

EGYPT: ACCESS TO THE JUSTICE SYSTEM AND TO LEGAL AID

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Egypt: Access to the Justice System and to Legal Aid

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SUMMARY In Egypt, free access to the justice system and legal aid are constitutional rights. This concept can be found in various legislative instruments across the legislative spectrum, including the Criminal Procedures Code, Family Law, Child (Juvenile) Law, Human Trafficking Law, and Advocacy Law. The Supreme Court of Egypt, the Court of Cassation, affirmed this principle in its rulings.

The court system demonstrates free access to the justice system and legal aid. The right to free legal counsel is mandatory before criminal courts. In family courts, legal assistance offices and dispute settlement offices provide free legal aid services. Similarly, in courts of first instance and labor courts, legal aid offices provide legal assistance and advice to women who are victims of violence, and to labor litigants. Child courts also require use of a special panel (with a specified composition) and special trial proceedings to ensure free legal assistance and effective legal representation. Law clinics, a relatively recent addition, provide free legal assistance as well.

Lack of quality legal education, insufficient professional training for lawyers, reluctance to provide *pro bono* services, the poor quality of representation provided by court-appointed lawyers, and a shortage of law clinics are named by observers as challenges that need to be addressed.

I. Background

Equal access to justice is often cited as a fundamental right, but one that is beyond the reach of many disadvantaged persons due to a lack of affordable legal representation.¹ Ensuring the right to efficient and full legal representation before the courts is vital for a well-functioning justice system and for building public trust in the justice sector.²

Over the past several years, an array of international legal instruments have addressed the concept of legal aid as a mean for facilitating free access to justice and ensuring a fair trial. For instance, on December 20, 2012, the United Nations General Assembly adopted the Principles

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¹ See, e.g., Muhammad Ali Nekokara, *Access to Justice and Legal Aid*, DAWN (Dec. 12, 2016), <http://www.dawn.com/news/1301948>, archived at <https://perma.cc/F4U4-USTW>.

² *Id.*

and Guidelines on Access to Legal Aid in Criminal Justice Systems.³ On September 25, 2015, the General Assembly issued another resolution identifying seventeen goals for its 2030 Agenda for Sustainable Development, including equal access to justice for all.⁴

The Egyptian legal system likewise recognizes that access to the courts and the provision of legal aid for those who otherwise lack the necessary means are vital. These principles have been affirmed and guaranteed by a number of legislative instruments, from the Egyptian Constitution to other legislation, discussed below. The Ministry of Justice aims to promote justice and safeguard free and equal access to the justice system by enhancing current legal aid mechanisms, updating existing laws, and ensuring an efficient judiciary. However, there is still no stand-alone piece of legislation governing the principle of access to the justice system and legal aid.

This report explores the challenges facing access to justice and legal aid in Egypt, and provides recommendations for reform, drawing on the author’s judicial experience.

II. Legal Instruments Governing the Doctrine of Access to the Justice System and Legal Aid

A. Constitutional Mandates

The Egyptian Constitution guarantees free access to the justice system, stating, “[l]itigation is a right that is safeguarded and an inalienable right for all. The State shall guarantee the accessibility of judicature for litigants and rapid adjudication on cases.”⁵

The right to counsel and legal aid is also safeguarded. Article 54 of the Constitution provides that, “[i]n all events, it is not permissible to present an accused for trial in crimes that may be punishable by imprisonment unless a lawyer is present by virtue of a power of attorney from the accused or by secondment by the court.”⁶

This right applies not only to the trial phase, but also to the pretrial phase. The second paragraph of article 54 states that an “[i]nvestigation may not start with the person unless his/her lawyer is present. A lawyer shall be seconded for persons who do not have one.”⁷ The Constitution also covers individuals with special needs, stating that “necessary assistance shall be rendered to people with disability according to procedures prescribed by Law.”⁸

³ G.A. Res. 61/187, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, (Dec. 20, 2012), available at www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf, archived at <https://perma.cc/8AEY-QMSH>.

⁴ G.A. Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development (Sept. 25, 2015), http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E, archived at <https://perma.cc/3GQU-D8QT>.

⁵ CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 97, unofficial English translation available at <http://www.sis.gov.eg/Newvr/Dustor-en001.pdf>, archived at <https://perma.cc/6B9J-D5D2>.

⁶ *Id.* art. 54.

⁷ *Id.*

⁸ *Id.*

Similarly, in civil matters, article 98 introduces the right to counsel and to legal aid, stating, “[t]he right of defense either in person or by proxy is guaranteed. . . . The law shall provide all means by which those who are financially unable can resort to justice and defend their rights.”⁹

B. Code of Criminal Procedure

The Code of Criminal Procedure of 1950 and its amendments safeguards the right of defense and the provision of legal aid. Article 124 prohibits interrogating the accused or cross-examining him or her in the absence of a lawyer, except in cases where the accused is caught *in flagrante delicto* or where there is a fear that evidence may be lost. It further states that if the accused does not have a lawyer or cannot afford one, the prosecutor must appoint one.¹⁰

At the trial stage for any offense punishable by mandatory imprisonment, an indigent defendant has a constitutional right to an appointed attorney, with no exceptions. However, if the offense is not punishable by mandatory imprisonment, it is optional for the court to appoint a lawyer for the defendant.¹¹

Further, the law emphasizes the quality of legal aid provided by a court-appointed lawyer. It mandates that the lawyer, whether court-appointed or retained, represent the defendant with due diligence. The lawyer is not allowed to decline representation unless permitted by the court, and not before handing over representation to another lawyer.¹²

C. Family Law

The purpose for enacting Law No. 1 of 2000 Regulating Litigation Procedures in Personal Status Affairs,¹³ and Law No. 10 of 2004 Establishing Family Courts,¹⁴ was to facilitate access to the court system for litigants (mostly women and children) who have family disputes. The laws contain provisions that simplify litigation procedures and allow for a more user-friendly family court system. For instance, the age of legal capacity to initiate a legal action before a family court is fifteen years. This allows children to assert their legal rights.¹⁵

⁹ *Id.* art. 98.

