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Challenging the Legal Ideology of the State: Cause Lawyering and Social Movements in Egypt

→ Ahmed Ezzat



Egyptian security forces outside the State Council after a verdict against the transfer of the Egyptian Tiran and Sanafir islands to Saudi Arabia, January 2017.

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Cause lawyering, understood as a judicial practice aimed at promoting social change, constitutes a crucial aspect of civil society's mobilization in Egypt, where the cause lawyers' movement has been a pillar of the struggle for democracy and social justice over the past 70 years.

Cause lawyers have sometimes been referred to as “labour lawyers” or “freedoms lawyers”, but the most organized form of cause lawyering has come in the form of *pro bono* legal services provided to individuals through human rights NGOs by professionals labelled as “human rights lawyers”. This confused and sometimes overlapping terminology highlights the strong diversity of cause lawyering practices in Egypt. While the term “human rights lawyer” refers to lawyers who would unconditionally defend victims of human rights violations, it also designates lawyers who would engage with cases that trigger public interest but not necessarily through a human rights lens.

Despite those differences, over the last three decades, Egyptian cause lawyers have come to constitute a strong and well-identified socio-professional group. Since the 1940s, they have provided legal aid to members of different social movements in their struggle against the state's authoritarian and capitalist policies as well as against populist and conservative political groups. Although their techniques, until the mid-1990s, focused on providing victims of human rights violations with direct legal empowerment services and facilitating their access to the Egyptian legal system to redress their grievances, cause lawyers have also succeeded, over the past 25 years, in using “strategic litigation” to challenge state policies and counter its conservative narratives and in judicializing controversial political and economic policies before different judicial platforms. Furthermore, these lawyers have been providing a remarkable legal shield to different social movements before and after the pre-2011-revolution era.

Yet, after the advent to power of President Abdel Fattah El-Sissi in 2013, the impact of cause lawyering has come under question, amid arguments of the meaningless of going to court against the state over matters of rights and freedoms considering the security agencies' total control over normative legal institutions and courts. However, most cause lawyers interviewed for the purpose of this research believe that cause lawyering provides an opportunity to expose the legal ideology of the counter-revolution in Egypt, to develop tactics to confront it and, most



importantly, to support victims of the authoritarian regime. The success of this strategy was evident in 2016 with the case against the Egyptian state's decision to waive its sovereignty over Tiran and Sanafir, two islets in the Red Sea, to the Kingdom of Saudi Arabia. In this case, cause lawyers scored several victories before the Administrative Court, which initially considered the state's decision to hand these islands to Saudi Arabia null and void and a violation of sovereignty and constitutional guarantees.¹ Although this was quashed by the Supreme Constitutional Court through a final orchestrated backlash, the public debate created before courts allowed lawyers to put the regime's official patriotic narrative under a tough examination.

Can cause lawyering then be considered a social movement in Egypt? What has been the impact of cause lawyers on the mobilization process and the diverse social movements that have marked the Egyptian public sphere? To what extent have they contributed to reshaping the public sphere? Along what lines have cause lawyers been manoeuvring in the grey zones of the Egyptian state? What are the challenges and prospects of the cause lawyers' movement under El-Sissi's era?

This research draws from the experience of the author as a human rights lawyer in Egypt from 2004 to 2014 in three rights groups² as well as from a series of interviews he conducted with 21 cause lawyers based in Egypt between August and November 2018. In addition to reviewing the existing literature on cause lawyering and social movements in Egypt and other countries, the author also reviewed the files of 15 cause lawyering cases that were examined or are still being examined by Egyptian courts.

This paper reviews several emblematic cases to highlight the exciting history of Egyptian lawyers' ability to transform social demands into legally recognized rights and use them to confront state repression. It includes cases on the national minimum wage, union pluralism, independence of labour unions, religious minorities and freedom of expression. The research also explores the terrain followed by lawyers from different generations in their work to support specific political organizations, as volunteers in cases of general public concern through the lawyers' syndicate (bar association), through human rights organizations and finally through lawyers' networks that emerged after the military coup in Egypt in July 2013 in order to support victims of human rights violations.



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Part One examines the institutionalization of the cause lawyers' community as a political movement bound by common political and social specificities and shared litigation tactics that differentiate them from other lawyers. It questions how the movement has imposed itself as a tool of collective empowerment able to foster a counter legal narrative, politicize the judicial language, and impact, notably, on legal argumentations and litigation strategies.

