Rights Council, Addendum 1 (2011) UN DOC A/HRC/17/27/Add.1. [A/HRC/17/27/Add.1], pp 103–5.

90 UN Human Rights Council ‘Report of the Special Rapporteur on independence of judges and lawyers’ (19 May 2011) UN Doc HRC/17/30/Add.1, p 65.

91 See also World Organisation Against Torture (OMCT) press release, ‘Egypt: Arrest and subsequent release of a human rights defender monitoring the referendum on constitutional amendments’, 28 March 2011.

92 See ANHRI, ‘Before The Hearing Of June 26th On The Case Against Gamal Eid, Ahmed Seif And Amr Gharbeia – How Does The Victim Become An offender in Egypt?’ 23 June 2010, available at: www.anhri.net/en/?p=769. In July 2010, the activists were ordered to pay a fine of EGP2,000.

93 Mohamed Serag, ‘Legal Education in Egypt’, 43 S Tex L Rev, p 616.

94 *Ibid.*

95 A Shalakany, ‘Elite Legal Education’, *Egypt and Its Laws*, eds Natalie Bernard-Mauguinon and Baudoin Dupret, (The Hague: Kluwer Law International, 2002), p 18.

one time, and it sometimes takes seven to ten years to complete a law degree. Class sizes reach 6,000–7,000 students, with an average of 5,000 students per graduating class.⁹⁶

92. The IBAHRI learned that the number of new law students that each public law programme receives is determined by the Ministry of Higher Education. The university has no decision-making control over admissions, or even the curriculum. According to one interviewee: in a letter, the Ministry tells a student which university to attend and which subject to study based on eligibility requirements. Students who attain high grades are usually given the opportunity to enter the medical and engineering faculty, whilst those with lower grades are assigned to languages, literature and law.⁹⁷ Practical skills training is not integrated into the Egyptian law school curriculum.
93. Many interviewees also raised concerns regarding current professional training opportunities. Although there is some training delivered at the Institute of Lawyers (and, for prosecutors, at the National Judicial Institute), the IBAHRI heard from lawyers that this is grossly inadequate for the needs of the modern lawyer. Lawyers told the delegation that these training sessions are not all compulsory. In addition, the IBAHRI was told on many occasions that the vast majority of lawyers are completely unfamiliar with international law. One lawyer considered that ‘more than 90 per cent of Egyptian lawyers have never been acquainted with the international conventions, though in the Constitution these conventions take the status of the laws’.
94. Opportunities for training contracts and continuing legal education are also scarce. The American Bar Association Rule of Law Initiative has partnered with Cairo University to conduct additional trainings for young lawyers in Cairo and Alexandria.⁹⁸ Other ad hoc courses are offered by other institutions. But there is no compulsory, rigorous training for every practicing lawyer or even every young lawyer.⁹⁹
95. As law professor Amr Shalakany has put it, ‘the legal profession and the educational system that underpins it all continue to suffer from a status-crisis [...] While marrying your daughter to a lawyer may not be as shameful as it was in the late nineteenth century, today’s discerning parents would nonetheless still balk in horror should one of their brighter children decide to enroll at law school.’¹⁰⁰ Overall, the decline in legal education over the last 50 years appears to be at the root of lawyers’ ‘status-crisis’, and hinders the proper functioning of the profession in other areas as well.

96 *Ibid*, at p 19.

97 Serag, at p 616–17.

98 American Bar Association, ‘ABA ROLI Expands its Continuing Legal Education Program in Egypt’, August 2009, available at: http://apps.americanbar.org/rol/news/news_egypt_continuing_legal_education_program_expanded_0809.shtml (accessed 21 September 2011).

99 Despite provisions in the Advocates Law that suggests this is compulsory for ‘apprentice’ lawyers.

100 *Ibid*, n 95 above, Shalakany, p 20.

(v) LACK OF A CLEAR ETHICAL CODE AND DISCIPLINING SYSTEM

96. Ethical rules, sometimes referred to as the rules of professional responsibility, are a set of standards that govern the way in which lawyers conduct their professional lives. Ethical rules usually address four main areas of concern: conflict of interest, confidentiality, competence and independence.¹⁰¹
97. During its consultations, the IBAHRI did not hear of any case of individual misconduct within the Egyptian legal profession. However, unscrupulous practices have been reported. In March, one human rights NGO denounced, for instance, the military court trial of a 15-year-old boy whose court-appointed lawyer did not raise the issue of the boy's age, or question the court's jurisdiction over him.¹⁰² Delegates also heard of questionable practices by court-appointed defence counsel in military courts.¹⁰³
98. Under Article 56 of the 1971 Egyptian Constitution, 'trade unions and associations [...] 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.'
99. Delegates were told that the EBA has not, however, adopted any document that constitutes a code of professional conduct of lawyers.
100. There is an indication in the Advocates Law (Law No 17 of 1983) of the basis upon which a lawyer can be disciplined, in Article 98. This provides that any lawyer who violates the duties of the profession, who perpetrates acts that affect the integrity of the profession or renders it in a non-respectable light shall be liable to disciplinary measures ranging from a notice to permanent disbarment. In addition, the Advocates Law and EBA By-laws include the following scattered provisions relevant to ethical conduct:
- a. the text of the oath to be taken before becoming a practicing lawyer includes an obligation 'to carry out the duties of a lawyer with honour and integrity', 'to protect the ethics of the profession and its traditions and to respect the Constitution and the Law'.¹⁰⁴
 - b. the duties of the lawyer include requirements of ethics, integrity and honesty,¹⁰⁵ duties towards the client¹⁰⁶ and to provide legal aid;¹⁰⁷ a duty of confidentiality;¹⁰⁸ and to avoid conflicts of interest.¹⁰⁹
 - c. lawyers' dress code and demeanour in court should be respectable;¹¹⁰ and
 - d. there is an obligation to supervise subordinates to ensure their integrity.¹¹¹

101 American Bar Association Central European and Eurasian Law Initiative, 'Professional Legal Ethics: A Comparative Perspective' (2002). Available at: http://apps.americanbar.org/rol/publications/professional_legal_ethics_con_paper.pdf (accessed 21 September 2011). See also 'IBA Principles on Conduct for the Legal Profession', adopted 28 May 2011 at www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx#ethics.

102 HRW, 'Egypt: End Torture, Military Trials of Civilians', 11 March 2011.

103 See above, para 73.

104 Article 20 Advocates Law (No 17 of 1983).

105 Article 62 Advocates Law (No 17 of 1983).

106 Article 63 and Article 69 Advocates Law (No 17 of 1983).

107 Article 64 Advocates Law (No 17 of 1983).

108 Article 65, Article 70 and Article 79 Advocates Law (No 17 of 1983).

109 Article 66 Advocates Law (No 17 of 1983).

110 Article 73 Advocates Law (No 17 of 1983).

111 Article 75 Advocates Law (No 17 of 1983).

101. The IBAHRI believes that these provisions need further clarification in order to provide a clear articulation of ethical principles that should be followed by lawyers. They do not provide guidance on, for instance, how to deal with guilty pleas in criminal cases, or the exceptions to lawyer-client privilege.¹¹² Nor do they contain any guidelines on matters that are typically covered in national ethical codes,¹¹³ including the handling of client money, the circumstances giving rise to conflict of interest and the steps to be taken to avoid or resolve them, or the lawyer's duty not to mislead the court. In addition, vague words such as 'duties' and 'integrity' are on the one hand, difficult to interpret without more detailed guidance in the rules, and on the other hand, may indeed expose the lawyer to potentially abusive accusations or disciplinary proceedings based on alleged non-compliance with these amorphous standards. There is therefore a need for reform in this area.

(VI) TENSION BETWEEN LAWYERS AND OTHER LEGAL ACTORS

102. Some lawyers complained to the IBAHRI that they often feel disrespected by judges, bailiffs and court clerks; a member of a diplomatic delegation in Egypt called the relationship between judges and lawyers the worst relationship between judges and lawyers he had seen. The perception is that judges do not consider lawyers equal partners in the litigation process, but rather as 'assistants'. Similar comments were made in relation to prosecutors' attitudes towards defence counsel.

103. The IBAHRI was told about an infamous example of the bad relationship between lawyers and other legal actors, known colloquially as the 'Tanta Incident'. This occurred in June 2010 in the town of Tanta. Two lawyers – Mohamed Ibrahim Saadeddin and Mustafa Ahmed Fattouh – had a fight with prosecutor Bassem Radwan Abu El-Rous. The lawyers stated that the prosecutor started the fight when they tried to access the prosecution office, and that they were then shocked to learn that *they* had been charged with assault instead of the prosecutor. In the criminal action that ensued, amidst suspicions of irregularities, the two lawyers were sentenced to five years' imprisonment.¹¹⁴

104. The 'Tanta Incident' ignited a country-wide dispute between the judiciary and lawyers as Egyptian lawyers across the country were outraged by the ruling.¹¹⁵ Commentators stated that lawyers had been suffering from disrespect by judges and prosecutors for years, and that this particular incident 'was the last straw'. A group of 10,000 Egyptian lawyers filed a complaint to the Prosecutor General, and then went on strike in June 2010, paralysing the Egyptian courts.¹¹⁶

112 The rules on privilege appear to encompass communications other than with the client in extremely broad terms. See Article 65 of the Advocates Law. That Egypt's legal provisions are insufficient is particularly evident when they are compared to the wealth of material and resources on deontology available to lawyers in other countries. The English Solicitor Regulation Authority, for instance, supplements its 257-page code of conduct with detailed guidance on frequently asked questions provided on the SRA website, as well as a dedicated professional ethics helpline.

113 There are also international and regional codes of conduct for lawyers, such as the IBA Principles on Conduct for the Legal Profession and the CCBE Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers.

114 The IBAHRI was told about the Tanta incident by two Egyptian lawyers who spoke to the delegation during its mission. The incident is also recounted in numerous press reports. See www.almasryalyoum.com/en/node/50604; www.almasryalyoum.com/node/57248 and; www.almasryalyoum.com/node/50379.

115 Al-Masry Al-Youm, 'Egypt's justice system divided: Lawyers vs. Judges', 20 June 2010, available at: www.almasryalyoum.com/en/node/50379.

116 The Egyptian Gazette, 'Egypt's lawyers escalate crisis with judges', 26 June 2010, available at: <http://cp2.gom.com.eg/~egyptian/index.php?act=on-news&id=9879&title=Egypt's%20lawyers%20escalate%20crisis%20with%20judges> (accessed 21 September 2011).

The President of the EBA, Hamdi Khalifa, supported the lawyers' stance.¹¹⁷ This prompted a group of 800 judges and prosecutors to file a complaint against him with the Prosecutor General for encouraging lawyers to strike and offending judges and prosecutors.¹¹⁸

105. Lawyers presented a list of demands after the incident, but the institutional relationships did not significantly change. Indeed, the gap may be widening as a growing number of prosecutors are appointed from the police, and not the Bar,¹¹⁹ and the vast majority of judges are in turn drawn from the ranks of public prosecutors. It is hoped that lawyers' relations with all these other judicial actors will – with necessary reform and training – improve in time.

(VII) LOW PAY

106. Practicing lawyers confirmed that a very small minority of lawyers in Egypt are well-paid. One of the interviewees estimated that 'one in 100 lawyers has a good income'. Although there are a number of large firms – some with links to western law offices – that are well-established in Egypt, their lawyers constitute a very small minority of practitioners, even in Cairo, and other local law firms fail to match their salary levels. The delegation was told that many lawyers work in one-person or small law offices, and could expect a salary, after five years, of no more than EGP1,000 (approximately GBP100) per month. Financial hardship, which is particularly acute in the case of lawyers who work (at times pro bono) in solely human rights cases, or are appointed to represent indigent clients, unavoidably affects Egyptian lawyers' professional performance, and some lack resources such as basic law books and computers. It is hoped that in the future the EBA may be able to assist with this.

4.3 Conclusion

107. The IBAHRI reiterates the concerns about the use of military and emergency courts to try civilians that were voiced, prior to the revolution, by the UN Human Rights Committee and UN Special Rapporteur on human rights and counter terrorism. In addition to the right to an independent and impartial trial, these 'exceptional courts' do not adequately protect defence rights or meet due process standards guaranteed under Article 14 of the ICCPR. Problems are also noted to exist in Egypt's ordinary criminal courts, where the right to an effective defence is not adequately safeguarded in practice, particularly at the investigation stage.

117 Al-Masry Al-Youm, 'Egypt's justice system divided: Lawyers vs. Judges', 20 June 2010, available at: www.almasryalyoum.com/en/node/50379 (accessed 21 September 2011).

118 *Al-Ahram Weekly Online*, 'Chilled Court', available at: <http://weekly.ahram.org.eg/2010/1003/eg7.htm> (accessed 21 September 2011).

119 Al-Masry Al-Youm, 'Mubarak calls for resolving lawyers-judges dispute promptly', 26 June 2010, available at: www.almasryalyoum.com/en/node/51439; *Al-Ahram*, 'Chilled Court' 17–23 June 2010, available at: <http://weekly.ahram.org.eg/2010/1003/eg7.htm> (accessed 21 September 2011).