¹⁰ CODE OF CRIMINAL PROCEDURE, Law No. 150 of 1950, art. 124, <http://laws.jp.gov.eg/home/altshryat/alqwanyn-aljnyayte> (in Arabic), archived at <https://perma.cc/N3RJ-8VF4>.

¹¹ *Id.* art. 237.

¹² *Id.* art. 375.

¹³ Law No. 1 of 2000 (Regulating Litigation Procedures in Personal Status Affairs), *al-Jarīda al-Rasmīyya* (official gazette), vol. 4, 29 Jan. 2000, available at <https://www.egypt.gov.eg/arabic/laws/download/2000> [قانون رقم 1 لسنة 2000](https://www.egypt.gov.eg/arabic/laws/download/2000) [باصدار قانون تنظيم بعض اوضاع واجراءات](https://www.egypt.gov.eg/arabic/laws/download/2000) [.pdf](https://www.egypt.gov.eg/arabic/laws/download/2000), archived at <https://perma.cc/975Q-4Q8F> (official gazette references in Arabic unless otherwise noted).

¹⁴ Law No. 10 of 2004 (Establishing Family Courts), *al-Jarīda al-Rasmīyya*, vol. 12 (bis), 18 Mar. 2004, p. 3, art. 12.

¹⁵ Law No. 1 of 2000 (Regulating Litigation Procedures in Personal Status Affairs), art. 2.

Moreover, litigants are allowed to appear before family courts pro se. Unlike other civil lawsuits, legal complaints can be filed before family courts without being signed by a lawyer; thus, litigants do not have to hire a lawyer. Nonetheless, the court still can appoint a legal representative for the plaintiff, free of charge, if deemed necessary.¹⁶

Another example of legal aid under Law No. 1 of 2000 is that all claims for alimony and support are exempt from litigation fees and charges.¹⁷

Similarly, individuals who suffer from a minimum of two sensory disabilities (e.g., blindness, muteness, or deafness) or severe physical disability are entitled to a free legal assistant appointed by the court.¹⁸

D. Child Law

Law No. 12 of 1996 (as amended by Law No. 126 of 2008), referred to in Egypt as the Child Law, affirms the right of a delinquent child to free legal representation before the juvenile court (known as the Child Court¹⁹). If the child does not have or cannot afford a legal representative, the court must appoint one for him or her free of charge in the pretrial and trial stages.¹⁹ Also, juvenile defendants are exempt from judicial fees and expenses.²⁰

Likewise, the law provides child victims and witnesses of crimes the right to social and legal assistance, in accordance with the United Nations Guidelines on Justice for Child Victims and Witnesses of Crime.²¹

To ensure a high level of judicial expertise, the law mandates a special panel composition in juvenile courts. The court panel must comprise three judges, at least two of whom are ranked as chief judges.²²

In addition, with the intention of providing efficient legal representation and effective legal assistance, the law requires two specialists (sociologists), at least one of whom must be female, to attend the court proceedings. The specialists must submit a written report elaborating on all

¹⁶ *Id.* art. 3.

¹⁷ *Id.*

¹⁸ Law No. 119 of 1952 (Custodianship), arts. 70–73, available at <http://mohamedbamby.blogspot.com/2012/03/119-1952.html> (in Arabic), archived at <https://perma.cc/RM26-54SY>.

¹⁹ Law No. 12 of 1996 (Promulgating the Child Law), as amended by Law No. 126 of 2008, *al-Jarīda al-Rasmīyya*, vol. 24 (Duplicate), 15 June 2008, p. 2, art. 125, unofficial English translation available at https://www.unodc.org/res/cld/document/egy/2002/egypt_child_act_english_html/Egypt_Child_Act_English.pdf, archived at <https://perma.cc/2UHB-W6VJ>.

²⁰ *Id.* art. 140.

²¹ *Id.* art. 116 bis (d).

²² *Id.* art. 121.

aspects pertaining to the child's circumstantial background before the court renders its judgment.²³

E. Human Trafficking Law

In May 2010, Egypt enacted Law No. 64 on Combatting Human Trafficking.²⁴ In addition to criminalizing human trafficking activities, the law goes a step further, dedicating a separate chapter to the protection of victims of human trafficking.²⁵

Chapter 5 of the law, titled Protection of Victims, asserts the right of victims of human trafficking to be well informed of relevant legal and judicial procedures. It explicitly affirms their right to free legal assistance, particularly the right to counsel in trial and pretrial procedures.²⁶

Furthermore, emphasizing the need for victims and witnesses of human trafficking to receive adequate care and legal support throughout the entire judicial process, the law requires the competent court to take appropriate measures to ensure the protection of victims and witnesses during the judicial process and after trial.²⁷ It also ensures their right of privacy and confidentiality.²⁸ Additionally, it provides measures for rehabilitation of victims and offers them financial and psychological assistance.²⁹