Part Two focuses on the history of the movement. Key developments of the Egyptian modern legal system are first analyzed to understand how a space for cause lawyering was carved as a result of the duality of a state apparatus drawn between two competitive "prerogative" and "normative" functions, hence facilitating the confrontation of state policies. The study then highlights the dialectical relationship between social movements and their lawyers by recounting the different strategies and purposes adopted by cause lawyers in the course of their history. Started as an organizational tactic for leftist groups in the 1940s to provide their support bases with technical and educational services and root their ideological hegemony among workers and unions, the movement then morphed with the independent and spontaneous voluntary work provided by "Freedoms Lawyers", who emerged during the 18 and 19 January 1977 uprising and played a major role until early 1990s to support victims of state repression and legal arbitrariness. Finally, the establishment of human rights organizations in the early 1990s, have entrenched human rights lawyering at the core of civil mobilizations in Egypt, with lawyers representing a main component of the most established independent human rights NGOs in the past three decades.³

Part Three discusses the limitations, contradictions and challenges of cause lawyering in the aftermath of the 2013 coup and sheds light on the expansion of cause lawyering beyond the traditional circle of human rights organizations. By examining the political polarization of cause lawyers and limitations put on their work by the fall in mobilizations and new state restrictions, this analysis questions future prospects for cause lawyers in Egypt at a time when they have been accused of selectivity with regard to the cases they choose to work on. Giving detailed accounts of how cause lawyering has become a decisive tool to counter state narratives and dismantle discriminatory and repressive structures, provides valuable clues of the role cause lawyers are likely to play at a time of



unprecedented repression.

Part I: Cause lawyers from a non-movement to a political movement

In Egypt, lawyers work in a difficult environment characterized by economic and institutional pressures,⁴ the absence of an independent bar association, the poor quality of legal education,⁵ and systematic abuses against lawyers by judges, prosecutors and police officers.⁶

Unlike competitive environments in other countries, becoming a lawyer in Egypt does not require more than a bachelor's degree in law and registration fees at the bar association. Those convicted in criminal cases or cases related to their personal "reputation" are excluded. No examination is required for law graduates to register as lawyers in the bar association and to practice the profession.⁷

Most lawyers face economic difficulties and marginalization, and many suffer state repression. They usually seek to overcome these problems through individual solutions rather than collective action. Such solutions might involve breaching the law and benefiting from a corrupt bureaucracy. For example, it is widely known in Egypt that some justice administration officers would receive bribes from lawyers to take or not to take action. Lawyers' responses to their everyday struggles with applicable laws, the courts and bureaucracy can be described as a "non-movement" that manipulates legal and bureaucratic difficulties through practicing the very profession of law.⁸

Nonetheless, the nature of the legal profession requires lawyers to regularly communicate with different government officials such as judges, police officers, and prosecutors in order to protect their profession and show solidarity with each other, which changes them into a movement. This is clear in Egyptian lawyers' resistance to attacks on their independence or solidarity with colleagues facing harassment by the authorities in relation to their work. In such situations, lawyers have taken organized collective action to confront state attack on their profession or to promote their common interests. The history of the Egyptian Lawyer's Syndicate is full of strikes, protests and sit-ins against state interference in its

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internal affairs and police violence against lawyers.⁹ Such actions by lawyers can amount to a movement.¹⁰

However, conventional lawyering in Egypt takes different forms with most lawyers working independently in small private law firms, at corporate law firms owned by famous and well-connected lawyers, or in the legal administrations of the public sector. There are no rules for determining legal fees,¹¹ independent lawyers are paid by their clients on a case-by-case basis. This is what sets cause lawyers apart and shapes the formation of their identity. Lawyers are made of individuals from different social classes, ideologies and interests. Some find fulfilment in maintaining the narratives of the ruling classes; others make a living from judicializing everyday life disputes between individuals or between private individuals and state actors or members of non-state groups, with litigants seeking to survive political and economic hardships rooted in injustice, legal arbitrariness, incompetence and corruption.

As a rule, lawyers defend the interest of their clients regardless of their motivations or values. They rely on the existing legal framework and exploit legal loopholes and different judicial platforms to achieve the individual interests of their clients. Generally, when lawyers work towards policy or legislative changes, they are motivated by self-interest rather than aspirations for social change.¹²

“Cause lawyering” is another type of lawyering. It lends support to social movements seeking social change¹³ and, in some cases, transforms cause lawyers themselves into an independent political movement. Cause lawyers usually choose to work on cases linked to the protection of rights and freedoms, affecting individuals’ political, economic or social status. They provide a platform to enable those that are marginalized to speak out and challenge the state ideology and prevalent narratives.¹⁴ This general distinction between conventional lawyers (who focus on the direct interests of their clients) and cause lawyers (who focus on social movements) applies to Egyptian lawyers.

This paper reflects on the lawyers’ contribution to the struggle of other movements in seeking democracy and social justice. By acting collectively through the political groups to which they belong or through human rights organizations where they work, cause lawyers in Egypt do constitute a socio-political



movement.¹⁵ Their actions usually consist of challenging the ruling legal system and exposing its hostility towards vulnerable groups, political opponents and marginalized classes. Cause lawyers have different political ideologies and build different types of organizations to facilitate their work, thus developing a distinctive identity. This can be seen in the legal language they use, the legal platforms they choose for their battles, and the legal tactics they employ to achieve their goals.