108. The lawyers (as well as judges and politicians) that the IBAHRI met indicated that abuse and harassment of human rights lawyers was not systematic. They also made it clear that harassment has not deterred them from their work. Even so, the IBAHRI considers any interference with the professional duties of lawyers to be wholly unacceptable. It also notes that the situation does not appear to have improved following the delegation's visit, with additional restrictions reportedly imposed on civil society organisations that have been critical of the SCAF.¹²⁰
109. Serious deficiencies in legal education and professional training, inadequate ethical regulations as well as low pay, underlie a number of the obstacles faced by Egypt's legal profession, such as declining status and a deteriorating relationship with other legal actors. In order to ensure the proper functioning of the legal profession, educational reform is therefore an urgent priority, for the benefit of the legal system as a whole and the generations to come.
110. Changes to the laws and practises of the legal profession will not be complete, or even feasible, without appropriate reform of the EBA. A functioning, independent, progressive and strong Bar will ease many of the difficulties discussed in this chapter.

¹²⁰ In recent years, civic associations in Egypt have been placed under significant control by the state security apparatus. Under the Associations Law (Law No 84 of 2002), NGOs are subject to onerous licensing requirements and the threat or possibility of being disbanded by the State. The situation appears to have deteriorated in the months following the IBAHRI's visit. Restrictions on civil society organisations are not considered in this report. For more information, see HRW, 26 September 2011, 'Egypt: Government Moves to Restrict Rights and Democracy Groups', www.hrw.org/news/2011/09/26/egypt-government-moves-restrict-rights-and-democracy-groups; See also Frontline Defenders, 'Egypt: Human rights defender Ahmad Sayed Muhammad Sayed sentenced to two years in prison', available at: www.frontlinedefenders.org/node/15874.

Chapter Five: The Egyptian Bar Association

111. In the last 50 years, a decline in the quality of legal education and training, the ever-increasing number of lawyers, and, more recently, political in-fighting have seriously undermined the proper functioning and prestige of the EBA. Far from being an independent professional association, the Bar appears to have become increasingly politicised. It is currently administered by a transitional leadership council pending fresh elections. Delegates shared the frustration of many Egyptian lawyers, particularly young lawyers, who would like to see the organisation change and flourish. It is hoped that with fresh leadership in the post-revolution period, this will be possible.
112. During its mission, the IBAHRI heard that the EBA currently has a wide-range of shortcomings that prevent it from performing the professional functions recognised of a bar under international law. These can be said to fall into the following categories: structural and organisational weaknesses; poor regulation of lawyers; inadequate provision of education, licensing and training; and weak representation of the legal profession.

5.1 Relevant international standards

113. A bar association is a professional body of lawyers. Some bar associations are responsible for regulating entry and practicing requirements for the legal profession in their jurisdiction, and make membership mandatory on this basis. Other jurisdictions also have legal professional organisations dedicated to serving particular members' interests based on voluntary participation. In many cases, a single bar association will serve all four essential roles of bar associations: education, regulation, lobbying for the legal profession, and the promotion of justice and human rights.
114. The principal legal instrument regulating bar associations at the international level is the UN Basic Principles on the Role of Lawyers (the 'Basic Principles'). These Principles grant lawyers the right to join self-governing professional associations whose executive body is elected by its members and exercises its functions without external interference. Both the Council of Europe¹²¹ and the African Union¹²² have issued further guidelines in this area. The IBA has also developed its own non-binding 'Principles on Independent Bar Associations', which add detail to these provisions.¹²³ More generally, lawyers' freedom of association is guaranteed under Article 22 of the ICCPR.
115. One principle fundamental to all these instruments is independence. Although the executive bodies of bar associations 'shall co-operate with Governments', they also 'shall exercise their functions without external interference' (see UN Principles 24 and 25). This means that, while

121 Council of Europe, Committee of Ministers, Recommendation No 21 (2000).

122 'Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa', available at: www.afrimap.org/english/images/treaty/ACHPR_Principles&Guidelines_FairTrial.pdf.

123 The IBA Principles are persuasive, but not binding legal authority. Moreover, these particular principles have been formally adopted by the IBA to date.

it is set up by legislation and must cooperate with authorities in fulfilling its functions, the bar must not be subject to undue interference from the government or any other source. The UN Human Rights Committee has reiterated that bar associations must be allowed to work freely without being obliged to obtain a clearance from the executive.¹²⁴

116. International standards also require that lawyers receive continuing legal education and training, and indicate that it is the proper role of bar associations to ensure that this is provided. In most jurisdictions today, attending continuing legal education seminars is a requirement for having a licence to practise renewed. Such seminars are usually organised by a bar association in conjunction with experts from other organisations, such as universities, and are important in ensuring that a high level of professionalism is maintained. It is therefore important that the teaching be of high quality, that it be open to all lawyers, and that it covers various branches of law.

5.2 History and structure of the Egyptian Bar Association

117. The EBA, or ‘Lawyers Syndicate’, is the oldest and largest association of lawyers in the Arab world, first created in 1912, with its headquarters in Cairo. It is the only professional association of Egyptian lawyers in Egypt, and now has 21 regional branches.
118. The EBA comprises a very large membership – somewhere between 450,000¹²⁵ and 620,000¹²⁶ lawyers. Since the current population of Egypt is estimated to be 82 million, this means that Egypt has an approximate lawyers-per-capita ratio of between 549 and 756 lawyers per 100,000 inhabitants, which is significantly higher than that of any Western European country.

Number of lawyers per 100,000 inhabitants in 2006¹²⁷

Spain	346	Norway	116
Greece	324	Switzerland	108
Italy	306	Denmark	90
US	265	Netherlands	87
UK	250	France	73
Portugal	246	Austria	51
Germany	168	Sweden	49
Belgium	138	Finland	34

119. The EBA was established pursuant to Law No 26 of 1912. It is regulated by by-laws ratified by its General Assembly on 6 October 1972,¹²⁸ as well as the Advocates Law (Law No 17 of 1983) and its amendments.

124 The UN Human Rights Committee held, in relation to Belarus, that giving the Ministry of Justice jurisdiction to license lawyers and oblige lawyers to be members of a particular association (the Collegium) which was controlled by the Ministry, undermined the independence of lawyers (UN Doc GAOR, A/53/40, para 134).

125 Treasurer of the Bar Association, June 2011.

126 Hafez Abu Saeda, Egyptian Organization for Human Rights, June 2011.

127 Source: Faure et al (1993), World Bank Legal and Judicial Reform Practice Group, Council of the Bars and Law Societies of the European Union, own calculations, as reported in: N Garoupa, ‘Providing a framework for reforming the legal profession: insights from the European perspective’, 2008 Vol 9(3) EBOR, 463–495.

128 Approved in Bar Council session on 05/10/1972 and ratified by the General Assembly on 06/10/1972 (updated in 1983).

120. Membership of the EBA is compulsory for all practicing lawyers. Anyone who has a law degree and has spent two years working at a law office becomes eligible to practise law, and at the same time be a full member of the EBA.¹²⁹
121. Under the Advocates Law, the functions of the EBA are stated to be to:
- (1) Regulate the practice of the legal profession and ensure the proper performance of lawyers;
 - (2) Ensure the independence of lawyers and promote a spirit of cooperation amongst them;
 - (3) Ensure the right of defence;
 - (4) Provide judicial assistance to the poor;
 - (5) Promote legal research and studies of Islamic law; [and]
 - (6) Cooperate with trade unions and similar organisations in other Arab and African countries to serve the causes of freedom, peace, and progress.¹³⁰
122. The EBA comprises the Board and the Council of the Bar, as well as a General Assembly of members who are registered to vote.¹³¹ The President of the EBA is the head of the organisation.
123. The Board has six members: a Secretary-General, two deputies and two treasurers, as well as the President.¹³² The Council of the Bar (the ‘Council’) consists of 46 members who each serve a term of four years.¹³³ Resolutions are passed in the Council by a majority vote of those who are present at a meeting.¹³⁴ The Advocates Law reserves six spots on the Council for those employed in the public sector and two for younger lawyers.¹³⁵ No places are reserved for academics or private practitioners.
124. Within the EBA there is also a ‘Liberties Committee’ which has a mandate to defend human rights and the rule of law in the Arab world.¹³⁶

5.3 Current challenges

123. Mandatory bar associations such as the EBA should serve four main functions: regulation, education, representation of the legal profession and the promotion of justice and human rights. Delegates identified the following specific challenges that prevent the EBA from adequately performing these roles:

129 Legal academics who have not reached the rank of professor are denied membership. Judges, however, can remain a member of the EBA but move to the non-practicing list.

130 Article 121, Advocates Law (No 17 of 1983).

131 Article 123 Advocates Law (No 17 of 1983) and Articles 4 and 14 of EBA By-laws. Certain translations of this law use different terminology to describe these bodies.

132 Article 131 Advocates Law (No 17 of 1983), as amended by Law No 197 of 2008.

133 Out of the 46 Council members, 15 are elected at the national level. The others are from the courts of first instance.

134 Ninette S Fahmy, *The Politics of Egypt: State-Society Relationship* (New York: RoutledgeCurzon, 2002), p 112.

135 Article 131 Advocates Law (No 17 of 1983).

136 Article 116 Advocates Law (No 17 of 1983) states that the general and regional bar councils shall be considered as permanent committees to defend liberties and rule of law in the Arab world.

(I) MEMBERSHIP AND ELECTIONS PROCEDURES

126. At the time of the delegation's visit to Egypt in late June 2011, there was a leadership vacuum within the EBA, and legal uncertainty about the legitimacy of the 2009 election that put Hamdi Khalifa as its President and chose 46 members of the Bar Council.¹³⁷
127. The Bar's 2009 elections had been carried out pursuant to the Law on Democratic Trades Union Organisations (Law No 100 of 1993), which required strict quorums for voting in the executive bodies of all 'syndicate' elections, including that of lawyers. But in January 2011, just days before the revolution, Egypt's Supreme Constitutional Court had declared Law No 100 of 1993 unconstitutional on the basis that it had been passed without seeking consultations and approvals required by law.¹³⁸
128. Questions about the impact of this ruling abounded. Did the ruling retroactively make the 2009 Bar elections (and those of journalists, doctors and other syndicates) invalid? If so, what was the next step? Lawyers were divided on the answers. At the time, lawyers spoke of collecting signatures to call an emergency general assembly, or filing a lawsuit to clarify who should be running the organisation.
129. Shortly after the IBAHRI concluded its visit, the situation became clearer. On 6 July 2011, following a petition by a group of lawyers, Egypt's State Council Administrative Court ordered the dissolution of the EBA Council, and invalidated the results of the May 2009 elections. Many lawyers reportedly greeted the ruling with cheers. The court called on the head of the South Cairo Court to form a judicial committee to run the EBA's affairs until the elections are held.¹³⁹
130. The IBAHRI welcomes the ruling of the State Council Administrative Court in July, which clarifies that new elections should take place. However, concerns persist that the EBA's outdated and inaccurate membership register may still lead to delays in the holding of elections, and thereby prolong the involvement of the judicial committee in the Bar's affairs.¹⁴⁰
131. The IBAHRI was told that the EBA member-list is kept on an electronic database, and consists of two separate sections: practicing and non-practicing lawyers. Only the former have the right to vote. Moreover, only practicing lawyers who have paid their dues have the right to vote.¹⁴¹ An update of the list appears to have been done in 2011, just before the revolution, as a result of which, some 30,000 lawyers who were working in other businesses were removed from the register of practicing lawyers entitled to vote. However, EBA members told the IBAHRI that the list remains grossly overpopulated. There is no system in place, for example, to remove deceased members from the register. The list likely also includes members who have not paid their dues and should be ineligible to vote on that basis.

137 Some lawyers also launched a campaign in June to demand the withdrawal of confidence from the Council, which is headed by Hamdi Khalifa.

138 Case on constitutionality of Law No 100 of 1993, Supreme Constitutional Court, 2 January 2011.

139 'Egyptian court orders dissolution of Bar Association council', 06/07/2011, available at: www.almasryalyoum.com/en/node/474855.

140 This caused the Administrative Court to issue a ruling delaying the associations' elections in 2009, see 'Lawyers in election turmoil' Al Ahrām, Issue No 932, 29 January–4 February 2009, available at: <http://weekly.ahram.org.eg/2009/932/eg5.htm> (accessed 21 September 2011).

141 Article 65, By-laws of the EBA.

132. **EBA Membership (approximate) for Selected Years:**

	1912–1980	1980–90	1990–2000	2000–04
Bar Association Members	30,000	115,000	230,000	300,000

Source: Negad El-Borai 'The Independence of the Judiciary, The Truth as it is' (United Group, 2006), p 28, available at: www.ug-law.com/index.php?option=com_content&view=article&id=70%3AIndependence-of-the-judiciary-in-egypt&catid=40%3ABooks&Itemid=82&lang=en.