F. Advocacy Law

Articles 93–94 of Law No. 17 of 1983 (the Advocacy Law) require the Egyptian Bar Association branches to form legal aid committees to provide pro bono legal assistance and legal representation to those who cannot afford it during the investigation, pretrial, or trial stages. The law states that the Board must delegate lawyers to defend citizens at no cost.³⁰

Article 64 requires lawyers providing legal aid to those “unable to bear the costs” to serve with the same care and diligence as for a paying client. It further states that an attorney does not have the right to decline to represent the indigent client unless permitted by the court, and not before handing the case over to another lawyer.³¹

²³ *Id.*

²⁴ Law No. 64 of 2010 (Regarding Combating Human Trafficking), *al-Jarīda al-Rasmīyya*, vol. 18 (Duplicate), 9 Sept. 2010, p. 5, available at http://www.protectionproject.org/wp-content/uploads/2010/09/Law_regarding_Combating_Human_Trafficking_FINAL.pdf, archived at <https://perma.cc/W7N6-9LLP>.

²⁵ *Id.* p. 2, ch. 5.

²⁶ *Id.* art. 23(e).

²⁷ *Id.* art. 23(f).

²⁸ *Id.* art. 23.

²⁹ *Id.* art. 26.

³⁰ Law No. 17 of 1983 (Advocacy Law), *al-Jarīda al-Rasmīyya*, vol. 13, 31 Mar. 1983, arts. 93–94, available at <http://old.qadaya.net/node/65>, archived at <https://perma.cc/3XPF-RQNC>.

³¹ *Id.* art. 64.

III. Case Law: Access to the Court System and Legal Aid

A. Judicial Administrative Court

The role of courts in protecting the right to free legal assistance was demonstrated in a recent case concerning the application of article 98 of the Constitution, which requires the provision of legal aid to indigent individuals. The Judicial Administrative Court held that a claimant is not entitled to compensation for counsel fees and litigation expenses incurred in defending his case before the court, as long as he did not request from the trial court an exemption from litigation fees or a free, court-appointed lawyer.³²

B. Court of Cassation

1. Under the Code of Criminal Procedure

Article 124 of the Criminal Procedures Code mandates appointing an attorney for the accused in the pretrial stage if a lawyer is not already present.³³ Interpreting article 124, the Court of Cassation (the highest court of the land) has ruled that a prosecutor has the discretion to determine that the accused was caught *in flagrante delicto* or that there was a “fear of losing existing evidence,” either of which would support waiving the right of the accused to have an attorney present during the interrogation process, and accordingly can conduct the interrogation in the absence of a lawyer. This discretion, however, is subject to review by the trial court.³⁴

In another case involving the application of article 124, the Court of Cassation ruled that if the accused refuses the presence of the lawyer already present during the interrogation process, and further refuses to provide the name of a lawyer to accompany him/her, the prosecutor is not obligated to appoint a lawyer for the accused. The Court added, however, that in any case, a violation of article 124 does not void the interrogation process.³⁵

Conversely, at the trial stage, the Court of Cassation has consistently protected the defendant’s right to a substantive and effective defense rather than a procedural and superficial one. It has held that a defendant accused of a felony must be represented by a lawyer, whether retained or court-appointed.³⁶

In a landmark decision in 2015, the Court ruled that the trial court’s felony conviction of a defendant who was not represented by a lawyer and did not have one appointed was a violation of the right to a defense that rendered the entire trial proceedings null and void.³⁷

³² Maḥkamat al-Naqd [Court of Cassation], Criminal Chamber, petition no. 8129/58, session of 19 Jan. 2016.

³³ Law No. 150 of 1950 (Code of Criminal Procedure), art. 124.

³⁴ Court of Cassation, Criminal Chamber, petition no. 25770/83, session of 9 Nov. 2015.

³⁵ Court of Cassation, Criminal Chamber, petition no. 44160/85, session of 9 May 2015.

³⁶ Court of Cassation, Criminal Chamber, petition no. 27017/84, session of 11 Feb. 2015.

³⁷ *Id.*

2. *Under Family Law*

In affirming the right of children to appear before family courts, the Court of Cassation has construed the meaning of article 2 of the Law Regulating Litigation Procedures in Personal Status Affairs³⁸ to mean that a child who reaches the age of fifteen with full mental capacity has the right to self-representation in family court in disputes pertaining to his or her personal status, and to pursue all litigation and appeals in connection with such affairs.³⁹ Accordingly, children fifteen years of age and older are entitled to represent themselves before family courts, and also have the right to receive free legal representation by an attorney appointed by the court whenever it is deemed necessary.

3. *Under the Child Law*

Affirming the right to full legal assistance and legal representation of juvenile defendants before child courts, the Court of Cassation has consistently ruled⁴⁰ that a judgment is null and void if it is rendered without a written report drafted by the two specialists required to be present on the panel discussing the child's circumstances and background.⁴¹ However, this rule does not apply if the juvenile defendant is tried before an adult criminal court (e.g., when he or she is an adult's accomplice to a felony).⁴²

Additionally, ensuring a high quality level of justice in juvenile cases, the Court of Cassation has strictly construed the procedural provision mandating a special panel composition in child courts. It vacated a decision rendered by a child trial court panel comprising four judges, where two of them were chief judges. The Court reasoned that the plain meaning of the text requires the panel to be composed of three judges, not four.⁴³

IV. Facilitating Access to Justice and Identifying Legal Aid Venues in the Court System

Since 1996, Egypt has been moving toward what is known as “Specialized Courts” to address disputes involving a specific area of law. Economic, family, child, and labor courts are the courts with specified jurisdiction under the Egyptian judicial system. The following sections address the venues that facilitate access to the justice system and the provision of legal aid in family courts, child courts, and labor courts.