I.1 Cause lawyering as a political movement

A common ideological background: all 21 lawyers interviewed for the purpose of this study agree that having a political background is a key characteristic that distinguishes conventional lawyers from cause lawyers in Egypt, “political background” understood by the interviewees as a belief in certain social and democratic values, rather than membership in political entities. This understanding applies to various extent to leftist, Nasserist and liberal lawyers. According to lawyer Mahmoud Kandil,¹⁶ leftist and Nasserist lawyers active in the Freedoms Committee of the Bar Association in the 1980s, played a major role in establishing the first wave of human rights organizations that used litigation as a key strategy in the advancement of human rights.¹⁷ The same pattern applies to lawyers who were active in cases of public concerns in 1970s. For instance, two of the main lawyers who represented defendants in the 1977 uprising case, in which 176 individuals were tried on charges of inciting violence against state institutions during mass protests against the President`s decision to increase the prices of basic goods, were the leftist Ahmed Nabil el-Hilaly and the nationalist Essmat Seif al-Dawla.¹⁸

A tool of collective empowerment: the sympathy of these lawyers with the cause they defended is evident in the work of prominent human rights lawyer late Hisham Mubarak, the founder of the Legal Aid Centre for Human Rights (LACHR) and one of the first to introduce litigation as a key strategy in the work of human rights organizations in 1990s.¹⁹ While prominent lawyers like Ahmed Nabil el-Hilaly, Youssef Darwish and Ahmed Sharaf focused, for decades, on labour rights



cases through direct legal empowerment and representation, LACHR was the first human rights group to establish a legal unit for constitutional litigation to bring cases before the Supreme Constitutional Court. This has rendered litigation a tool of collective empowerment. This unit consisted of lawyers Ahmed Seif al-Islam Hamad, Tarik Abdelaal and Khaled Ali. Late Ahmed Seif al-Islam Hamad, founder of Hisham Mubarak Law Center, who is the first lawyer to institutionalize strategic litigation within the work of rights groups, was also driven by similar considerations. These lawyers focused their litigation on a number of Human rights issues, including the right to a fair trial, emergency law, death penalty, freedom of expression and labour rights.²⁰

More recently, renowned lawyer Khaled Ali was able to use strategic litigation to defend economic and social rights in an organized manner and on an unprecedented scale. His work in supporting labour movements before Egyptian courts has been linked to his political ideology as a leftist activist and a supporter of workers in their longstanding struggle to receive fair wages and form independent unions.²¹

A counter-narrative: while political or intellectual backgrounds might be a factor in attracting individuals to cause lawyering in Egypt, state ideology itself, which used law as a means of calculated repression, has facilitated the emergence and development of cause lawyering as a counter-narrative. The Egyptian state has used formal legality as a central method to force its political and economic agendas. For instance, even when exploiting emergency law and using military and state security courts, applying legal procedures, *habeas corpus*, and respecting (to a certain extent) judicial decisions remained, at least before the arrival of President El-Sissi, the main characteristics of the state's behaviour to promote, inside and outside Egypt, the impression that it upholds the "rule of law" and "judicial independence".²² This has been evident since the establishment of the Supreme Constitutional Court in 1979 and the re-empowerment of the Administrative Judiciary in 1980s. Although the Egyptian state has indeed resorted to extra-legal strategies to maintain the political order and protect the ruling regime, these strategies were used mainly at times of significant political changes, as was the case, for instance, after the military coup in July 2013.²³

Lawyer Ahmed Kinawy has argued that the state strategy of chasing opponents



and activists using the law and the courts played a major role in the emergence of cause lawyers who, in response, turned to the same tools to confront state repression, expose its legal arbitrariness, and its utilitarian usage of the slogans of “rule of law” and judicial independence, and to defend their political projects from state attacks.²⁴

Politicizing the judicial language: the ideological aspect of cause lawyering was very clear in the work of lawyer Ahmed Nabil el-Hilaly, particularly in his pleading in “Egyptian Communist Party” case (case No. 50 of 1980). In this case, the authorities detained leftist activists on charges of joining a secret communist group for the purpose of changing the social order by violence. In court, prosecutors argued that the defendants’ beliefs and ideas were in line with the Marxist idea of “internationalism”, at odds with the religious and social values of Egyptian society. Such beliefs were equated with treason. It was not enough for el-Hilaly to respond to legal evidence and arguments, which he did ably,²⁵ but more importantly he pleaded in defence of Marxist ideas of internationalism and the universality of political thoughts and ideas, science and freedom of expression. He said:

“I have to respond to another accusation, before moving to the official charges, which is importing thoughts and ideas alien to our religion and our national identity, which I find to be a shameful accusation, especially that it is being said in the 20th century, your honour. Thoughts, any thoughts, whether we agree or disagree with them, should not be criminalized or demonized under the pretext that they are coming from abroad. Thoughts and science have no home or nationality, they belong to all human beings”²⁶

Human rights lawyer Ahmed Raghieb says that only cause lawyers use such language given that their concerns go beyond the direct interests of their imprisoned clients but extend to the rights under attack. On the other hand, conventional lawyers mostly avoid making political points or raising controversial issues before courts.²⁷

1.2 Institutionalization of a socio-professional group



Securing a regular income: another difference between cause lawyers and conventional lawyers pertains to the remuneration of the work rendered. Tarek Abdelaal, lawyer with the Egyptian Initiative for Personal Rights and head of a private law firm, said that economic realities oblige lawyers to focus on lucrative cases.²⁸ The deterioration of the economic situation in Egypt further discourages lawyers from engaging in cause lawyering.²⁹