133. Delegates saw no reason why the membership register could not, with proper effort, be updated. Moreover, the Advocates Law provides for a special committee to review applications and regularly update the list of practicing lawyers.¹⁴² Unfortunately, it appears that this has not been a regular practice. Indeed, as the ICJ noted when they visited Egypt in the 1990s, the same problem regarding the integrity of the data on the Bar's voter register apparently existed.¹⁴³
134. In the view of the IBAHRI, free and fair Bar elections must be held as soon as possible. To this end, the relevant representatives of the EBA are urged to ensure that updating the Bar's list of members and eligible voters is made a matter of absolute priority.
135. On a related note, delegates were also informed that an amendment to the Advocates Law made in 2008¹⁴⁴ had substantially increased the number of Bar Council members from 24 to 46. It was suggested that this number now makes meetings of the executive body unworkable: if each member was given a ten-minute speaking slot, this would result in a seven-and-a-half hour meeting just to discuss one item. The IBAHRI therefore suggests that, in addition to making the necessary amendments to the voter register, the Bar's new leadership consider structural reform of the EBA as a priority to improve its working processes.
136. Media reports indicate that 26 candidates have put themselves forward for the position of President of the Bar, including at least one who describes himself as an 'independent'.¹⁴⁵ It is hoped not only that elections can be held as soon as possible, but also that both candidates and voters will engage in important issues of concern to the profession, so that the future Bar can be a vehicle for meaningful progress with respect to the rule of law in Egypt.

¹⁴² Articles 12, 16, 18, 19, 30 of the Advocates Law (No 17 of 1983).

¹⁴³ Neil Davidson QC and Pierre Sébastien QC, Egypt: The Sequestration of the Bar: Report of a Mission: 10–16 March 1998 (Geneva: Centre for the Independence of Judges and Lawyers, 1998).

¹⁴⁴ Law No 197 of 2008.

¹⁴⁵ Media reports indicate that on 8 September 2011, the closing date for nominations, there were 26 registered candidates for the position of President of the EBA. See Baegypt.com, 'After the close of the nomination 26 candidates for the position of President and 206 courts of first instance and 159 on the general level and 34 candidates for the public sector', (8 September 2011), available at: www.baegypt.org/13.php?id=2029 (Arabic); See also Al-Masry Al-Youm, 'Brotherhood seeks to dominate Lawyers Syndicate', 16 September 2011, at www.almasryalyoum.com/en/node/496146 (accessed 21 September 2011), available at: www.baegypt.org/13.php?id=2029 (Arabic only).

(ii) POTENTIAL FOR POLITICAL INTERFERENCE IN EGYPTIAN BAR ASSOCIATION ELECTIONS

137. The independence of the Bar is a prerequisite to its success. International instruments stress that a bar association is to be free from political interference in its election process, disciplinary proceedings and day-to-day administration of its affairs. In addition, the bar should itself refrain from ‘indulg[ing] in partisan politics’ or engaging ‘in politics per se’, if this will compromise its independence.¹⁴⁶
138. Government interference in the Bar’s affairs has taken place historically, including through the dissolution of the elected Bar Council by the executive. This measure was resorted to on at least four occasions (under President Gamal Abdel Nasser in 1954, and under President Anwar Sadat in 1971, 1981 and 1982), as a means to dismiss bar councils that had publicly criticised government policies.¹⁴⁷ Such explicit interference has not occurred since then.¹⁴⁸ Nonetheless, the IBAHRI noted that many EBA members spoke about the Bar in entirely political terms. For instance, members of the most recent Bar Council were often identified based on their political allegiance.
139. Both the Advocates Law (Law No 17 of 1983) and 1972 EBA By-laws provide for the independence of Egypt’s legal profession. Under these laws:
- a. The practice of law is a profession that is exercised independently. It is carried out by lawyers alone independently, subject only to their conscience and the provisions of the law.¹⁴⁹
 - b. The role of the Bar is ‘[t]o care for the interests of its members and instil the spirit of cooperation between them as well as ensuring the independence thereof in performing their mission’.¹⁵⁰
 - c. Some activities (for example ministerial and religious positions) cannot be pursued together with the practise of law.¹⁵¹
 - d. The text of the oath to be taken before becoming practicing lawyer includes a reference to independence.¹⁵²
 - e. There is a right to accept or reject appointment as counsel on the basis of the lawyer’s convictions only.¹⁵³

146 Report of the Special Rapporteur on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, Mr Param Cumaraswamy, UN Doc E/CN.4/1995/39, para 72: ‘the Special Rapporteur is conscious of the fact that the role of lawyers and their respective bar associations in upholding human rights and fundamental freedoms, as referred to in paragraph 14 of the Basic Principles on the Role of Lawyers, is sometimes seen by Governments as lawyers dabbling in politics. The Special Rapporteur will be vigilant in the protection of this important role of lawyers [...] However, the Special Rapporteur will be equally vigilant in scrutinizing situations where lawyers may be using their bar associations to indulge in partisan politics, thus compromising the independence of the legal profession. In this connection, the Special Rapporteur will seek to distinguish between engagement in the protection of those human rights which have political connotations, and engagement in politics per se’.

147 See ICJ report ‘Clash in Egypt – The Government and the Bar’ (1995).

148 On 28 January 1996, a court order decreed the ‘sequestration’ of the EBA due to alleged financial irregularities by its then-board members. The Bar was taken over by court-appointed sequestrators and no elections were held for over five years. See ICJ, ‘Egypt: The Sequestration of the Bar: Report of a Mission: 10–16 March 1998’ (1998).

149 Article 1 Advocates Law (No 17 of 1983).

150 Article 121 Advocates Law (No 17 of 1983).

151 Article 14 Advocates Law (No 17 of 1983).

152 Article 20 Advocates Law (No 17 of 1983).

153 Article 48 Advocates Law (No 17 of 1983).

- f. Egyptian law provides for immunities of lawyers and guarantees in relation to disciplinary or criminal actions for contempt of court.¹⁵⁴
140. As noted above, all ‘syndicate’ elections, including the EBA were, until recently, governed by the Law on Democratic Trades Union Organisations (Law No 100 of 1993). The law was passed barely a year after the Muslim Brothers dominated the EBA elections in 1992. It is said that it was as a result of the alarm raised by the rise of the Muslim Brotherhood within the Bar and in other professional associations that the government in 1993 adopted Law 100, with a view to blocking or delaying future syndicates elections to the extent possible.¹⁵⁵
141. Law No 100 of 1993 required strict quorums for voting in syndicates’ executive bodies and some lawyers interviewed by the IBAHRI considered that this law had frustrated an independent and democratic election process. It was said that the quorum required for valid elections was intentionally unrealistic and the effect of this provision was to paralyse the organisation for some time, leaving it without an elected and effective leadership.
142. In the years immediately following its adoption, however, Law No 100 of 1993 was of limited practical consequence for the EBA, because of other events that had unfolded. On 28 January 1996, months before the first Bar election that was to be regulated by the new law, a court order decreed the ‘sequestration’ of the Bar, due to alleged financial irregularities by its then-board members. The Bar was taken over by court-appointed sequestrators, and no elections were held for over five years.¹⁵⁶ In February 2001, the EBA managed to elect a new Board and Chair, in compliance with the quorum required by Law 100.¹⁵⁷ The required quorum of 50 per cent was similarly reached in 2005, when over 74,000 lawyers (out of the 146,000 members of the EBA General Assembly) cast their votes.¹⁵⁸ The election of Hamdi Khalifa in 2009 took place after a second round of voting, where the reduced quorum of 33 per cent of voters was met.¹⁵⁹ Law No 100 of 1993, therefore, does not appear to have directly impacted the Bar’s ability to hold valid election, at least at the national level.
143. Nevertheless, it does appear to illustrate both the desire and the possibility of political interference at the time the law was in force. For the EBA to become truly independent in the future, members of the Bar will have to break away from the past where political agendas dominated professional issues, and when voting was frequently carried out along political lines.

154 Article 47–51 Advocates Law (No 17 of 1983).

155 Cassandra, ‘The Impending Crisis in Egypt’, Vol 49(1) (1995) Middle East Journal, 9–27; E Kienle, ‘More than a response to Islamism: The Political Deliberation of Egypt in the 1990s’, Vol 52(2) (1998), Middle East Journal, 219–235; M Aknur and I Askar Karakir, ‘The Reversal of Political Liberalization in Egypt’, Vol 7(1) (2007), Egypt Academic Review, 311–333.

156 ICJ Report ‘Egypt: The Sequestration of the Bar’ (1998).

157 See HRW, World Report 2002, p 418, available at: http://books.google.com/books?id=YVAZQxB2HacC&pg=PA418&dq=%22egyptian+bar+association%22+1996&hl=en&ei=13ZvToqRKdLUiALj0uiGBw&sa=X&oi=book_result&ct=result&resnum=2&sqi=2&ved=0CC8Q6AEwAQ#v=onepage&q=%22egyptian%20bar%20association%22%201996&f=false. Note, however, that the required quorum was not reached for some of the local committees’ election, which had to be re-run: see Albawaba, ‘Egypt’s Bar Association Sub-Elections Postponed for Lack of Quorum’, (19 March 2001), available at: www.albawaba.com/news/egypt-s-bar-association-sub-elections-postponed-lack-quorum.

158 See <http://weekly.ahram.org.eg/2005/735/eg7.htm>.

159 The first round of elections saw only 65,000 lawyers casting their votes, while the 50 per cent quorum required by Law No 100 of 1993 would have amounted to over 100,000 votes. See <http://weekly.ahram.org.eg/2009/949/eg2.htm>; <http://news.egypt.com/en/200905246147/news/-egypt-news/poor-turnout-in-egypt-bar-association-elections.html> According to the ‘Summary of The Annual Democracy Status in Egypt Report’ of 2009, in the second round, 76166 people – more than 33 per cent – cast their votes out of a total of 208,115 eligible voters (though ultimately only 63,972 votes were deemed valid). See www.mosharka.org/pdf/english-web.pdf, p 25.

(III) LACK OF TRANSPARENCY IN FINANCES

144. A number of the IBAHRI interviewees alleged that the EBA has suffered financial mismanagement over the years.¹⁶⁰ Although Articles 157–165 of the Advocates Law require an auditor to review the budget, and that the budget is published, these requirements do not appear to be fulfilled in practice.¹⁶¹ This suggests that, at the very least, there is a need for a more transparent accounting process, and regular reports on how money has been spent.

(IV) FAILURE TO FULFIL MANDATE ON ETHICS AND DISCIPLINING

145. The UN Basic Principles on the Role of Lawyers foresee a ‘vital role’ for bar associations in upholding professionalism and ethical conduct by lawyers and establishing disciplinary proceedings against them.¹⁶² Based on the relevant international norms, the IBA also recommends, inter alia, that lawyers’ associations shall adopt and enforce a code of ethics for lawyers (Principle 21); and that disciplinary proceedings shall be conducted in the first instance before a disciplinary committee of the appropriate lawyers’ association (Principle 24). Since the Bar ‘has a crucial interest in maintaining professional standards’, it ‘should have a principal role in disciplinary matters’.¹⁶³

146. Article 99 of the Advocates Law allows the EBA to issue a warning or caution, or else to temporarily suspend a lawyer from practice while a disciplinary process is ongoing. The Bar can also itself conduct an investigation where allegations of ethical misconduct are not of such gravity as to warrant disciplinary measures.¹⁶⁴

147. However, there is no first instance disciplinary process within the Egyptian Bar. Instead, an independent committee – which is not run by the Bar – decides whether a violation has occurred. This committee is composed of:

- a. the Chief Justice of the Cairo Court of Appeals (the ‘Court’) or his deputy;
- b. two ‘counsellors’ or legal consultants from this same court to be appointed by the Court’s general assembly each year; and
- c. two members of the Board of the EBA, one to be chosen by the lawyer against whom the action is brought and the other to be chosen by the Board.¹⁶⁵

148. Several EBA members told the IBAHRI that ideally the Bar should handle the disciplinary process, but only when confidence in the institution has been restored. Otherwise, the process

160 The vast majority of EBA members who the IBAHRI spoke to said that the Bar was rich. Membership dues are modest, ranging between EGP6 and EGP80, but lawyers who argue cases in court pay a stamp duty that goes to the Bar. In addition, every contract that is worth more than EGP50,000 is registered with the signature of the Court of Appeal and the Bar takes a percentage of it. Article 168 Advocates Law (No 17 of 1983). Estimates of the Bar’s budget in the press also suggest that it has substantial savings. On the other hand, recent election candidates have stated that it is bankrupt. See Ahrām Online, ‘Sameh Ashour: Bar Association on the verge of bankruptcy’, 5 August 2011, available at: <http://gate.ahram.org.eg/NewsContent/5/35/101881/%D8%A7%D9%84%D9%> (Arabic only).

161 IBAHRI interview, 29 September 2011.

162 UN Basic Principles on the Role of Lawyers, Principles 26–29 and Preamble.

163 IBA Principles on the Role of Independent Bar Associations, p 2 and see also Principle 4.

164 Article 99 Advocates Law (No 17 of 1983).

165 A lawyer facing disciplinary action is entitled to be defended by another lawyer; disciplinary sessions are confidential, and decisions may not be published (Article 89). The potential penalties, upon a finding that a violation has occurred, range from a warning to permanent disbarment. Decisions are subject to appeal before the branch and central councils of the Bar.

can be used as a bargaining tool for elections. Other lawyers suggested to the delegation that this would be a proper role for the Bar to assume even now, or at least as soon as the new leadership is elected.