³⁸ Law No. 1 of 2000 (Regulating Litigation Procedures in Personal Status Affairs), art. 2.

³⁹ Court of Cassation, Civil Chamber, Family Affairs Circuit, petition no. 372 /59, session of 7 Apr. 2008.

⁴⁰ Court of Cassation, Criminal Chamber, petition no. 31475/84, session of 9 Nov. 2015.

⁴¹ Law No. 12 of 1996 (Promulgating the Child Law) art. 121.

⁴² Court of Cassation, Criminal Chamber, petition no. 13303/82, session of 11 Feb. 2014.

⁴³ Court of Cassation, Criminal Chamber, petition no. 10276/85, session of 5 Dec. 2015.

A. Family Courts

Family courts were established as a specialized court by Law No. 10 of 2004.⁴⁴ Family courts handle issues pertaining to personal status and adjudicate all family disputes. There is a family court of first instance in each judicial district throughout the country. The court panel comprises three judges, and two specialists (a psychologist and a sociologist) at least one of whom must be a female.⁴⁵

Family courts are vested with specific attributes in order to simplify litigation procedures and allow for a more user-friendly court system, where litigants tend to be women and children.⁴⁶ The right of litigants to represent themselves *pro se*, combined with the reduced age of legal capacity from twenty-one to fifteen, enables children to pursue their legal rights, and to combine all family disputes into one file before a single court.⁴⁷

In addition, two venues were established in family courts to provide free legal assistance to litigants: Dispute Settlement Offices and Legal Aid Offices.

1. Dispute Settlements Offices

The family court system introduced the concept of mediation (prior to initiating any litigation) through the establishment of Dispute Settlement Offices (DSOs). The mandate of these offices is to mediate between the parties to reach an amicable settlement of their dispute before referring the conflict to the court.⁴⁸

There is a DSO at every family court. Each DSO comprises a legal specialist, a psychologist, and a social worker.⁴⁹ The specialists summon the parties to a dispute to mandatory, pretrial mediation. They inform the parties about their legal rights and explain the consequences of their dispute in an effort to reach an amicable settlement. If an agreement is reached, it is as enforceable as a court decision. Otherwise, the dispute is referred for adjudication before the court.⁵⁰

⁴⁴ Before the establishment of family courts, family and personal status disputes were handled in the form of specialized dockets in civil courts.

⁴⁵ Law No. 10 of 2004 (Establishing Family Courts), p. 3, arts. 1–2.

⁴⁶ See discussion, *supra*, Part II(C) (Family Law).

⁴⁷ *Id.*

⁴⁸ Law No. 10 of 2004 (Establishing Family Courts), art. 5.

⁴⁹ *Id.*

⁵⁰ *Id.* art. 6.

2. Legal Aid Offices

In 2008, in a groundbreaking move to promote the concept of legal aid, the Ministry of Justice established Legal Aid Offices (LAOs) in family courts through a partnership with the United Nations Development Program (UNDP).⁵¹

The idea of selecting family courts as a primary venue for LAOs arose from the growing volume of family conflict cases, in addition to the complexity and sensitive nature of such cases. The majority of litigants are women or disadvantaged persons who want to avoid lengthy and costly litigation procedures.⁵²

There are thirty-five LAOs now in place in seven Egyptian governorates. The UNDP reports that the office, which was established in 2008, had addressed a total of 49,597 cases by early 2015, of which 36,948 cases were filed by women.⁵³

The LAOs play a significant role in providing free legal assistance to litigants. In fulfilling their mandate, LAOs assist litigants with filing complaints, educate them about their rights, help them compile the required documents, and provide them with legal advice. In so doing, they help dispose of cases in a timely manner and avoid dismissal of cases on grounds of insufficient documentation.⁵⁴

The Ministry of Justice has envisioned a plan for the modernization of family courts, which encompasses the expansion of LAO offices to cover all courts of first instance, periodic training to enhance the capacities of judges and DSO and LAO staff, raising legal awareness of litigants in family courts, renovating facilities, and providing IT equipment.⁵⁵

B. Child Courts

Child courts were established as autonomous courts with specialized jurisdiction in 1996. Each governorate has a child court.⁵⁶ Considering the sensitivity and complexity in dealing with

⁵¹ *Support to Dispute Settlement and Legal Aid in Family Courts*, UNITED NATIONS DEVELOPMENT PROGRAMME, <http://www.eg.undp.org/content/egypt/en/home/operations/projects/democratic-governance-and-peacebuilding/LegalAid.html> (last visited June 16, 2017), archived at <https://perma.cc/V9LK-T7TJ>.

⁵² FATIMA KHAFAGY & THANAA EL-SHAMI, EVALUATION REPORT OF ACCESS TO JUSTICE PROJECT 3 (Jan. 2014), available at <http://www.eg.undp.org/content/dam/egypt/docs/Governance/LLAD%20Evaluation%202014.pdf>, archived at <https://perma.cc/2BX7-PWLL>.

⁵³ *Access to Justice for the Vulnerable in Egypt*, UNITED NATIONS DEVELOPMENT PROGRAMME, <http://www.undp.org/content/undp/en/home/ourwork/ourstories/access-to-justice-for-the-vulnerable-in-egypt-.html> (last visited June 16, 2017), archived at <https://perma.cc/2GL7-QMFF>.

⁵⁴ Law No. 10 of 2004 (Establishing Family Courts), p. 18.