In the past, lawyers interested in human rights and other public concern cases usually worked *pro bono*, by volunteering with the Freedoms Committee in the Lawyers' Syndicate. Currently, most lawyers focusing on human rights cases work in human rights organizations. Abdelaal disagrees with calling cause lawyers working in human rights groups as volunteers, as some prefer. He argues that human rights lawyers are paid by their organizations to represent victims of human rights violations. Since the 1990s, lawyers working in human rights organizations as regular staff receive monthly salaries covered by donor-funded projects. They have been providing victims with legal services through direct legal representation or strategic litigation. Working in human rights organizations has allowed cause lawyers to secure a monthly income and the financial stability that enables them to prioritize cause lawyering.

Lawyer Ahmed Kinawy considers the establishment of legal units within human rights organizations that pay lawyers on a monthly basis a very positive step in institutionalizing cause lawyering and ensuring sustainability. He added that it was very difficult to rely on volunteers given the scale of human rights violations in Egypt and the high need for legal representation.³⁰

1.3 Rethinking legal argumentation

Another key difference between cause lawyers and conventional lawyers lies in the formers' use of the language of international human rights standards and constitutional protection of human rights. Their arguments are not limited to the domestic legal framework. Conventional lawyers rely more on using loopholes in the legal framework and exposing illegalities, in accordance to Egyptian law, in their opponents' behaviour without resorting to political or human rights arguments.

Cause lawyers use of international human rights law and constitutional guarantees. Such use was evident in Case No. 4190/1986 of 37 Railways Authority workers' trial before the Supreme State Security Court on charges of participating in a strike, an act criminalized under Article 124 of the Penal Code. Cause lawyers, including Ahmed Nabil el-Hilaly, Abdullah Khalil, Essmat Seif al-Dawla, Amir Salem and Rabi` Rashid, successfully argued that article 124 of the Penal Code had been superseded by the Egyptian state's ratification of the International Covenant on Economic, Social and Cultural Rights, which protects the right to strike. Egypt ratified the Covenant in April 1982, long after the enactment of Article 124 of the Penal Code. In its decision to drop the charges, the court reiterated the reasoning of the cause lawyers:³¹

*"If Article 124 was superseded by the aforementioned Covenant, it is not legal to amend this article because it does not exist. This also means that the crime of strike has no legal base. The court in this regard calls on the legislator to regulate the right to strike in a manner that protects the high interests of the state as well as workers' rights to avoid chaos and the disruption of the supreme interests of the society..."*³²

In political cases, such as those involving charges of participating in an unauthorized protest, cause lawyers and conventional lawyers rely on very distinct arguments. Conventional lawyers focus on the absurdity of the charges against their client and the invalidity of the applied legal procedures of arrest, search and interrogation. For example, their main line of defence often hinges on denying the defendant's participation in the alleged protest. In a case found on the Arab Lawyers Forum's website,³³ a conventional lawyer argued that his client could not have participated in the protest as he was wearing pyjamas at the time of arrest, which means that he was arrested from home and not from the protest.³⁴ It is clear that the lawyer's only interest was to clear his client of the charge of "participating in an unauthorized protest", and not to defend the right to peaceful assembly as a constitutionally recognized right.

On the other hand, cause lawyers are searching to defend both their clients' individual interests and the wider cause affecting society. For example, lawyer Ahmed Seif al-Islam Hamad's pleading in the well-known case of the strike in the city of Al-Mahalla on 6 April 2008 in front of the Supreme State Security Court was divided between arguing his client's innocence of charges of participating in an



“unauthorized” and “violent” protest and defending fair trial guarantees particularly under attack in this exceptional court. In his written defence, Ahmed Seif al-Islam submitted two notes to the court. The first focused on refuting the charges on logical grounds. Prosecutors had charged a defendant with stealing computer screens from a school on the date of the protest, based on evidence allegedly recovered by the police under the defendant’s bed at the time of his arrest. In responding to these allegations, Seif al-Islam followed a conventional way of argumentation casting doubts on the reliability of the charges:

“it is practically impossible for the defendant to hide the screens under the bed. Let's assume that the length between the floor and the bottom of the bed is 20 cm, while the height of any computer screen is not less than 30 cm. Neither the police nor the prosecutor mentioned any of these sizes in their reports. This leaves us with many assumptions and no certainty, and assumptions cannot be a base for a conviction”³⁵

On the other hand, in the second written defence note, Seif al-Islam couched his arguments in the language of rights. He called for the referral of the case to the Supreme Constitutional Court on the basis that proceedings by an exceptional court inherently violate fair trial rights. Lawyer Ahmed Raghieb, who worked with Seif al-Islam at the time, argues that this dual strategy of focusing on the narrow interests of the client simultaneously with pushing a human rights agenda had been the main characteristic of Seif al-Islam’s career. In his note on the unconstitutionality of State Security Courts, Seif al-Islam argued:

“Nothing justifies depriving individuals of resorting to their natural judges in public law crimes and nothing also justifies the overuse of exceptional courts which can be considered an assault by the executive authority on the jurisdiction of the judicial authority and has a wider impact on the individual’s enjoyment of rights and freedoms”³⁶

It is very common for cause lawyers, particularly staff at local human rights groups in Egypt, to use international standards of human rights in their legal defence. For instance, lawyers at the Association for Freedom of Thought and Expression (AFTE) regularly use Article 19 of the International Covenant on Civil and Political Rights and of the Universal Declaration of Human Rights in cases related to freedom of expression. For instance, AFTE referred to international human rights law when



challenging the government's decision to impose restrictions requiring security clearance before the use of bulk text messaging:

“Article 19 of the International Covenant on Civil and Political Rights protects the right to know and freedom of information in a similar way to the protection provided to this right in the Universal Declaration of Human Rights, which the appealed decision violates because bulk SMS is a method of exchanging information, and forcing individuals to get a prior permission from the authorities before using this service restricts the exercise of this right”³⁷

As candidates for elections used bulk text message services as a campaigning tool to disseminate their programs, AFTE lawyers saw the restrictions as a direct affront to civil and political rights.

1.4 Finding legal education and institutional support

Lawyers lack exposure to international human rights law and standards as these are missing in curriculums of at Egyptian law faculties.³⁸ In addition, interference from the executive authority in the Lawyers' Syndicate has weakened its role in developing the profession and providing its members with trainings opportunities and other institutional and educational services which would increase their interest and ability to take on public affair cases. Therefore, lawyers drawn to public affair cases could only find the necessary support through political groups or human rights organizations. For example, between the 1940s and 1970s, leftist organizations, such as *Tali'at al-'omal* (The Workers' Vanguard) encouraged lawyers among their membership to provide legal services to their political bases.³⁹ The political pedagogy provided by these groups to their members played a major role in the formation of different generations of lawyers who took up cause lawyering as a form of political activism.⁴⁰

The weak role of the Lawyers' Syndicate and its Freedoms Committee, the body within the institution to be mandated with cause lawyering, encouraged legally registered political parties to establish their own legal bodies tasked with defending their members and political rights more broadly. The Freedoms



Committees of *Al Tajammu'* Party and the Nasserist Party contributed to the development of cause lawyering.⁴¹

These bodies provided their lawyers with different types of support to help them engage actively in cause lawyering. Even though lawyers affiliated with political parties carried out their work free of charge, legal and administrative fees and other basic expenses were covered by the Freedoms Committees. These groups also offered space for meetings and discussions and provided books, articles and other source material influencing their intellectual backgrounds, views and even affinity with vulnerable social classes. Such resources were not made available to conventional lawyers.

Nonetheless, the educational and institutional support political groups provide to lawyers remained insufficient and lacked professionalism and consistency. The emergence of human rights organizations in mid-1980s and their adoption of litigation as a main strategy in mid-1990s changed the face of cause lawyering in Egypt. Human rights groups exposed lawyers to areas of law with which they were unfamiliar, such as international human rights law and standards, as well as the jurisprudence of international and regional legal institutions, such as the Inter-American and European Human Rights Courts and the African Commission and African Court of Human and People's Rights. These groups also provided regular training for their staff and other lawyers, including on the judicialization of human rights concerns, fair trial standards, and the independence of judiciary and legal profession. They also encouraged lawyers to engage in legal research besides defending their clients in court.

By providing cause lawyers with the institutional support, training and skills that conventional lawyers usually lack (particularly in light of the poor standard of legal education in Egyptian universities⁴² and the failure of the Lawyers' Syndicate to support its members), human rights organizations have considerably contributed to the professionalization of cause lawyers and fostered the development of their identity as a professional group.

I.5 Developing different litigation tactics and using various judicial platforms



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In addition to exploiting loopholes within the existent legal framework, cause lawyers also seek to reform it, including through applying democratic, progressive and liberal interpretations of the law.

As a strategy, cause lawyers also try to have cases heard by judges known for their respect for human rights, or judicial bodies with strong legacies of respecting the rule of law. This partially explains why the administrative judiciary and the Supreme Constitutional Court in Egypt are the most frequently used platforms by cause lawyers. Egyptian law allows lawyers to bring cases before these two platforms proactively.⁴³ The State Council Law No. 49 of 1972, concerning administrative judiciary, gives individuals the right to file a case against any administrative decision violating any of their rights, while the Supreme Constitutional Court examines the constitutionality of legal provisions.