(v) OVERREGULATION OF LAWYERS

149. The regulatory functions of a bar association should include a role in admitting members to the bar, drafting and maintaining a code of conduct, and disciplining members of the legal profession. The EBA, whilst failing to live up to its mandate on ethics and discipline, over-regulates many other aspects of its members' professional activities.
150. Both the Advocates Law and the EBA By-laws include a host of out-dated provisions, for instance, naming specific sums of money that have little value today and assuming that technology has not advanced beyond paper. More worryingly, they are detailed in regulating lawyers' conduct in a manner that may impede their professional development and efficient running of the Bar. For instance, the laws provide that:
- a. No lawyer may have more than one office in Egypt.¹⁶⁶
 - b. A lawyer cannot be a member of another syndicate and cannot 'engage in commerce' or be on the board of a company.¹⁶⁷
 - c. A fine shall be imposed on lawyers failing to vote in the Bar Council elections.¹⁶⁸
 - d. Detailed regulations govern the compulsory nature of annual general meeting of the Bar and its functioning.¹⁶⁹
151. Overregulation, particularly with antiquated provisions, could hinder lawyers' day-to-day operations and progress. It is suggested that those detailed rules which are necessary for the functioning of the bar associations be updated. Other regulations, however, should simply be abrogated.

(vi) FAILURE TO PROVIDE ENTRY REQUIREMENTS

152. There is currently no bar examination in Egypt. After a two-year training period in a law office, a lawyer is automatically authorised to appear in court.¹⁷⁰
153. The IBAHRI believes that there is a need to introduce a bar exam or similar requirement in Egypt. Requiring candidates to pass stringent examinations in order to secure the right to practise law is a useful guarantee of quality control.¹⁷¹ It is not the only way to structure entry

¹⁶⁶ Article 74 Advocates Law (No 17 of 1983).

¹⁶⁷ Articles 13–14 Advocates Law (No 17 of 1983).

¹⁶⁸ Article 228 Law 17/1983; Article 21 By-laws of the EBA.

¹⁶⁹ Articles 124–130 Advocates Law (No 17 of 1983); see also, Article 24. In the event any member is unable to attend the meeting of the Bar Council, they must inform the secretary with their excuse, or else they will be considered absent without a legal excuse, unless they attend the next session and state the reason that had inhibited them from attending the previous meeting.

¹⁷⁰ After an additional five years of practise and an exam at that stage, the lawyer is entitled to appear before an appellate court. Upon ten years of practise, the lawyer is qualified to plea before the Court of Cessation, the highest court in the Egyptian judicial system.

¹⁷¹ Law No 197 of 2008 (amending the Advocates Law No 17 of 1983) did introduce an exam in order for a lawyer to be accepted before the Court of Appeal. The rules and regulations for this are set by the Bar and the exam takes place after the lawyer has completed their period of practise before the Court of First Instance. See n 179.

requirements, but is a common way of doing so. The IBAHRI reached the firm conclusion that it is no longer feasible *not* to have a bar exam in Egypt to regulate entry into the profession. Given the legal education system that is producing thousands of graduates per year, many of whom are academically weak, quality control is required. This is not necessarily the sole responsibility of the Bar, but it should play a proactive role in it.

(VII) INADEQUATE PROVISION OF PROFESSIONAL TRAINING

154. The UN Basic Principles on the Role of Lawyers state that governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training.¹⁷² Each country must decide for itself, in accordance with its own needs and circumstances, how to divide up responsibilities to achieve this, but bar associations should have an input into what this training should entail and how certification of its completion is to be provided.
155. In some countries (such as many jurisdictions in the US) the bar association sets the examinations which qualify a person for admission to practise as a lawyer, but does not actually undertake the training, which is left to educational institutions. Other bar associations operate their own training and education.¹⁷³
156. The Egyptian Advocates Law and EBA By-laws include the following training guarantees:
 - a. Branch Syndicates shall organise each year a period of six months of lectures for lawyers under apprenticeship and shall create an institute for the training of such lawyers.¹⁷⁴
 - b. The tasks of the Bar include encouraging legal research, and caring for the interests of its members.¹⁷⁵
 - c. Lawyers in pupillage period must give proof of attending half of the lectures given at the general bar, or one of the regional bars, within the pupillage period at least.¹⁷⁶
157. The IBAHRI believes that these requirements, apparently not fully enforced in practice, are in any event insufficient. Lawyers repeatedly informed the IBAHRI that in recent years the EBA has failed to provide training sessions for the profession. Civil society has stepped in to some extent to fill the gap in training and legal education. For instance, the Arab Centre for Independence of the Judiciary and Legal Profession has trained 6,000 lawyers in international human rights law, among other things. The UNDP Human Rights Capacity Building Project (BENAA), has trained over 30,000 individuals, including lawyers,¹⁷⁷ and the American Bar Association regularly conducts training for a relatively small number of legal professionals who practise outside of Cairo.¹⁷⁸

172 UN Basic Principles on Role of Lawyers (1980), Principles 9–11, available at: www.2.ohchr.org/english/law/lawyers.htm.

173 In South Korea, for instance, applicants are required to take the bar examination and complete two years of courses at the Judicial and Research Training Institute. See International Network to Promote the Rule of Law (INPROL), 'Establishing and Reforming Bar Associations in Post-Conflict States', (2010), p 11, available at: www.inprol.org/node/4837.

174 Article 28 Advocates Law (No 17 of 1983).

175 Article 121 Advocates Law (No 17 of 1983); and Article 1 By-laws of the EBA.

176 Article 69 By-laws of the EBA.

177 For example, UNDP's BENAA Human Rights Capacity Building Project, available at: www.benaa-undp.org/english/index.php?pageid=2&page=About%20Benaa.

178 ABA ROLI programme, available at: <http://apps.americanbar.org/rol/mena/egypt.shtml>.

158. The IBAHRI is of the view that, in addition to the problems with legal education affecting lawyers, and the lack of entry requirements detailed above, there is an urgent need for continuing legal education for practising lawyers, including through lectures, seminars and training.

(VIII) FAILURE TO PROTECT LAWYERS FROM EXTERNAL INTERFERENCE

159. All bar associations should protect the interests of their own members. This includes protecting members from persecution, for instance through threats, arbitrary arrest or malicious prosecution.¹⁷⁹

160. As noted above, this is not merely a theoretical problem in Egypt. With one notable exception,¹⁸⁰ lawyers told the IBAHRI that when they were unjustly detained or arrested there had been no intervention by the EBA. In many countries it would be unthinkable that, if any lawyer is arbitrarily detained during the course of his professional duties, a representative of the Bar would not be at the detention facility within 24 hours to provide support for the lawyer.

(IX) THE DECLINE OF THE EGYPTIAN BAR ASSOCIATION IN THE HUMAN RIGHTS ARENA

161. While primary responsibility for protecting human rights rests with individual states, bar associations are in a unique position to play an essential role in this regard. As the UN Basic Principles on the Role of Lawyers point out: '[l]awyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law'.¹⁸¹

162. At a national level, the Advocates Law and the EBA By-laws provide that:

- a. the practise of law is a profession that assists the judiciary in the realisation of justice, the rule of law and the guarantee of the defence of the rights and freedoms of citizens;¹⁸² and that
- b. one of the EBA's tasks is '[d]rafting project laws aiming at developing and modernizing legislation in such a way that consolidates public liberties, justice, human rights and the rule of law for citizens.'¹⁸³

163. Notwithstanding these provisions, a number of Egyptian lawyers suggested that the EBA as an institution has done little, if any, meaningful work in the human rights arena.

164. Human rights defenders also told the delegation that, with some noted exceptions,¹⁸⁴ that there was no real culture of strategic public-interest litigation in Egypt, that there was a lack of legal capacity in the human rights area, and that there was little awareness or practical experience in using litigation to change laws.

179 See Chapter Three, above.

180 In relation to the 'Tanta Incident' the President of the EBA publicly spoke out in defence of the lawyers. *Ibid*, n 117, above.

181 Principle 14 of the UN Basic Principles on the Role of Lawyers.

182 Article 1, Advocates Law (No 17 of 1983).

183 Article 1, By-laws of the EBA.

184 Important rulings achieved by lawyers on minimum wage was obtained by Khalid Ali Omar and Hussam Barhad was able to obtain changes to identification (ID) laws for Baha'is.

165. It was not always this way. Prominent members of the Bar played an essential role in drafting the 1923 and the 1971 Constitutions, two milestones in Egyptian history.¹⁸⁵ The EBA was also a major force in defending the Constitution against encroachment by the King and illiberal governments in the interwar period.¹⁸⁶ In decades past, the Bar was frequently butting heads with the government over abuses of power, and it frequently got its way.¹⁸⁷
166. When the IBAHRI put this to the Bar's Treasurer during its visit, he admitted that in the last few years the human rights role of the EBA has been 'neglected'. Other lawyers confirmed this decline and attributed it to the fact that pro-Mubarak-regime figures had dominated the 46-member Council and the Presidency. EBA President Hamdi Khalifa did not respond to the IBAHRI's calls to meet him during the mission, so his views on this are unknown.
167. A minority of lawyers the delegation met were more positive about the activities of the Bar in recent months, highlighting for instance that 'since 25 January, the association is filled with people and conferences talking about human rights issues'. In the last few months, the Bar, including its Liberties Committee, also appears to have been more active in issuing statements on human rights issues. For instance, there have been statements opposing military trials, publicising the launch of a fact-finding commission on the alleged killing of protesters by the police,¹⁸⁸ and reporting a visit to Tora Prison to verify that former-President Mubarak and the other 'VIP detainees' were receiving adequate, but not special, treatment in detention.¹⁸⁹
168. While these are welcome developments, the IBAHRI agrees with the Egyptian lawyers who stated that the Liberties Committee, and the Bar as a whole, could do more in impartially defending human rights in the post-revolution era. For instance, it is hoped that this committee – or any new mechanism established to take its place – can conduct strategic human rights monitoring, investigations and litigation, and be more active in advocating and drafting law reform proposals where needed, in order to safeguard human rights.

(x) FAILURE TO CONTRIBUTE TO LAW REFORM AND PROVIDE LEGAL AID

169. Legal aid is essential for the delivery of justice to all people, especially those who cannot afford to pay for legal representation. Many bar associations around the world now encourage their members to do pro bono work, and some require it as a condition for obtaining or renewing a licence to practice.
170. Articles 93–94 of the Advocates Law state that bar association branches should form legal-assistance committees to help the needy in each territory, and that 'the branch office should

185 See B Rutherford, *Egypt after Mubarak: Liberalism, Islam, and Democracy in the Arab World*, (Woodstock: Princeton University Press, 2008), 'Liberal Constitutionalism', p 42–43.

186 See Farhat J Ziadeh, *Lawyers, the Rule of Law and Liberalism* (Stanford: Hoover Institution, 1968), p 77–98; and also Donald M Reid, *Lawyers and Politics in the Arab World, 1880-1960* (Minneapolis: Biblioteca Islamica, 1981), p 139–43.

187 See for instance: Carnegie Endowment for International Peace, 'Egypt's Judges Step Forward – The Judicial Election Boycott and Egyptian Reform', May 2005, available at: www.carnegieendowment.org/files/PO17.borwn.FINAL.pdf (accessed 21 September 2011).

188 Gulf News, 'Egypt Probes Illegal Transactions', 19 May 2011, available at: <http://gulfnews.com/mobile/business/investment/egypt-probes-illegal-transactions-1.809808> (accessed 21 September 2011); see also Youm7, 'Human rights violations committed post-revolution: Bar Association', 13 June 2011, available at: <http://english.youm7.com/NewsPrint.asp?NewsID=340948> (accessed 21 September 2011).

189 Egyptian Organization for Human Rights, 'Abu Sead and a group of human rights' activists visited Tora Prison', 31 July 2011, available at: *Al-Ahram Newsreel*, Issue No 1059 (4–11 August 2011) available at: <http://weekly.ahram.org.eg/2011/1059/eg2.htm>; and Youm7, 'Bar Association delegation to visit Torah', 28 April 2011, available at: <http://english.youm7.com/News.asp?NewsID=339408&SecID=12&IssueID=0> (accessed 21 September 2011).

name a lawyer to the client to be exempted from legal fees', and form a list of lawyers to do this. The Advocates Law at Article 95 also suggests that the Board should delegate lawyers to defend citizens at no cost. While the IBAHRI did seek to review the issue in detail, this process does not appear to be operational in practice.