⁵⁵ *Future Strategic Vision 2015*, MINISTRY OF JUSTICE, DEPARTMENT OF SPECIALIZED COURTS, <http://www.jp.gov.eg/sca/6.aspx> (last visited June 16, 2017), archived at <https://perma.cc/Z3NW-RKT4>.

⁵⁶ Law No. 12 of 1996 (Promulgating the Child Law), art. 120. Before the establishment of child courts, juvenile delinquency cases were tried in the form of specialized dockets in ordinary criminal courts.

juvenile delinquency, the Child Law also created an autonomous prosecution department with sole jurisdiction in family disputes.⁵⁷

To ensure the quality of service, these courts have a panel composed of senior-level judicial experts. As mentioned earlier, the court panel comprises three judges, at least two of whom are ranked as chief judges, and two specialists, including a sociologist and a psychologist at least one of whom is a woman.⁵⁸

The presence of these two social specialists is mandatory during the court proceedings. They must submit a written report to the court on each case assessing all relevant circumstances pertaining to all aspects of the child's background. The court, on the other hand, is required to discuss this report with the specialists.⁵⁹ These safeguards ensure effective legal representation for the defendant before the court.

In 1997, the Ministry of Justice established the General Administration for the Legal Protection of Children and the Subcommittee on Child Judicial Protection. The mandate of this Subcommittee is to support the juvenile justice system by designing policies and implementing plans to enhance the capacities of key players in the juvenile justice system.⁶⁰ This Subcommittee currently sits within the Department on Women and Child Affairs of the Ministry of Justice, under the supervision of a chief judge whose title is Assistant Minister. It consists of a team of justice professionals headed by a judge.⁶¹

In March 2015, the Ministry of Justice announced the kickoff of an EU-funded project, Support for the Modernization of Administration of Justice (SMAJ).⁶² One of the project's main objectives is to help the juvenile justice system keep pace with international standards. This has been envisioned through creating four child-friendly and fully equipped pilot courts and by providing necessary training to judicial professionals, court staff, and law enforcement personnel working in the juvenile justice system. The program pays attention to dealing with children suffering social and psychological problems.⁶³

⁵⁷ *Id.*

⁵⁸ *Id.* arts. 121, 127.

⁵⁹ *Id.*

⁶⁰ Minister of Justice Decree No. 2235 of 1997 (in Arabic).

⁶¹ See Department of Women and Child Affairs webpage, <http://www.jp.gov.eg/rwc/1.aspx> (in Arabic).

⁶² Press Release, Support to the Modernization of Administration of Justice in Egypt (May 7, 2016), http://www.eeas.europa.eu/archives/delegations/egypt/press_corner/all_news/news/2016/20160507_en.pdf, archived at <https://perma.cc/49EK-P9F8>.

⁶³ *Egypt: Modernization of Administration of Justice*, NORTHERN IRELAND COOPERATION OVERSEAS (Mar. 20, 2015), available at <http://www.nico.org.uk/egypt-modernisation-of-justice/>, archived at <https://perma.cc/A5MJ-5EAL>.

C. Support Offices for Women in Courts of First Instance

Over the last decade, the Ministry of Justice declared that the empowerment of women has been its top priority. Initiatives have been taken to fight violence against women by facilitating women's access to the justice system and providing them with free legal assistance and legal representation.⁶⁴

In cooperation with the British Council, the Ministry of Justice established the My Right project. Four pilot offices have been created in four courts of first instance to provide legal advice and legal aid to women and girls who are victims of violence. This is accomplished by raising the awareness of women who are victims of violence, informing them about their legal rights, and assisting them in filing police reports and gathering evidence in the pretrial and trial stages. Four additional offices are planned.⁶⁵

In addition, the Ministry of Justice recently established a twenty-four-hour clinic for female and child victims of sexual and physical abuse, including potential trafficking victims. Female doctors who are trained in victim protection and evidence collection for potential criminal proceedings staff this clinic.⁶⁶

D. Legal Assistance Offices in Labor Courts

Labor courts play a vital role in safeguarding the rights of workers. They exercise jurisdiction over labor disputes pertaining to labor contracts, wages, rights and obligations of workers, work injuries, and compensation.⁶⁷

In accordance with the Ministry of Justice's policy of supporting legal aid, legal assistance offices were established in labor courts of first instance by Ministerial Decree No. 13637 of 2009.⁶⁸ The mandate of these offices is to provide free legal assistance for indigent litigants in labor courts. There are currently thirty-eight labor courts with three legal assistance offices throughout the country and a total of three hundred judges dealing with labor disputes.⁶⁹ Labor cases filed by workers are exempt from legal fees and charges.⁷⁰

⁶⁴ UN EGYPT, SOCIAL, ECONOMIC AND LEGAL EMPOWERMENT OF WOMEN (JOINT PROGRAMME PROPOSAL) 4 (Nov. 26, 2013), [http://www.eg.undp.org/content/dam/egypt/docs/Women%20Empowerment/Women_Empowerment_Swedish_Proposal_26Nov2013%20\(2\).pdf?download](http://www.eg.undp.org/content/dam/egypt/docs/Women%20Empowerment/Women_Empowerment_Swedish_Proposal_26Nov2013%20(2).pdf?download), archived at <https://perma.cc/57BN-QA3A>.

⁶⁵ *My Right: Spaces to Support Women's Choices*, BRITISH COUNCIL, <https://www.britishcouncil.org/en/programmes/society/my-right> (last visited June 16, 2017), archived at <https://perma.cc/B4B7-FUH3>.