Lawyer Malek Adly, from the Egyptian Center for Economic and Social Rights, argues that cause lawyers, like conventional lawyers, usually wait for clients to seek their legal services, but they also take initiatives by identifying specific clients to enable them to file strategic cases on a topic of concern for a specific group in society such as journalists, artists, workers, religious minorities, students or activists. Adly adds that cause lawyers themselves file these cases under their own names.⁴⁴

In 2010, Adel Ramadan, a lawyer at the Egyptian Initiative for Personal Rights (EIPR), Hossam Bahgat, then executive director of the organization, and others filed a case before the Administrative Court against the Minister of Health and the Minister of Justice after the former issued a decree requiring prospective spouses to undergo mandatory premarital medical tests at their own expenses and to include the results of these tests in their marriage certificate. Using strategic litigation as a tool, EIPR staff did not wait for a client negatively affected by the decision to file a case, but considered that they themselves, as Egyptian citizens, are affected by this decree. They filed the case in their own names calling on the court to overturn this decree.⁴⁵

Through Hisham Mubarak Law Center (HMLC) and subsequently the Egyptian Centre for Economic and Social Rights, prominent human rights lawyer Khaled Ali used strategic litigation to challenge repressive and conservative official policies in



the fields of labour rights and freedom of association.⁴⁶ For instance, when many labour activists and unionists were arbitrarily excluded from participating in the 2006 labour union elections as the state interfered in the elections through the pro-government Trade Unions Federation, Ali identified clients through the HMLC's workers networks. He filed dozens of cases before the Administrative Court calling for the overturn of decisions to exclude specific candidates on arbitrary grounds and to nullify official decisions in contravention of the law. In fact, the Administrative Court ordered the dissolution of the administration of the pro-government Workers Unions Federation and Unions elected following these flawed elections.⁴⁷

The work of Egyptian cause lawyers did not stop at challenging state policies but extended to confronting conservative non-state actors. The Arabic Network for Human Rights Information, the Hisham Mubarak Law Center and the Association for Freedom of Thought and Expression intervened in many cases brought by religious figures against writers, artists and creators calling for publication bans, or for blocking a website or denying state awards for writers under the pretext of protecting public decency and religious values. For instance, in 2009, an Islamic movement figure, filed a case against the Minister of Culture calling for the withdrawal of the State Encouraging Award granted to writers Hassan Hanafy and Sayyid al-Qimany, arguing that their writings allegedly violated Islamic tenets.⁴⁸ The Administrative Court usually accepts the interventions of human rights lawyers in such cases, on the grounds that their rights, as Egyptian citizens, would be affected by court decisions.⁴⁹

By seeking support from political parties and NGOs and elaborating specific litigation strategies and practices, Egyptian cause lawyers have laid the foundations of an ideological, political and professional identity. This sets them apart as a socio-professional group and a political movement whose objective can be described as collective empowerment through the judicialization of politics.

Part II: A brief history of cause lawyering and strategic litigation in Egypt: organic intellectuals and a dual state

II.1 Manoeuvring the dual state

Cause lawyering in Egypt must be related to lawyers as professionals and engaged individuals in a context of intense political struggles over the last 70 years. It is also closely linked to the nature of legal and bureaucratic apparatuses and institutions in Egypt and the development of modern law as an ideological basis for the state. Since the establishment of modern legal institutions in the nineteenth century, the public sphere has been tightly controlled through a body of institutions composed of security agencies, exceptional courts and compliant ordinary courts. This repressive apparatus, labelled by German lawyer Ernst Fraenkel “the prerogative state”, can be considered one of the two functions of the state, as opposed to the “normative state”.⁵⁰ The “normative state”, which consists of judicial bodies maintaining a certain degree of respect of human rights and the rule of law (namely the Administrative Court, the Supreme Constitutional Court and the Court of Cassation to a certain extent in the Egyptian context),⁵¹ has been used, on the opposite, to allow and maintain a margin of legal predictability.

This dual nature of state institutions is a key characteristic of many authoritarian states, including in Egypt.⁵² This duality was not introduced out of a genuine conviction by successive Egyptian regimes in the rule of law as a value in and of itself, but rather as a political and economic necessity to achieve the centrality of state institutions and maximize their effectiveness,⁵³ maintain economic stability, avoid international criticism and gain internal legitimacy by giving the impression that the judiciary was unaffected by state repression.⁵⁴ This dualism provided cause lawyers with a space to manoeuvre and fight for basic rights or for the interests of marginalized and vulnerable groups before courts belonging to the normative state.⁵⁵

To sustain its capitalist policies, the Egyptian state apparatus has not been able to totally sacrifice the margin of the rule of law at least between the presidency of Anwar al-Sadat in 1970 and the military coup under the leadership of now president El-Sissi 2013. Despite broad powers granted to security agencies, such as the State Security Agency (renamed the National Security Agency after 2011), and exceptional courts (such as Emergency State Security Courts) and severe



restrictions imposed on any form of dissent, some judicial bodies have upheld the rule of law to some extent, thus enabling the different regimes to articulate a neo-liberal agenda and, at the same time, maintain calculated political and social repression.

Amid the repression, Egyptian lawyers filed cases against administrative decisions that violated human rights and challenged the constitutionality of repressive and abusive legislation. Successive ruling regimes relied on their own lawyers to justify economic exploitation and social and political oppression, to serve the interests of the ruling elite, and to maintain religious, cultural and social norms. Likewise, vulnerable social classes, such as workers and peasants and other groups such as religious minorities, LGBTQI communities and women could approach sympathetic lawyers who choose to support their struggles by providing them with legal technical aid. These lawyers defended the workers' rights to strike, fair wages, and independent unions. They represented atheists, Shia, Copts and other individuals who have been subjected to persecution for "deviating from religious norms" accepted in Egyptian society. In all these examples, cause lawyers used the law as a counter-narrative against the paradigm of restricting fundamental freedoms under the pretext of protecting national security, private property, public decency and religious values.