171. Several Egyptian lawyers also commented that much more could be done to foster a culture of pro bono work, and that following the revolution there would be considerable support and interest in doing so amongst younger lawyers. It may be that imposing a mandatory requirement to take on pro bono work through the licensing process is the best way to kick-start this process. In addition, following a review of best practices in this area, discussions should focus on whether a new system of legal aid – for instance a public defender system similar to that in the US – could work in Egypt.
172. A bar association can play a crucial role in any such reform process given the expertise of its members and its ability to speak for the profession with a single voice on issues of common concern. Unfortunately, however, the EBA, by and large, has not had a meaningful role in law reform in recent times. The IBAHRI was told that here is no single body dedicated to generating proposals for law reform, and lawyers as a group are not generally invited to comment on proposed new laws. Interviewees highlighted that this was the case, even when it came to laws about the legal profession itself or that affected it directly.
173. Lawyers, particularly those who receive up-to-date training on international human rights standards, should be uniquely qualified to propose and comment on law reform, particularly in the crucial months to come, to make sure the new laws that regulate their work will match both their needs and the country's international commitments.

5.4 Conclusion

174. In the words of one young Cairo lawyer interviewed by the IBAHRI, 'if lawyers had a Golden Age it was a long time ago'. Another lawyer agreed, 'People have given up on the Bar.' Yet the EBA has a distinguished history and could play a very meaningful role in the human rights arena and in advancing professional development through law reform proposals to the future parliament. In the months following Egypt's revolution, there is clearly enormous potential. However, to live up to its mandate to regulate, educate and protect, delegates concluded that substantial reform of the EBA is urgently needed.
175. Now that a court ruling has clarified that new Bar elections must take place, the inadequacy of the EBA members list appears to be the major impediment to holding swift elections. Gaps in the membership register must not be used as a pretext to delay independent elections. Current Bar members who are eligible to vote must be confirmed once and for all, and an electronic membership register, one that is easy to update, must be put in place. This should be done as soon as possible, ideally so that a functioning Bar is in place before Parliamentary elections occur and the new Constitution is drafted.

176. The representative function of bar associations entails not only lobbying activities, but also to protect members and represent the legal profession in the wider community. In this regard, the EBA must start to do more to protect independent lawyers, including human right lawyers, from interference. The Liberties Committee should do more to live up to its name. New mechanisms should be put in place to improve the legal aid system. More generally, measures should also be taken to imbue a new sense of purpose, meritocracy, and professionalism within the EBA. Updating and simplifying the two legal instruments that govern the Bar to reduce over-regulation and increase transparency and efficiency will be a good start. Introducing entry requirements for the admission of members to the Bar, and then professionally training lawyers, is also essential.
177. To engage young lawyers, reformists and others, cultural change is also necessary. Lawyers should be informed of the important roles that bar associations can play in society, and of the 'best practices' in achieving this. Training is essential, including on international human rights norms. The Bar needs to be reinvigorated with a decreased focus on political affiliations and an increased engagement in legal, professional and public-interest issues. The new elections provide the perfect opportunity for this change to happen, and it is hoped that Egyptian lawyers will fully embrace it.

Chapter Six: Recommendations

To the Egyptian Government, the Ministry of Justice, the future Parliament, the EBA and appropriate judicial authorities:

On law reform and international commitments

- End the state of emergency, repeal the Emergency Law (Law No 162 of 1958) and related laws that place undue restrictions on human rights.
- In consultation with all relevant stakeholders, including the EBA, ensure appropriate prioritisation of law reform in the area of administration of justice.
- Extend an invitation to visit Egypt to the UN Special Rapporteur on Independence of Judges and Lawyers and consider ratifying additional international human rights treaties and conventions that recognise international adjudicative bodies and courts.

On judicial independence and the use of ordinary courts

- Abolish emergency state security courts.
- Amend the Military Code of Justice to clearly restrict the jurisdiction of military courts to military personnel and military offences.
- Review all convictions of civilians handed down by military courts and emergency courts since January 2011 and where possible grant the right to a re-trial in a civilian court in full accordance with international fair trial standards.
- Consider a range of proposals and adopt measures to remove the influence of the executive, including the President and the Minister of Justice, over senior judicial appointments and transfers/assignments of judges in ordinary courts and consider transferring these powers to an independent judicial body such as the Supreme Judicial Council.
- Ensure that non-prosecution lawyers are given an equal opportunity to enter the judiciary based on merit.
- Strengthen the provision of training to the judiciary, including by experts on international fair trial and other human rights standards and the provisions of domestic law which give them effect.

On respect for due process and defence rights

In addition to lifting the state of emergency, abolishing state security courts and ending the trials of civilians before military courts:

- Ensure and publicly state that any new legislation introduced will afford defendants full due process as provided under Article 14 of the ICCPR.

- Revise the Criminal Procedure Code to ensure adequate protection of defence rights as guaranteed in Article 14 ICCPR and other conventions to which Egypt is a party. Amendments should include:
 - amendment to Article 124 of the Criminal Procedure Code that has allowed prosecutors to regularly interview defendants in the absence of counsel; the new version of this Article should make clear that defendants in any criminal case – whether felony or misdemeanour – have the right to have defence counsel present during pre-trial interviews, including at the police station;
 - removing bureaucratic hurdles in the disclosure process such as requiring permission from the prosecutor to photocopy files. Move towards a system where there is an electronic database of material with controlled access and share documents that way; alternatively, grant defence counsel free access to hard copy files to which the latter is entitled under the applicable procedural rules; and
 - removing the need for a defence lawyer to seek permission from a prosecutor or judge to visit his client in detention.
- Ensure that defendants are informed of their right to defence counsel, and that the right to defence counsel is fully respected in practice.
- Reform the system of court appointed lawyers to ensure that a working legal aid system is established that ensures that indigent defendants receive timely and effective legal assistance; study best practices such as ‘public defender’ models, paralegal positions and other models in doing so.

On interference with human rights lawyers’ work

- Respect lawyers’ right to freedom of expression, particularly in discussions on matters concerning the law, the administration of justice and the promotion and protection of human rights.
- Ensure that defence counsel are treated with respect and are not subject to arbitrary arrest or harassment; adequately safeguard lawyers’ security when it is threatened as a result of discharging their functions.
- Ensure the EBA is quick and robust in publicly protecting lawyers in response to any spurious charges filed against a lawyer, or any interference with the proper performance of his duties.
- Allow professional associations such as the EBA to regulate themselves, including their elections, without imposing quorum or other unreasonable requirements.
- Introduce clearer legislation concerning duties of prison officials, prosecutors and police during the course of carrying out their functions to provide that officials who obstruct the performance of lawyers’ duties should be effectively dealt with by their respective internal disciplinary procedures as well as under applicable laws.

On lawyers' education, training and professionalism

- Recognise that reform of Egypt's legal education system is essential to wider reform of the justice sector. Priorities for change should include:
 - allowing public university law departments autonomy from the Ministry of Higher Education, so they can set their own admission standards; regulate the number of students per class, the content of tuition and the intake number; and let students choose which degree they are applying for;
 - raising admission standards for public law schools;
 - reviewing public law faculty curricula to increase learning about international law and human rights.
- Ensure that all lawyers receive continuing legal education (CLE) and training to update their skills, including on international human rights law;
- Introduce special training and qualification programs for young lawyers;
- Educate lawyers about the important roles that bar associations can play in society, and of the 'best practices' in achieving this.
- Develop proposals to remove over-regulation of the legal profession set out in the current Advocates Law and By-laws (see provisions listed at section 5.3(v)).

On membership and elections for the Egyptian Bar Association

- Undertake an immediate further review of the EBA's membership register to ensure the list of registered voters is accurate; strike out individuals ineligible to vote in Bar Council elections, including any non-practising lawyers, those deceased, or those who have not paid their dues;
- Make sure the electronic register is easy to update and that members have to opt-in to renew their membership periodically; it is suggested that a system be put in place whereby, once a year, a lawyer needs to pay his/her dues and certify that they are *still* practising (providing supporting material) in order to have their practising status renewed, and consequently their right to appear on the list of registered voters also renewed.
- Restore leadership of the EBA to a self-governing elected body by holding fresh Bar Council elections; this should be done as soon as possible.
- In preparing for EBA elections:
 - Issue a statement clarifying the procedures for the elections.
 - Ensure adequate supervision of the actual voting; to guarantee fairness, transparency and independence.
 - Take steps to publicise and increase knowledge of, and the turnout at, elections, particular among young lawyers, women and minorities.

On cultural and structural reform of the Egyptian Bar Association

- Drawing upon the EBA's impressive history and rich heritage, forge a clear vision for the Bar in post-revolution Egypt that includes a decreased focus on political affiliations and increased engagement on legal and public-interest issues.
- Prepare and submit to Egypt's new Parliament an organised legislative proposal on the reform of the Advocates Law.
- Update, simplify and codify the provisions that govern lawyers and the Bar – including the By-laws and the Advocates Law. Delete any By-laws that are outdated, unnecessary, unhelpful or that conflict with the Advocates Law. Encourage young lawyers and independent professionals to take up active membership of the Bar.
- Raise awareness about the proper role of a professional bar and the international standards which regulate it.
- Undertake a strategic assessment of the needs of the Bar; seek technical advice as necessary to determine the following:
 - if there should be one national bar association or several, and, if several, how they would be divided (for example, geographically or based on area of law practised);
 - consider the advantage of one national bar association with compulsory membership for all lawyers. A unified bar may help to create a cohesive legal profession, make it a more powerful voice and could still accommodate regional or practice divisions through the creation of committees (for example an international law committee, young lawyers' committee etc);
 - review provisions that regulate the ability of prosecutors, lawyers who work in the public sector, judges, legal academics and others with qualifications in the law, to become members and/or have voting rights; and
 - review the structure of the 46-member Board and the 100-member Liberties Committee to make it smaller and more workable.
- Consider introducing a requirement that each lawyer take on one pro bono case per year as a way of easing the legal aid burden, and engendering a culture of pro bono work within the profession. Organise workshops involving international experts who can share their experiences and provide training to lawyers.

Human rights

- Focus more on the role of the EBA in human rights promotion; build the capacity of its 'Liberties Committee' to advocate effectively on human rights issues and law reform relating to human rights.
- With assistance where necessary, conduct strategic human rights monitoring, investigations and litigation, and be more active in advocating and drafting law reform proposals where needed to safeguard human rights.

Licensing

- Lay down conditions for being enrolled as a lawyer, including a bar exam or similar requirement. The bar exam should be administered by an independent committee and/or the EBA. Lawyers should be required to renew their licence on a regular basis.

Ethics/disciplining

- With appropriate advice, produce a 'Code of Ethics' for the legal profession. It should be comprehensive, and deal with issues such as guilty pleas in criminal cases and lawyer-client privilege. Consider testing applicants for the Bar on ethics as part of their bar exam. Consider establishing an 'Ethics Helpline' to assist lawyers with a practical application of the ethics code.
- Improve upon the disciplinary procedures currently contained in Articles 85–94 of the Advocates Law, so as to make them more transparent, and to clarify that an accused lawyer is entitled to have his or her case heard in public if he or she so chooses.
- Move to a system where the Bar provides the first-instance disciplinary mechanism, and clarify that this process allows a lawyer the right to appeal the decision to a court.

Financial

- Develop clearer, more accountable and more transparent regulations regarding the finances of the Bar, to prevent financial mismanagement. Publish regular reports on how revenue is derived and expenses are disbursed. Have the accounts audited regularly (at least annually) by an established and reputable accounting firm, as required under the Advocates Law.

International network

- Establish and harness better contacts with international organisations, including the International Bar Association.

Appendices

Annex A: Advocates Law (Law No 17 of 1983) [excerpts]

ARTICLE 1

The practice of law is a profession that is exercised independently. This profession assists the judiciary in the realisation of justice, the rule of law and the guarantee of the defence of the rights and freedoms of citizens.

This profession is carried out by lawyers alone independently. And they are subject only to their conscience and the provisions of the law.

[...]

Part 1

Chapter 1: Registration on the Lawyers' Register

[...]

ARTICLE 12

The General Register and the registers provided for in Article 10 shall be the responsibility of the Committee for the Acceptance of Lawyers provided for in Article 16. The committee shall review these registers annually to ensure the conformity of the data contained therein to the decisions of the Lawyers' Admission Committee and shall review cases of lawyers inscribed on such registers whose situations warrant their transfer to the register for non-practicing lawyers and shall issue the necessary decisions in this regard.

[...]

Chapter 2: Registration on the General Register

[...]

ARTICLE 14

The following activities may not be pursued altogether with the practice of law.

1. To be the speaker of the People's or Consultative Assembly.
2. To occupy a ministerial position.
3. To occupy public office in the government, public authorities, local government, public sector

companies or private employment other than to be employed by legal departments as permitted by this law and with the exception of professors of law at Egyptian universities in cases permitted by this law. Membership of governmental temporary or scientific committees, the performance of activities that do not take more than six months, or the teaching of law at universities or higher institutions shall not be considered activities that prohibit the practice of law.

4. To engage in commerce.
5. To occupy the position of Chairman, Managing Director, Board Member or Manager in joint stock companies, companies of limited liability, limited partnerships and partnerships.
6. To occupy religious positions.

[...]

ARTICLE 16

Applications for registration on the General Register shall be submitted to the Committee for Admission of Lawyers formed at the General Syndicate presided over by the dean or Secretary-General of the Syndicate in cases of absence of the Dean, and membership of four lawyers admitted to plead before the Court of Cassations or Courts of Appeal to be selected by the Board of Directors of the Syndicate annually.