⁶⁶ U.S. DEP'T OF STATE, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, 2016 TRAFFICKING IN PERSONS REPORT: EGYPT (June 2016), <https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258760.htm>, archived at <https://perma.cc/V3RY-8EPX>.

⁶⁷ Law No. 12 of 2003 (Labor Law), *al-Jarīda al-Rasmīyya*, vol. 14 (Duplicate), 7 Apr. 2003, p. 2.

⁶⁸ Ministry of Justice Decree No. 13637 of 2009.

⁶⁹ Interview with the Egyptian Ministry of Justice Specialized Courts Department (Mar. 2016).

⁷⁰ Minister of Justice Decree No. 2235 of 1997, arts. 6, 7 (in Arabic).

In its 2015 strategic plan, the Ministry envisioned the expansion and improvement of legal assistance offices in labor courts, as well as enhancing the capacities of judges working in these courts, through cooperation with the World Labor Organization.⁷¹

E. Law Clinics: Clinical Legal Education

One of the recently established venues for promoting legal aid is law clinics within legal academic institutions. There have been successful initiatives to set up legal clinics in a number of Egyptian law schools. For instance, the Protection Project partnered with Alexandria University Law School to establish the first legal clinic in Egypt in 2010. The clinic provides legal aid and assists pro bono lawyers who help child victims, victims of human trafficking, and victims of domestic violence.⁷²

This project plans to expand its services by reaching out to the community in Alexandria to offer free legal services through collaboration with legal assistance offices at family courts and the Ministry of Justice. The Protection Project also intends to build a cadre of future lawyers with cutting-edge skills and hands-on experience under the supervision of the law professors, the Ministry of Justice, and the Egyptian Bar Association.⁷³

In June 2017, another environmental law clinic and consumer protection law clinic opened at Helwan University, in cooperation with the American Bar Association Rule of Law Initiative (ABA ROLI).⁷⁴

V. Challenges Facing the Legal Aid Framework

Despite efforts to support the structure of legal aid in Egypt, there is still much to be accomplished. In the 2016 World Justice Project Rule of Law Index, Egypt's civil justice system was ranked 104 out of 113 worldwide in its adherence to the rule of law. The civil justice indicator measures access to the civil justice system among other elements.⁷⁵

⁷¹ EGYPTIAN MINISTRY OF JUSTICE, FUTURE STRATEGIC PLAN, OCTOBER 2015, <http://jp.gov.eg/sca/6.aspx> (in Arabic), archived at <https://perma.cc/R75B-EEDK>.

⁷² *Advancing Clinical Legal Education in Egypt*, THE PROTECTION PROJECT, <http://www.protectionproject.org/activities/international-human-rights-clinic/the-clinical-legal-education-network/> (last visited June 16, 2017), archived at <https://perma.cc/KCG2-Q7YW>.

⁷³ MARCO SOLIMAN, ACCESS TO JUSTICE AFTER THE ARAB SPRING: IS THE PROMISE FULFILLED? (CASE OF EGYPT AND TUNISIA) 35 (2013), available at <http://www.luc.edu/media/lucedu/prolaw/documents/MARCO%20SOLIMAN%20FINAL%20VERSION.pdf>, archived at <https://perma.cc/RWG2-YZ2U>.

⁷⁴ *Rule of Law Programs in Egypt, Legal Education and Civic Education*, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/advocacy/rule_of_law/where_we_work/middle_east/egypt/programs.html (last visited June 5, 2017), archived at <https://perma.cc/YP8Q-G7HD>.

⁷⁵ WORLD JUSTICE PROJECT, RULE OF LAW INDEX 40–43 (2016), https://worldjusticeproject.org/sites/default/files/documents/RoLI_Final-Digital_0.pdf, archived at <https://perma.cc/TH9S-7Q9K>.

A. Lack of Quality Legal Education

Admission to law school in Egypt follows graduation from high school and requires four years of study. Law schools, particularly Cairo University Law School, were highly regarded until the second half of the twentieth century. Cairo University Law School was once the college of the elite class from which most prominent lawyers, judges, and political figures graduated. Three judges at the International Court of Justice, one Secretary General of the United Nations, and a Director General of the International Atomic Energy Agency are all graduates of Cairo University Law School.⁷⁶

However, the status quo is changing. For instance, in 2006, an estimated 32,000 students were enrolled at Cairo University Law School, with an average of 5,000 students per graduating class. Students often apply to law schools because their weak grades do not qualify them for top-ranked colleges rather than because of their motivation for an outstanding career.⁷⁷

Large classes, uninspired law students, and a lack of practical skills inevitably amount to low-quality and less-qualified law graduates.⁷⁸

Nevertheless, an initiative has been undertaken by Helwan University School of Law to partner with ABA ROLI in developing and upgrading its curriculum. This has been envisioned through the integration of interactive teaching techniques, critical thinking, and practical legal skills in educational strategy.⁷⁹

B. Shortage of Law Clinics

Although there have been successful initiatives to set up pilot legal clinics, they are still not common in Egypt's system of legal education.⁸⁰ There are no quality measures or performance standards regulating the practice of these clinics. Clinical legal education has no systemic mechanism and is not an officially accredited practice.

C. Scarcity of Pro Bono Lawyers

As previously mentioned, the right to counsel and legal aid is guaranteed and safeguarded by statute, enshrined in the Constitution, and affirmed by the Advocacy Law. However, these provisions are nonoperational in practice: “the concept of pro bono work is still alien to the vast majority of lawyers in Egypt.”⁸¹ Additionally, lawyers, by and large, are not well paid, even

⁷⁶ INTERNATIONAL LAW AND THE THIRD WORLD: RESHAPING JUSTICE 147–48 (Richard Falk et al. eds. 2008).