The longstanding state of emergency in Egypt since the establishment of modern legal institutions of late nineteenth century and the state's permanent iron grip on individual rights and freedoms did not prevent the establishment of a normative body like the administrative judiciary in 1946. The administrative judiciary has jurisdiction over the abuse of administrative power, including the establishment of legality of the government's administrative decisions, including those linked to the dissolution of political organizations and censorship.⁵⁶ This broad power granted to the judiciary can be understood in the social and political context of the 1940s, widely seen as the golden years of social movements in Egypt.⁵⁷ Political and social organizations, such as labour and students unions and political parties, including Marxist organizations, the liberal Al-Wafd Party and the Muslim Brotherhood had been able to operate freely and to successfully challenge the government's attempts to restrict their activities.⁵⁸

This golden age came to an end on 23 July 1952, when a group of army officers,



including former president Gamal Abdel Nasser, overthrew the king, seized power and suspended the Constitution.⁵⁹ All manifestations of democratic life were abolished, including political parties, labour unions, parliament and free media, under the pretext of protecting national security. This development negatively affected the interests of the capitalist class as foreign investment fled the country and political repression was followed by economic nationalizations.

President Anwar al-Sadat, who took over the presidency after Nasser's death in 1970, faced major political and economic difficulties as the power granted to security agencies and their rampant corruption threatened the very existence of the regime.⁶⁰ International and regional investors left as a result of the 1950s and 1960s nationalization policy.⁶¹ At the same time, social classes and opposition groups that were severely oppressed during Nasser's era were looking forward for democracy and political pluralism.⁶² To deal with these demands, Sadat's solution was to revive the "dual state". He empowered the administrative judiciary to control the corruption of the administrative apparatuses.⁶³ In addition, the regime established the Supreme Constitutional Court to convince investors that Egypt will uphold the rule of law and protect private property rights against fears of nationalization. During the 1980s, the Egyptian authorities ratified some international human rights treaties,⁶⁴ but maintained the state of emergency, which targeted opponents with administrative detention without charge or trial and trials before special and military courts.⁶⁵

II.2 Cause lawyers as “organic intellectuals”

Within the contradictions characterizing the Egyptian legal system, Egyptian cause lawyers have played the role of “organic intellectuals”⁶⁶ who represent the interests of certain social groups and offer these groups the technical and legal knowledge they need to achieve their goals. As analyzed in his Prison Notebooks, Antonio Gramsci explained the concept of organic intellectual as:⁶⁷

“Every social group, coming into existence on the original terrain of an essential function in the world of economic production, creates together with itself, organically, one or more strata of intellectuals which gives it homogeneity and an



awareness of its own function not only in the economic but also in the social and political fields. The capitalist entrepreneur creates alongside himself the industrial technician, the specialist in political economy, the organizers of a new culture, of a new legal system....”⁶⁸

II.2.1 Representing and galvanizing workers movements: the first generation of cause lawyers (1940-1970)

At that time already, many social movements in Egypt relied on cause lawyering for the technical expertise needed to have their demands recognized by the state or to give them the necessary tools to sustain their struggle against exploitation and repression. Political organizations drew on their membership among lawyers to maintain close relationships with their support bases by providing them with legal aid and counselling. This was evident in the relationship between the Egyptian communist movement and workers’ unions in 1940s. For instance, prominent unionists Mahmoud al-'askary and Taha Saad Othman, who led *Tali'at al-'omal* (Workers’ vanguard), one of the most active political organizations in the 1940s, relied on lawyers to represent workers before various courts in labour cases and to raise workers’ awareness of their rights and freedoms. According to prominent Marxist lawyer Youssef Darwish, the two leaders asked him to represent textile workers’ unions in the area of Shubra El Kheima. In his testimony to the Committee of Documentation of the Communist Movement in Egypt, Darwish said that in 1940s, he represented about half of the 170 workers unions in Egypt. He stated that his role extended beyond legal representation to the organizing of lectures on legislation on the right to work and unions. Together with the leftist unionist Mohamed Youssef al-Moddarrik and others, they established an NGO, the House of Unions Services, to provide legal aid for workers.⁶⁹ Through this NGO, Darwish authored a short book on their rights in relation to work injuries. Youssef Darwish received his education in France and was registered as a lawyer before Mixed Courts in Egypt, which had jurisdiction over cases in which foreigners were parties. The fact that most employers in 1940s in Egypt were foreigners forced workers to resort to Mixed Courts in disputes with their employers. In 1944, the House of Union Services instructed Darwish to study law in Egypt to be able to



practice before National Courts, which had jurisdiction over cases where all parties were Egyptians, and represent workers work in businesses owned by Egyptian employers.⁷⁰ Darwish maintained his communist struggle through supporting the working class. As a part of the Nasserist regime's crackdown on opposition and independent trade unions in 1950s, the government forced many unions to withdraw their cases from Darwish's office in the spring of 1955.⁷¹