The application shall be accompanied by the documents that prove the fulfilment of the conditions provided for in Article 13 that are elaborated in the internal regulations of the Syndicate.

[...]

ARTICLE 18

The committee shall issue its decisions after ascertaining the fulfilment of the conditions for registration within a period of 30 days from the date of application. If its decision is to reject the application, then, such decision should be founded on reasons, which shall be advised to the applicant within 15 days of the date of the issue of the decision by means of a registered letter with notification of receipt.

ARTICLE 19

The applicant may petition against the decision rejecting the application within 15 days from the date the applicant is advised of such rejection. The petition shall be presented to the Admission Committee, which shall take a decision thereon after hearing the applicant.

The applicant may, in the event of the rejection of the petition, or in the event that the time frames that are set for the submission of the petition have elapsed, submit a further petition before the Cairo Court of Appeals within 30 days from the date the petition was rejected or, the date that the time for the submission of the petition had elapsed. The applicant may also submit a challenge before the same Court, if the application for the registration is not decided on within the time frame set forth in the aforementioned article.

The application may not be renewed in the cases listed in the previous two paragraphs except if the reasons had led to the preclusion of registration no longer exist.

ARTICLE 20

A lawyer who has been registered on the lawyers' register, may not practice except after taking the oath in the following form:

'I swear by Almighty God to carry out the duties of a lawyer with honour, integrity and independence and to protect the ethics of the profession and its traditions and to respect the Constitution and the Law.'

Taking of the oath shall be before the Lawyers' Admission Committee in the presence of at least three of its members.

The oath shall be recorded in the committee's protocol.

Chapter 3: Registration of Lawyers under Apprenticeship

[...]

ARTICLE 28

The Branch Syndicates shall organise at the beginning of each judicial year and for a period of six months lectures for lawyers under apprenticeship covering practical matters pertaining to the practice of law in accordance with the curriculum prepared by the Board of Directors of the Syndicate. Senior lawyers, members of the judiciary, Professors and experts in law shall be invited to lecture at these courses.

The Board of Directors of the Syndicate shall create an institute for the training of lawyers under apprenticeship.

[...]

ARTICLE 30

If four years elapse from the date of the registration of the lawyer on the Register of Lawyers under apprenticeship, without such lawyer applying for registration before the Courts of First Instance, then such lawyer's name shall be removed from the register and a decision to that effect shall be issued by the Admission Committee.

The lawyer may, within one year from the lapse of the four-year period request registration of his or her name on the Register of Lawyers accepted to plead before the Courts of First Instance if he or she fulfils the conditions necessary therefore provided that new registration fees are paid for registration on the general register in addition to the fees for registration on the register for lawyers admitted to plead before the Courts of First Instance.

If a second year elapses after the removal of a lawyer's name from the register and no application is made or re-registration, then re-registration shall not be permitted except on the register for lawyers under apprenticeship after payment of new registration fees and provided that the applicant has not, during the period of removal, performed work that prohibits the registration on the Lawyers' Register.

Chapter 4: Conditions for Admission to Plead before Courts of First Instance

[...]

ARTICLE 34

Lawyers admitted before Courts of First Instance may open offices in their names either solely or together with other lawyers. Such lawyers may appear on their own behalf before Summary Courts, Courts of First Instance and Administrative Courts. They may also appear before Courts of Appeal and General Administrative Courts on behalf of lawyers who are accepted before such Courts at such lawyers' responsibility. They may also appear at all investigations conducted by the prosecution.

Such lawyers may prepare contracts and register same as well as sign applications and documents related thereto other than deeds for the Incorporation of Joint Stock Companies or the registration or amendment of mortgages.

Such lawyers may not grant written legal opinions.

[...]

Chapter 7: Register for Non-Practicing Lawyers

ARTICLE 43

A lawyer, who wishes to cease to practice law, may apply to the Admission Committee provided for in Article 16, to have his or her name transferred to the register of non-practicing lawyers.

Lawyers who occupied positions that may not be practiced together with the practice of law, or who cease to practice law, should also advise the Admission Committee to have their names transferred to the register of non-practicing lawyers within 30 days of such occurrence.

Legal departments whose lawyers are permitted to practice law pursuant to the provisions of this law shall advise the Syndicate of any change that occurs in the status of members of such departments that requires the transfer of such members name to the register of non-practicing lawyers.

ARTICLE 44

The Board of Directors of the Syndicate after hearing the lawyer or after serving notice on him or her, in the event of the lawyer's non-appearance may issue a decision based on reasons transferring the lawyer to the register of non-practicing lawyers when such lawyer loses one of the conditions required for registration on the general register provided for under this law.

The lawyer may challenge this decision before the Criminals Circuit of the Court of Cassations within 40 days of receipt of the decision to that effect.

ARTICLE 45

The lawyer, whose name has been transferred to the register of non-practising lawyers, may request re-registration if such lawyer had been formally registered before the Courts of Appeal or the Court

of Cassations. Other lawyers may not be re-registered unless they perform equivalent functions to the practice of law during the period of transfer to the register of non-practising lawyers.

In all cases, the period during which the lawyer had ceased to practice law or the functions equivalent to the practice of law, should not exceed 15 years. This shall be without prejudice to the right to be re-registered in the general register if the conditions for such registration are fulfilled.

Lawyers registered on the register of non-practising lawyers, who do not fulfil the conditions provided for in this article, may correct their status within one year of the coming into force of this law.

[...]

Part 2: Rights and Duties of Lawyers

Chapter 1: Rights of Lawyers

ARTICLE 47

A lawyer is entitled to follow the matters deemed by him or her to be successful pursuant to the principles of the profession for the defence of his or her client. He or she shall not be responsible for matters contained in his or her verbal or written pleadings as may be necessitated by the rights of defence. This however, shall be without prejudice to the provisions of the Law on Criminal Procedures and the Law of Civil and Commercial Procedures.

ARTICLE 48

A lawyer shall have the right to accept or reject appointment as attorney in a specific case in accordance with such lawyer's conviction.

ARTICLE 49

A lawyer shall be entitled to be treated by the Courts and other entities where he or she may appear with the due respect due to the profession.

By way of exception to the provisions governing the procedures, order and crimes that are committed in the Court room provided for in the Law of Civil and Commercial Procedures and the Law on Criminal Procedures, if a lawyer commits during the course of a Court hearing and while performing his or her duties or by reason thereof an act that violates the order in the Court or any other act that renders him or her criminally liable before the lawyer's Syndicate then, the President of the Court shall order the preparation of a memoranda containing such events which shall be referred to the General Prosecution and advise thereof given to the Branch Syndicate with jurisdiction.

[...]

ARTICLE 51

No investigation may be conducted with the lawyer nor may his or her office be searched except through a member of the Public Prosecution.

The Public Prosecution shall be obligated prior to the comments of the investigation to advise the Branch Syndicate of any complaint against the lawyer within a reasonable period.

The Dean of the Syndicate or the President of the Branch Syndicate may, if the lawyer is accused of a felony or misdemeanour related to his or her profession, attend the investigation.

The Board of Directors of the General or Branch Syndicate may request copy of the investigation protocol without costs.

[...]

Chapter 2: Duties of Lawyers

ARTICLE 62

Lawyers when performing their duties, shall abide by the ethics, integrity and honesty required by the profession and shall perform all duties imposed by this law, the internal regulations of the Syndicate, and the traditions and ethics of the legal profession.

ARTICLE 63

A lawyer shall be obligated to defend efficiently the interest with which he or she has been charged and to exert ultimate efforts and care in so doing.

A lawyer may not abstain from defending an accused person in a criminal case unless he or she feels due to the circumstances of the case, that it shall not be possible to render the service of defence efficiently and honestly.

ARTICLE 64

A lawyer must provide legal aid to citizens and others unable to bear the costs of such legal services in the cases provided for under this law. The lawyer shall perform his or her duties when delegated to defence of persons with the same care that would have been exerted for a client.

A lawyer delegated for defence may not withdraw from the case except after obtaining permission from the Court where the defence is being conducted and shall continue to do so until withdrawal is accepted and a replacement lawyer appointed.

ARTICLE 65

A lawyer shall not give evidence or facts or information obtained by such lawyer by reason of his or her profession if requested not to do so by the party that divulged such information unless the [divulging] of the information to the lawyer was with the intent to commit a felony or misdemeanour.

ARTICLE 66

A person who occupied a public or private position, and whose relationship ended with that position and practised law may not accept to become an attorney either in his or her own capacity or through a lawyer in his or her office in a case brought against the entity where such person was employed for a period of three years succeeding the date of termination of the relationship with that entity.

[...]

ARTICLE 69

A lawyer may not mention personal affairs that are harmful to the client of his or her opponent, or make accusations against such client that are injurious to honour or integrity, unless this is necessitated by the interests of such lawyer's client.

[...]

ARTICLE 70

A lawyer may not make statements or divulge information concerning pending cases that such lawyer is defending, or publish matters that may affect the process of the case for the benefit of such lawyer's client, or against the opposing party.

ARTICLE 71

A lawyer may not resort to publicity or promotion or use intermediaries to give the impression that such lawyer has a real or false influence. Furthermore, it shall be prohibited for a lawyer to place on the office plaques or letterheads any title other than academic titles and the grade of Courts before which such lawyer is admitted to plead. Furthermore, such lawyer shall not refer to any former position that her or she may have occupied.

[...]

ARTICLE 73

Lawyers shall attend all Courts in dress code specific to lawyers. Furthermore, lawyers shall ensure that their demeanour is always respectable.

ARTICLE 74

With due regard to the provisions concerning lawyers who work for legal departments, a lawyer must obtain a reputable office within the domain of the Branch Syndicate where such lawyer practices.

No lawyer may have more than one office in the Arab Republic of Egypt.

ARTICLE 75

A lawyer shall be obligated to supervise the employees at his or her office, and observe their conduct and ensure that they perform their duties with integrity and honesty.

A lawyer may issue a Power of Attorney to one or more of such employees to peruse documents on behalf of that lawyer, and to receive same from any entity as well as to receive judgments and to make enforcement procedures, to pay and receive fees and deposits.

It shall suffice that such Power of Attorney is notarised by the Branch Syndicate.

ARTICLE 76

A lawyer may not sign legal actions, challenges other papers for the service of summons, contracts submitted to the Notary Public or attend and plead before Courts in a manner that violates the conditions for the practice of law provided for herein. Violation of this provision shall result in the non-admissibility of the action or its being ruled null and void.

This shall be without prejudice with the lawyer's liability pursuant to the provisions of this law and liability towards the party damaged by such action.

Chapter 3: Lawyer Client Relationship

[...]

ARTICLE 79

A lawyer shall retain information divulged to him or her by the client unless requested by the client to release it in the interests of the defence of the case.

[...]

Chapter 5: Disciplinary Responsibility of Lawyers

[...]

ARTICLE 99

The Syndicate Board of Directors may issue a warning to the lawyer or impose a penalty of notice. The Board may also order the suspension of the lawyer against whom a disciplinary action has been brought till a decision is passed with regard to such action. The matter shall be referred to the disciplinary commission referred to in Article 107 of this law within 30 days following its issue. The commission shall, within 20 days thereafter and after hearing the lawyer concerned decides either to continue the preclusion or discontinue same till the disciplinary action brought against such lawyer has been decided on.

The Branch Syndicate shall delegate another lawyer to conduct the cases that were followed by the lawyer so suspended during the period of suspension.

[...]

ARTICLE 116

The Public Prosecution and the convicted lawyer shall both have the right to challenge decisions of the Disciplinary Council referred to in Article 107 within 15 days of the issue of the decision as regards the prosecution and within 15 days of receipt by the lawyer of such decision as regards the lawyer.

Decisions on such challenges shall be taken by a council composed of four counsellors of the Court of Cassations appointed annually by its general assembly and the Dean of the Syndicate of the Secretary-General and two members.

The lawyer against whom the action was brought may choose one of the Syndicate Board members.

No member of the Disciplinary Committee that issued the disciplinary decision being challenged may participate in the committee viewing the challenge.

Decisions of the Committee viewing the challenge shall be final.

Part 3: The Bar Association System

Introduction

[...]

ARTICLE 121

The Bar Association aims to achieve the following objectives (in accordance with the provisions of this Law).

1. To organise the practice of the legal profession and ensure the proper performance thereof.
2. To ensure the public's right of defence and provide juridical assistance to those incapable.
3. To care for the interests of its members and instil the spirit of cooperation between them as well as ensuring the independence thereof in performing their mission.
4. To encourage legal research and Islamic Sharia (Islamic Law) studies.
5. Cooperation with similar professional unions and organisations existing in Arab and African countries as well as other States in order to serve the national objectives of the Arab nation and successfully address the issues of freedom, peace and progress.

[...]