⁷⁷ *Id.*

⁷⁸ See INTERNATIONAL BAR ASSOCIATION'S HUMAN RIGHTS INSTITUTE, JUSTICE AT A CROSSROADS: THE LEGAL PROFESSION AND THE RULE OF LAW IN THE NEW EGYPT 30–31 (2011).

⁷⁹ *Rule of Law Programs in Egypt, Legal Education and Civic Education*, *supra* note 74.

⁸⁰ See discussion, *supra*, Part IV(E).

⁸¹ INTERNATIONAL BAR ASSOCIATION'S HUMAN RIGHTS INSTITUTE, JUSTICE AT A CROSSROADS, *supra* note 78, at 28.

those appointed by courts. Thus, they are not motivated to provide their services free of charge.⁸²

D. Low Quality Representation by Court-Appointed Lawyers

The competence of court-appointed defense in criminal cases for indigent defendants is still a matter of concern. These lawyers are appointed at random from a list of attorneys present in the courthouse that day and with no preparation. Thus in reality, the defendant is restricted when selecting a lawyer of his or her choice. These lawyers often lack relevant experience pertaining to the case adjudicated, thereby jeopardizing the defendant's right to effective legal representation.⁸³

In addition, there is no clear practical measure for evaluating the efficiency of services provided by the court-appointed lawyers, absent a formal complaint or serious malpractice or misconduct reported to the Disciplinary Committee.⁸⁴ Despite the Advocacy Law's requirement that lawyers provide legal assistance to disadvantaged defendants with the same care and diligence as a retained lawyer, in practice, they exercise their role in a *pro forma* manner for procedural due process.

In this regard, the Court of Cassation has ruled that the preparedness of a lawyer to represent a defendant is at the sole discretion of the lawyer, depending on his or her conscience, diligence, and professional practice traditions.⁸⁵

E. Insufficient Professional Training for Lawyers

International legal organizations recognize that professional training opportunities for lawyers are scarce and do not fulfill the needs of a modern lawyer.⁸⁶ The law provides that Egyptian Bar Association branches must organize practical trainings at the beginning of each judicial calendar year for new lawyers before they receive their license. However, these trainings are outdated and, in many cases, noncompulsory. In addition, young lawyers lack accessibility to basic legal resources, such as books and legal references.⁸⁷

There have been some opportunities for continuing legal education (CLE) training, and the ABA ROLI has conducted additional training on lawyering skills for more than 380 young lawyers since 2009. The ABA ROLI also partnered with Cairo University, Helwan University, and Cairo Regional Center for International Commercial Arbitration to provide CLE *ad hoc* courses.⁸⁸

⁸² *Id.* at 34.

⁸³ *Id.* at 26.

⁸⁴ Law No. 17 of 1983 (Advocacy Law), ch. 5, arts. 98–119.

⁸⁵ Court of Cassation, Criminal Chamber, petition no. 42924/85, session of 11 Apr. 2016.

⁸⁶ INTERNATIONAL BAR ASSOCIATION'S HUMAN RIGHTS INSTITUTE, JUSTICE AT A CROSSROADS, *supra* note 78, at 34.

⁸⁷ *Id.*

⁸⁸ *Rule of Law Programs in Egypt, Legal Education and Civic Education*, *supra* note 74.

VI. Recommendations for Improving the Current Legal Aid Framework

Despite efforts made to support legal aid, either via government institutions or through society at large, legal aid offices by and large still have not yet covered all Egyptian courts or all civil disputes, as discussed above. In addition, there is still a limited systemic or institutionalized structure for legal aid.

- **Establish a Quasi-Public Defender System**

The assessment of the viability of a public defender system is proposed as one possible solution. Although this might sound feasible, it is still a discouraging option, in the opinion of international legal community, especially at a time when governments have decided to cut their legal aid budgets due to economic austerity.⁸⁹ However, making some adaptations to the current system could be viable and cost-effective.

A suggestion would be to expand the court-appointed lawyers' roster in criminal courts at all trial levels. These lawyers would be available to provide legal assistance and defense to indigent defendants in all trial stages. To ensure the quality of legal services, lawyers should have specific, efficient, and sufficient training on case management and effective case handling. They should also be specialized and selected on the basis of preset criteria.⁹⁰

In addition, incentives should be provided to motivate lawyers to be listed on the court-appointed lawyers' roster. These incentives could vary from monetary compensation to other rewards. For instance, lawyers with outstanding performance scores could be offered bonuses, or lawyers who met a threshold of legal representation could be promoted to appear before higher courts.⁹¹

American judges recommend ensuring the efficiency of the system and the sustainability of high performance standards through regular evaluation and the periodic vetting of the lawyers' roster. For instance, a file could be created for each lawyer with an evaluation sheet, to be completed by the judge in each case in which the lawyer is appointed. This file could be revisited periodically; lawyers who did not meet a threshold performance standard would be delisted.⁹²

- **Encourage the Pro Bono Principle**

To incentivize lawyers to provide pro bono legal service, pro bono practice should be a threshold requirement for admission to the bar.⁹³ Similarly, a legal aid system could offer incentives and benefits for law firms and individual lawyers in the form of tax credits or tax cuts, or by reducing

⁸⁹ Auke Willems, *The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems: A Step toward Global Assurance of Legal Aid?*, 17 NEW CRIM. L. REV. 184, 185, 219 (2014).