Chapter 1: The General Bar Association

ARTICLE 123

The General Bar Association shall conduct its activity through the following agencies:

1. The General Assembly
2. The Board of the Bar Association

Section One: The General Meeting

ARTICLE 124

The General Meeting of the General Bar Association shall be formed annually of lawyers acknowledged before the Court of Cassations, Courts of Appeal and Courts of First Instance and who have paid the membership fees due, or for which they have been exempted, until the end of the year preceding the convening of the General Assembly and at least one month prior to the Meeting thereof.¹⁹⁰

The General Assembly shall convene annually during the month of June at the premises of the Bar Association in Cairo. The meeting shall not be valid unless attended by at least one third of the members of three thousand members whichever is less. If the quorum is not reached then the meeting shall be postponed for two weeks. The second meeting shall be valid if attended by at least [1,500] members. If such quorum is not reached at the second meeting, the invitation notice shall be re-notified for a meeting to be held during a period of two weeks. The said invitation notice shall be sent repeatedly until the required quorum has been completed.

In all cases the Bar Association Board may postpone the convening of the General Meeting until after the termination of the judiciary holiday.

ARTICLE 125

The President of the Bar Association shall chair the General Assembly and in his absence the senior of the two attorneys practicing the profession independently shall take his place and in the absence of one of said attorneys the other shall take his place.

The Chairman of the Meeting shall announce the commencement of the Meeting after ascertaining that the quorum necessary for the validity of the Meeting has been fulfilled.

The Chairman of the Meeting shall also announce the closing of the Meeting. The Secretary of the Bar Association shall select a Secretary to replace him. The General Meeting shall select two members from amongst its members to act as vote tellers.

¹⁹⁰ Article 124: para one is replaced by Law No 227 of 1984.

ARTICLE 126

In addition to the stipulation in this Law of a special provision relating to the General Meeting, the General Meeting shall have the following powers:

1. To consider the reports presented by the Board and the auditor relating to the Associations final accounts of the preceding year and to approve the estimated budget of the succeeding year.
2. To amend registration, membership and stamp fees paid by the lawyers in favour of the Association based upon the recommendation of the Board.
3. To amend the pension amount prescribed for lawyers and for their beneficiaries. Also to amend the rules relating to pension entitlement based upon the recommendation of the Association's Board and in accordance with two Actuary Experts selected by said Board.

ARTICLE 127

The General Meeting may not consider matters other than those indicated in the agenda. However, the Board may present for consideration such urgent matters as may arise after the dispatch of notice calling the Meeting to convene and which have been studied.

ARTICLE 128

The Extraordinary General Meeting may convene based upon an invitation extended by the Association's Board or based upon a written application presented to the President by not less than five hundred members of the General Meeting, the signatures thereof to be legalised by the competent Branch Association. The reasons and proposed agenda should be indicated in the application.

The President of the Bar Association shall call the Meeting to convene within a maximum period of thirty days from the date of said application.

If the invitation is not sent by the President during the above-mentioned period, the Extraordinary General Meeting shall convene by force of law on the day following the expiry of said period.

ARTICLE 129

If the application for convening the Extraordinary General meeting relates to the withdrawal of confidence in the President or one or more of the Association's Board members, then for the meeting to be valid, the number of members present shall not be less than one thousand five hundred and said meeting shall be chaired by the oldest member age-wise, other than the Association's Board members.

ARTICLE 130

Resolutions of the General Meeting shall be adopted by the absolute majority of votes present at the meeting. In the event of a tie, the side of the Chairman of the Board shall have the casting vote. Minutes of the Meeting shall be drawn up and recorded in a special register to be signed by the Chairman of the Board, the Secretary and Vote Tellers.

The internal system of the Bar Association shall indicate the procedures relating to the invitation notice, the convening of the General Meeting and the work process thereof.

[...]

Chapter 3: The Financial System of the Bar Association

[...]

ARTICLE 168

Annual membership fees shall be paid by lawyers in accordance with the following categories:

- EGP6 for lawyers under training
- EGP12 for lawyers acknowledged before the Courts of First Instance, if the period of their registration on such Roll does not exceed three years.
- EGP24 for lawyers acknowledged before the Courts of First Instance, if the period of their registration on such Roll exceeds three years.
- EGP60 for lawyers acknowledged before the Courts of Appeal.
- EGP80 for lawyers acknowledged before the Court of Cassations.

[...]

Chapter 6: General and Final Provisions

[...]

ARTICLE 228

Lawyers who are registered on the Roll of Practicing Lawyers should not fail to participate in elections, otherwise the person failing to do so shall be subject to a fine of EGP20 to be collected by the Bar Association in favour of the Social and Health Care Fund when membership fees are being paid. Said amount shall not be exempted except if there is an excuse acceptable to the Board of the Bar Association provided that the Board had received prior notice thereof so long as it has not been proved that it was due to unforeseen circumstances.

Translators Notice:

The following terms have been used interchangeably:

- Bar Association – Lawyers’ Syndicate
- Dean of Lawyers Syndicate – President of Bar Association
- Protocol – Minutes
- Period of training – Period of apprenticeship
- Roll – Register
- Work equivalent to the practice of law – Work similar to the practice of law
- Chief Justice – Head of the Court
- Grievance – Petition

Annex B: Amendment to Advocates Law No 17/1983 (Law No 197 of 2008) [excerpts, unofficial translation]

ARTICLE I

Replaces the provisions of Articles 13, 29 (first paragraph), 31, 50, 59, 60, 84, 85, 131, 135, 152 and 227 of Law No 17 of 1983 on the issuance of the Law Firm of the following texts:

ARTICLE 13

Those that request their name on the General Schedule must:

1. Enjoy Egyptian citizenship, and Minister of Justice rules, in accordance with the Bar Association require a foreign lawyer license for a particular case to work on or a particular topic in Egypt, provided there is reciprocity.
2. Enjoy full civil capacity.
3. Have possession of a law degree from one of the law schools in one of the Egyptian universities or a degree from a foreign university that is its equivalent according to the regulations and provisions of law applicable to it in Egypt.
4. Not have been convicted of a felony or misdemeanour involving dishonesty, moral turpitude, or a criminal offense, unless rehabilitated.
5. Be of good character and reputation, worthy of the respect due to the profession, and must not have had any disciplinary sanctions issued against him, or have ended his relationship with his job or the profession, or have lost contact with it for urgent reasons of fitness for the job he occupied.
6. Pass a medical examination administered by one of the hospitals designated by the Bar Council, to make sure of the fitness to practice the profession and put the Bar Council in compliance with the rules and regulations issued by the Minister of Health.
7. To pay registration and annual subscription fees.
8. Not be in one of the situations of incompatibility (of professions) enumerated in the following article.

In order to remain registered on the General Schedule, these conditions must continuously be met. Other than the item mentioned in No 6 of this article, registration is voided by forced of law from the date that any one of these conditions is no longer being met. This will occur without the need of a decision from the Registration Committee. It is necessary to notify of this measure by registered letter and the relevant sub-committee must also be notified.

[...]

ARTICLE 50

A lawyer may not be arrested or detained for any of the crimes provided in the previous article, as well as crimes of defamation, insult, and libel, because of writings or statements made during the practise of or by reasons of fulfilling professional duties referred to in this law.

A memo should be released on this case that includes what occurred and refer it to the Public Prosecutor/Prosecutor-General and send a copy to the Bar Council and Deputy-General to take proper procedures. If what the lawyer did constitutes a crime, he shall be punished according to the Penal Code or it will be put before the Bar Council if what occurred was just prejudice of the system or professional duties. In this case, the courts are in closed session.

Judges or members of the body that brought forth the prohibited act cannot participate in consideration of the proceedings.

[...]

ARTICLE 131

The Association's Board will consist of the following:

- President of the Bar Association
- A member from all primary courts elected by the General Assembly for all sub-syndicates of the Association so if the number of members in the assembly is more than 20,000, it will be represented by two member lawyers.
- 15 members registered before the Court of Appeals, at least three of whom will be from legal departments subject to the provisions of Law No 47 of 1973 on the legal department of public institutions, public bodies, and their subsidiaries, and are chosen by the General Assembly as provided for in Article 124 of this law.

Nomination for Centre President and Bar Council Membership cannot be combined. Neither can a representative be nominated for more than one of the categories mentioned in this article.

[...]

Annex C: Judicial Authority Law (Law No 46 of 1972) [excerpts, unofficial translation]

After reading the Constitution

And after reading Law 43 in 1956 regarding the judicial authority and amended laws, and Law 81 in 1969 for issuing the law of the Supreme Court, and Law 82 in 1969 regarding the Supreme Judicial Council.

And Law 85 in 1969 regarding appointing and promoting Judiciary members and Law 624 in 1955 on organising affairs of the Sharia judges moved to national courts.

And Law 50 in 1963 of issuing law on pensions and insurance for the state's civilian employees and workers; and Law 50 in 1962 of giving men of the judiciary a work nature allowance

And after consulting the Supreme Judicial Council and the approval of the Prime Minister and after what the State Council considered as valid.

The decree on the following law:

[...]

Section I: Courts

Chapter 1 – Arrangement and organisation of courts

ARTICLE 9

(Rectified as per the disclaimer published in the official gazette issue 17 on 26/04/1984, and was replaced with Law No 35 for 1984 that is published in the official gazette in the iterative issue 13 in issue 31–3 for 1984)

The venue of the First Instance Court shall be domiciled in the capital city of each of the Republic governorates. Each court shall consist of a sufficient number of chief justices and judges, and headed by a designated adviser to the Court of Appeals in which the First Instance Court is domiciled, or any other consequent Court of Appeals as per the order prescribed in paragraph (1) of Article (54) of the herein law.

The said designation is determined by the Minister of Justice in conjunction with the Supreme Judicial Council for a renewable tenure of one year. Each such court shall consist of an adequate number of departments, each of which shall be headed by a chief judge, or one of the chief justices thereof. It may also be headed by one of the court judges.

Rulings are thereto passed by virtue of three of the court judges. The First Instance Court may convene in any other venue within its related jurisdiction, or outside the said jurisdiction when necessary; all of which shall be subject to a decision from the Minister of Justice at the request of the court chief judge.

Section II: On Court Judges and all their Degrees

Chapter 1 – On Appointing Judges, their Promotion and Seniority

ARTICLE 38

The conditions of those working as judges are as follows:

1. He must have the nationality of the Arab Republic of Egypt [ARE] and all civil qualifications.
2. He must be no less than 30 years old in case of appointment at Courts of Appeal and no less than 43 years old in case appointment at the Court of Cassation.
3. He must have a law license from an ARE law faculty or an equivalent foreign degree and he must – finally – pass an adjustment exam according to laws and regulations related to this.
4. He mustn't have a conviction from a court or a disciplinary board for something indecent even if he is ultimately acquitted.
5. He must be good-mannered and well-reputed.

ARTICLE 39

Class (B) judges shall be appointed in First Instance Courts from the following institutions:

- a. Former First Instance Judges or those who occupied similar jobs as prescribed by law.
- b. Class (A) attorney general's deputies.
- c. Attorney general's deputies who occupied this post for four consecutive years.
- d. Deputies in the State Council and State Court (1) of class (B).
- e. Lawyers who worked before Courts of Appeal for four consecutive years provided that they worked for nine years as lawyers or any job considered by a regulatory decision from the Supreme Judicial Council as equivalent to a judicial job.
- f. The teaching staff members in faculties of law. And law teaching staff members in ARE universities and those working in a job considered by a regulatory decision from the Supreme Judicial Council as equivalent to a judicial job so long as all of them spent nine consecutive years in the legal job and have degrees equivalent to a degree of a class (B) judge and are paid a salary within this degree.

ARTICLE 40

Taking into consideration what is stated in the following two articles, the appointment in the jobs of class (A) judge or class (A) or (B) chief justice or a counsellor from the Court of Appeal shall come from the job directly preceding it in the judiciary or prosecution.

ARTICLE 41

When conditions prescribed in this law are fulfilled, the following can be appointed chief justices:

First: Jobs of Class (A) Judges:

- a. Former judges in First Instance Courts who spent at least five years in this job and those who occupied an equivalent job which stipulates spending similar period.
- b. Class (A) deputies in the State Council or in the State Court, and class (A) administrative prosecutors.
- c. Lawyers who worked before Courts of Appeal for nine consecutive years provided that they worked as lawyers or in any job considered by a regulatory decree by the Supreme Judicial Council as equivalent to a judicial job for fourteen years.
- d. The assistant professors in faculties of law. And law assistant professors in ARE universities and those working in a job considered by a regulatory decree by the Supreme Judicial Council as equivalent to a judicial job so long as they spent fourteen consecutive years in the legal job and have degrees equivalent to a degree of a class (A) judge and are paid a salary within this degree.

Second: Jobs of Class (B) Chief Judges in First Instance Courts:

- a. Former chief judges in First Instance Courts and those who previously occupied equivalent jobs as stipulated by the law.
- b. Class (B) deputy counsellors in the State Council and State Court and class (A) chiefs of administrative prosecution.
- c. Lawyers who worked before Courts of Appeal for 12 consecutive years provided that they worked as lawyers or in any job considered by a regulatory decree by the Supreme Judicial Council as equivalent to a judicial job for 17 years.
- d. Professors in faculties of law and law professors in ARE universities and also assistant professors in these faculties and law assistant professors in these universities who spent no less than five years in the job of an assistant professor.
- e. Those working in jobs considered by a regulatory decree by the Supreme Judicial Council as equivalent to a judicial job for seventeen years in the legal job and having degrees equivalent to class (A) chief justice or being paid a salary within this degree.

Third: Jobs of Class (A) Chief Judges in First Instance Courts:

- a. Former chief judges in First Instance Courts who spent at least three years in the job and those who previously occupied equivalent jobs as stipulated in the law provided that a similar term shall be met.
- b. Class (A) deputy counsellors in the State Council and State Court.

- c. Lawyers who worked before Courts of Appeal for fifteen consecutive years provided that they worked as lawyers or in any job considered by a regulatory decree by the Supreme Judicial Council as equivalent to a judicial job for twenty years.
- d. Professors in faculties of law and law professors in ARE universities who spent in the job of a professor no less than two years.
- e. Those working in jobs considered by a regulatory decision from the Supreme Judicial Council as equivalent to a judicial job for twenty years and having degrees equivalent to class (A) chief justice or being paid a salary within this degree.

Fourth: Jobs of Counsellors in Courts of Appeal:

1. Counsellors in the State Council and those who previously occupied equivalent jobs as stipulated in the law.
2. Counsellors in the State Council and State Case Authority and prosecutors working in the administrative prosecution.
3. Lawyers who worked before the Court of Cassation for five consecutive years.
4. Professors in faculties of law and law professors in ARE universities who spent in the job of a professor no less than three years.

ARTICLE 42

As an exception from rulings of Article 39 and (first, second and third) paras of Article 41 and Article 117, State Council members, State Court and administrative prosecution members and those teaching in law faculties and those teaching law in ARE universities can be appointed in judicial or prosecution jobs that directly follow degrees of their jobs as much as their hierarchy is concerned. The fixing their seniority shall be approved by the Supreme Judicial Council.

ARTICLE 43

Appointing a counsellor in the Court of Cassation must include one of the following conditions:

- That he worked for six years as a professor in law faculties or taught law in ARE universities as a professor and 21 years passed since his graduation during which he worked continuously in legal work.
- That he is a lawyer who worked before the Court of Cassation for eight consecutive years.

ARTICLE 44

(As replaced by Law No 35 for 1984)

Judicial posts shall be assigned by virtue of a decision from the Republic President for promotion or appointment.

Head of the Court of Cassation shall be appointed from amongst members of Chief Justice, and in consultation with the Supreme Judicial Council. Deputies to the Head of Court of Cassation shall be assigned by virtue of the Supreme Judicial Council approval at the nomination of Court of Cassation general assembly.

An adviser to the Court of Cassation shall be appointed by virtue of the Supreme Judicial Council approval, from amongst two candidates one of whom is nominated by the general assembly of the said court, while the other is nominated by the Minister of Justice.

Chief Judges of the Court of Appeals along with the judges, deputies, advisers, and heads of the Courts of First Instance are appointed by virtue of the Supreme Judicial Council approval.

The date of appointment or promotion shall be from the date of the Supreme Judicial Council approval or soliciting of opinion, as the case may be.

[...]

Chapter 2 – Judge’s Transfer, Delegation and Secondment

ARTICLE 62

The judge shall be temporarily delegated to carry out judicial or legal missions, different from his work or in parallel with his work. This shall be done upon a Minister of Justice’s resolution, after considering opinion of the Supreme Judicial Council, provided, the hereinbefore mentioned council shall determine the bonus, to be given to the judge in return for this work.

[...]

Section III: Public Prosecution

Chapter 1 – Appointment, Promotion and Seniority

ARTICLE 119

(As replaced by Law No 138 for 1981 and Law No 35 for 1984)

The Prosecutor General is appointed by virtue of a decision of the President of the Republic from amongst the deputies of the Court of Appeals Chief Judge, or Advisers to the Court of Cassation, or at least from amongst the Attorneys General.

The Prosecutor General may request reassignment to judicial duties, at which time seniority among colleagues shall be determined according to the status when appointed as Prosecutor General, hence shall maintain all benefits and wages at a personal level.

Appointment of the Assistant Prosecutor General and the Attorney General and other members of the Prosecution Department shall be by virtue of a decision from the President of the Republic, after soliciting the Supreme Judicial Council’s opinion. If the appointment consisted of a promotion, or was pertinent to a non-judiciary or Prosecution members, it shall thereto be virtue of the Council approval.

The Attorney General appointment shall only be valid if the designated person meets all conditions required for the appointment of an Adviser for the Court of Appeals, excluding the age condition that is stipulated in Article 38(2).

The date of appointment or promotion shall be from the date of the Supreme Judicial Council approval or soliciting of opinion.

ARTICLE 165

Any employee, who breaches duties of his job, if he commits any act that degrades the judicial mission or the judicial authority which he belongs to either inside or outside the court, the disciplines procedures shall be taken against him.

[...]

Annex D: Amendment to Judicial Authority Law No 46/1972 (Law No 142 of 2006) [excerpts]

The People's Assembly has decided the following, and we enact the same as law:

[...]

ARTICLE II

The provisions of Article 24 (last clause), Article 26, Article 43 (item (a)), Articles 45, 46, 65, 66, and 71 (third and last clauses), Article 77 (last clause), Article 77 bis (4), Articles 83 , 84, 85, 93, 94, 98, 99, 103 and 106 (third clause), Article 107, Article 111 (first clause), Article 119 (third and last clauses), Articles 125 & 126, Article 129 (first and second clauses) and Article 131 of the Judicial Authority Law referred to above are replaced with the following provisions:

[...]

ARTICLE 43 ITEM 1

He must have served for at least three years in the position of judge in one of the Courts of Appeal or an attorney general in the public prosecution or the equivalent in the judiciary.

[...]

ARTICLE 93

The Minister of Justice shall have the right of administrative oversight over the courts. The President of each court and its general assembly shall have the right to oversee its judges.

[...]

ARTICLE 98

Discipline actions against judges of all grades shall be the jurisdiction of a council to be formed from the most senior head of Courts of Appeal who is not a member of the Supreme Judicial Council as chair, and the most senior two judges of the Court of Cassation and the most senior vice-presidents of the Court of Appeals as members.

In the absence of the chair or a member, or if he has an impediment, he shall be replaced by the next in seniority.

ARTICLE 99

Disciplinary proceedings shall be instituted by the Public Prosecutor on its own or upon the proposal of the Minister of Justice or the President of the court to which the judge is affiliated.

Such proceedings can be instituted only on the basis of a criminal investigation, or upon an administrative investigation conducted by a vice-president of the Court of Cassation or a President of the Court of Appeal assigned by the Minister of Justice or the President of the Court in respect of judges and the higher staff in the Court of Cassation or the Courts of Appeal; or a judge of the Court of Cassation or Court of Appeals from the Judicial Inspection Department in respect of the presidents and judges of the courts of first instance.

[...]

ARTICLE 107

The verdict to be made by the Council as provided for in Article 98 shall contain the grounds on which it was made. The verdict shall be recited in an open session.

The Public Prosecutor and the convict may appeal the verdict within thirty days from the date of issue before a supreme disciplinary council to be formed as follows:

- President of the Court of Cassation Chair
- The three most senior heads of Courts of Appeal Members
- The most junior three vice-presidents of the Court of Cassation Members

When the post of President of the Court of Cassation is vacant, or in case of his absence or the presence of an impediment, he shall be replaced by the most senior member of the Council, and so on.

In the absence of a heads of a Courts of Appeal or the presence of an impediment, the number of members shall be completed from amongst the heads of Courts of Appeal who are not members of the disciplinary council, and then from the members of these courts.

In the absence of a vice-president of the Court of Cassation or the presence of an impediment, the number of members shall be completed from those next to him in seniority in this court.

The procedures established for the hearing of appeals of judgments in the cases stipulated in Article 83 shall be followed in respect of an appeal before the Supreme Disciplinary Council.

[...]

Annex E: Amendments to Judicial Authority Law No 46/1972 (Law No 17 of 2007) [excerpts, unofficial translation]

[...]

ARTICLE III

The wordings of Articles: 65 and 66 of Law by Decree No 46 of 1972 promulgating the Judicial Authority Law shall be replaced with:

[...]

ARTICLE 65

‘Judges may be seconded to foreign governments and international bodies by a decision from the President of the Republic, after consulting with the general assembly of the court to which the judge or public prosecutor is affiliated, as the case may be, and approval of the Supreme Judicial Council. The duration of secondment may not be longer than four consecutive years.

However, the period may be longer if in a national interest required so at the discretion of the President of the Republic.’

ARTICLE 66

‘The period in the provisions of the two preceding articles shall be deemed consecutive if its days were successive or separated by an interval of less than five years.

The position of a seconded employee shall be filled by an employee of the same grade if the duration of secondment is not less than one year. If the seconded employee returns to his work before the end of this period, he shall occupy the vacant position of his grade or shall occupy his original grade in a personal capacity provided that his status is settled on the first job becoming vacant in his grade.

In all cases, assignment or secondment should not adversely affect the good functioning of work.’

[...]

Annex F: Egyptian Bar Association By-laws (1972) [excerpts]

Chapter I: Purposes and objectives of the Bar Association

ARTICLE 1

The Bar Association promotes positive participation in the edification and development of the society, based on the noble task performed by lawyers as per establishing freedom and justice and imposing the logic of law. It also works for protecting and organising the legal profession as well as preserving its traditions and dignity and enhancing the professional, ethical and financial status of its members.

In order to fulfil such objectives, the Bar Association performs the following:

First – Defending the interests of the Bar Association, preserving the customs of the legal profession, supporting the activities thereof and fulfilling its noble task by guaranteeing the right of the lawyers to perform their tasks.

Second – Associating and organising the efforts of the members in order to develop the legal thought, serve the socialist renewal and contribute to the legislative development in order to facilitate the work of justice in the service of the citizens without any material impedes or administrative complications as well as enhancing productivity, hence providing prompt action toward the set objectives.

Third – Activating legal researches, encouraging researchers and enhancing the academic level of members.

Fourth – Drafting project laws aiming at developing and modernising legislation in such a way that consolidates public liberties, justice, human rights and the rule of law for citizens.

Fifth – Cooperating with all local, regional and international legal trade unions, syndicates, organisations and associations in order to promote the legal profession and enhance the knowledge of lawyers, protect their demands and support national work.

Sixth – Collaborating with professional trade unions and similar organisations in Arab countries and other countries to defend Arab rights and support the causes of liberation and world peace.

Seventh – Providing economic, social and cultural services to members, establishing retirement, sickness and death pension and providing help when needed as well as health care in such a way that provides a respectable life for members and their families.

Eighth – Providing legal work for members and organising cooperation in professional practices and providing judicial help for needy citizens.

Chapter II: Bodies of the Association and their competences

Section I: General Assembly

[...]

ARTICLE 4

General Assembly meetings shall only be attended by members who fulfil conditions stated in Article 4 of the Advocates Law No 61 (1968). Sheets bearing the names of all members who are entitled to attend the General Assembly shall be established and signed by attending members before taking part in the General Assembly.

[...]

ARTICLE 7

No member shall be entitled to speak without the permission of the assembly chairman.

[...]

Section II: Elections

[...]

ARTICLE 14

The secretary dispatches the election cards to the members of the General Assembly, with a list of candidates attached to each of them.

[...]

ARTICLE 21

Each electoral committee shall set a sheet bearing the names of the General Assembly members who refrained from exercising their voting right and hand it to the general bar secretary in order to collect the fine stipulated by Article 220 of the legal profession code [Advocates Law] when settling the subscription fees.

Section III: Council of the Bar

[...]

ARTICLE 24

In the event any member is unable to attend the meeting for any emerging reason whatsoever, they must inform the secretary with their excuse, or else they will be considered absent without a legal excuse, unless they attend the next session and state the reason that had inhibited them from attending the previous meeting.

[...]

Chapter III: Lawyers' rolls and membership

[...]

ARTICLE 65

In the event the lawyer's name was wiped out from the roll due to their failure to settle the subscription on the deadline stipulated in Article 167 of the legal profession code [Advocates Law], they shall be banned from pleading and consultancy, from taking part in the General Assembly, deprived from all rights bestowed to lawyers and subjected to disciplinary action.

[...]

ARTICLE 69

Lawyers in pupillage period must commit to continuous attendance in their training consultancies.

They should also give proof of attending half of the lectures given at the general bar or one of the regional bars, within the pupillage period at least, and of attending the court sessions twice a week at least, by signing the relevant registers bearing the seal of the bar.

[...]

Chapter IV: Lawyers' Obligations

[...]

ARTICLE 76

Lawyers must, before taking any case, get informed whether their potential clients have already hired the services of another lawyer. In such a case, they shall advise the client to remain with the essential lawyer; in the event the client refuses, lawyers should inform their colleague in writing and refrain from accepting the mandate until verifying that the client had fulfilled their obligations towards the first lawyer, except for summary matters or in the event of a conflict regarding the fees due to the first lawyer.

[...]

Chapter VII: General stipulations

[...]

ARTICLE 117

An annual tribute event shall be conducted for all colleagues who shall be retired within the year prior to the said event.

[...]



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