⁹⁰ SOLIMAN, *supra* note 73, at 50.

⁹¹ *Id.*

⁹² Interview with Hon. Timothy J. Sullivan, United States Magistrate Judge, U.S. District Court for the District of Maryland (Apr. 17, 2017).

⁹³ INTERNATIONAL BAR ASSOCIATION'S HUMAN RIGHTS INSTITUTE, JUSTICE AT A CROSSROADS, *supra* note 78, at 47.

the minimum practice period for licensing before higher courts, after meeting a threshold of pro bono work.⁹⁴

It is equally important to establish guidelines on quality measures and performance standards for pro bono services.

- **Promote Continuing Legal Education**

Promoting continuing legal education (CLE) for practicing lawyers is of paramount importance to keep lawyers abreast of the latest legal developments. CLE courses should include training to enhance lawyers' case management capacities and effective case handling in order to improve the overall quality of legal representation.⁹⁵

However, providing comprehensive and efficient legal training is financially challenging, bearing in mind the high number of lawyers admitted to the Bar Syndicate (Egypt's bar association). A key solution is partnering with law schools, the National Center for Judicial Studies, and civil society organizations to provide training to lawyers and give professional credit to those who complete training courses.⁹⁶

- **Institute a Legal Aid Program**

An institutionalized, comprehensive legal aid program needs to be established for the provision of legal aid services in Egypt. A strategic plan associated with an efficient operational plan should be crafted, and all stakeholders should be engaged in the process. This plan should address the needs of service recipients, with the stakeholders' input taken into consideration.⁹⁷

Additional coordination needs to be sought between individual initiatives and efforts exerted by civil society organizations, law clinics, and governmental and quasi-governmental bodies. Mobilizing and coordinating these efforts will inevitably result in better utilization and management of resources.⁹⁸

Ideally, the legal aid system would be affiliated with and supervised by the Ministry of Justice. The Ministry of Justice already operates legal aid programs in the court system, so this would ensure unified and consistent management.⁹⁹

⁹⁴ JULINDA BEQIRAJ & LAWRENCE MCNAMARA, BINGHAM CENTRE FOR THE RULE OF LAW, INTERNATIONAL ACCESS TO JUSTICE: LEGAL AID FOR THE ACCUSED AND REDRESS FOR VICTIMS OF VIOLENCE 31 (Oct. 2015).

⁹⁵ *Id.* at 39.

⁹⁶ SOLIMAN, *supra* note 73, at 50.

⁹⁷ G.A. Res. 61/187, *supra* note 3, Guideline 11.

⁹⁸ SOLIMAN, *supra* note 73, at 49.

⁹⁹ *See* discussion, *supra*, Part IV(A)(2) and (C).

- **Raise Public Awareness of the Justice System and Legal Aid**

Raising public awareness about legal aid can be accomplished by informing citizens of their legal rights, educating them about the justice system and court proceedings, and guiding them on how to access legal aid. This can be done by disseminating printed and electronic materials, designing TV commercials and advertisements, and distributing flyers and posters. Additionally, the institution responsible for legal aid could develop handbooks and design brochures to be available for pro se litigants at courthouses.¹⁰⁰

Likewise, defendants and accused persons should be informed of their right to legal aid and have unrestricted access to such aid at the pretrial and trial stage. Furthermore, they should be entitled to remedies if they are not adequately informed or are deprived of this right, especially in cases where the system does not provide effective legal assistance.¹⁰¹

- **Expand Legal Aid Offices (LAOs)**

The expansion of LAOs should be envisioned and strategically planned to cover all family courts. In spite of the financial challenges, the services provided by these offices are of paramount importance to disadvantaged litigants. The services outweigh the incurred costs by helping litigants understand their legal rights and file the required documents, thus contributing to disposition of cases in a timely manner.¹⁰²

Also, enhancing the capacity of LAO staff would ensure the sustainability and continual improvement of the services provided. This could be accomplished through periodic in-service trainings and regular evaluations of LAO staff, keeping them abreast of contemporary issues.¹⁰³

- **Upgrade Dispute Settlement Offices (DSOs)**

Upgrading DSOs and coordinating with LAOs is another point of consideration. Settlement mediation conferences where parties actively participate are an effective means of achieving prompt justice. These conferences permit the parties to reach the outcome voluntarily through facilitated and direct communication, and that outcome is more likely to be enforced than a court decision.¹⁰⁴

That being said, the roles of the DSOs and LAOs are complementary; thus, the nexus between them is obvious. Cooperation and coordination between staff of both offices will amount to improved justice service and more efficient settlement. When litigants are advised about their

¹⁰⁰ G.A. Res. 61/187, *supra* note 3, Guidelines 2, 4.

¹⁰¹ *Id.*

¹⁰² KHAFAGY & EL-SHAMI, *supra* note 52, at 19.

¹⁰³ *Id.* at 20.

¹⁰⁴ HON. MORTON DENLOW (RET.), SETTLEMENT TECHNIQUES FOR JUDGES 3 (2011).

legal rights and acquainted with their legal stance through the LAOs, this will positively impact their odds of an amicable settlement before a DSO.¹⁰⁵

In addition, when LAO staff communicate with their counterparts in the DSOs, and vice versa, this will help the DSO to have a better understanding of the dispute and hence better communication with the parties.¹⁰⁶

¹⁰⁵ KHAFAGY & EL-SHAMI, *supra* note 52, at 21.

¹⁰⁶ *Id.* at 18.