Ahmed Nabil al-Hilaly is another example of a communist lawyer using lawyering to promote his political beliefs, as well as to serve broader democratic and social movements. Al-Hilaly is considered to be one of the most important lawyers since the establishment of the Lawyers' Syndicate in 1912. He focused on representing vulnerable workers in their judicial disputes with employers. He also achieved unprecedented progress in pleading in the field of civil and political rights on behalf of members of the opposition, whether they were communist or Islamists. He also defended the right to strike during the railway workers' strike in 1986. He defended the right to fair trial and freedom from torture in the trial of defendants accused of assassinating the former president of the Egyptian parliament, Refaat al-Mahgoub and of belonging to an Islamist armed group.⁷² Al-Hilaly was subsequently accused by his communist comrades of supporting terrorism because of defending Islamists. One year prior to his death, al-Hilaly responded to his critics in a public conference in a way that demonstrates that he was conscious of his political role as a lawyer:

*“My position stems from my belief that there is no place for selectivity in human rights, there is only one principle, which is defending human rights for any human being regardless of his/her religion, political opinion or ideology. I did not reach this conclusion through my intellectual choices, but through lessons I learned from life. Such lessons confirm that turning a blind eye to violations against the others we disagree with, especially if they were political opponents and even if they were political enemies. Tolerating violations against the others, would return and strike the tolerant because it makes it easier for the police state to make a rule and generalize it on everyone. Brothers, it is not acceptable to look at violations against the others as insignificant matter or as if it does not concern us”.*⁷³

II.2.2 Cause lawyering through the

Freedoms Committee: fostering the pre-human rights community (1970- 1990)

Unlike the previous generation of cause lawyers who practiced law in an ideological way to support their leftist movements and their base of workers and unionists, the generations of 1970s and 1980s exercised cause lawyering in a coordinated manner by finding common grounds with others in the opposition to challenge government repression affecting all political movements. In other words, various political tendencies, especially the Marxist and Nasserist, coordinated their confrontations with the state through cause lawyering by working on cases affecting all political groups across the political spectrum supporting the right to a fair trial, freedom of expression, defending opponents of normalization with Israel.⁷⁴ The regime's crackdown on dissent, its control of the parliament, the use of emergency law, the criminalization of workers' strikes and imposing *sequestration* on professional syndicates paved the way for lawyers to work together in different cases.⁷⁵

President Sadat's ascent to power in 1970 was accompanied by students' and workers protests' and mass arrests against opposition members between 1972 and 1975. The *Infitah* (opening) economic policies of the regime reduced the role of the state in meeting the basic needs of the population and created a welcoming climate for capitalist actors. Public anger at these policies culminated into mass protests on 18 and 19 January 1977 against the president's decision to increase the price of basic goods.⁷⁶ This triggered a new wave of protests despite Naser's regime old ban on all means of political opposition, including unions, opposition parties or civil society organizations. The 1977 protest organizers and protesters faced a strong backlash, and many were detained. Lawyer Ahmed Kinawy says that the Freedoms Committee at the Lawyers' Syndicate played an important role in coordinating their defence,⁷⁷ and continued to represent defendants in political cases during the 1980s and 1990s. Members of the Committee defended workers and leftist activists in 1989 after police forcibly ended a workers' sit-in at the Iron and Steel Company, killing one worker.⁷⁸

Lawyer Mahmoud Kandil said that the golden age of the Freedoms Committee was from the 1977 uprising until the early 1990s, noting that during the 1980s



prominent lawyers known for their political activism, such as Ahmed Nabil al-Hilaly, Essmat Seif al-Dawla and Farid Abdel Karim, were particularly active in the Freedoms Committee. Kandil confirmed that while Committee's lawyers sometimes took on cases of social justice, such as supporting railway workers in 1986 and the Iron and Steel workers in 1989, they mainly focused on cases of a nationalistic nature such as providing legal aid to protesters demonstrating against political normalization with Israel.⁷⁹ The Freedoms Committee also responded to the urgent political developments of the time, especially the university students' movement in 1982 against the Students' Unions Regulations issued by President Sadat in 1979. Kandil contends that members of the Freedoms Committee represented the leaders of the students' movement arrested for protesting against the regulations. Amir Salem and Abdullah Khalil were some of the cause lawyers engaged in these events. They said that student activists convened their meetings at the syndicate's headquarters, which might have encouraged some of them to become cause lawyers after graduating. They include lawyer Hisham Mubarak.⁸⁰

The role of the Freedoms Committee of the Lawyers' Syndicate was weakened gradually due to increased state interference and attempts to control it. Different administrations of the syndicate, whether pro-government or pro-Muslim Brotherhood, imposed restrictions on the Committee to prevent lawyers belonging to rival political groups from using it as an umbrella to support social movements or opposition groups or as a platform for confronting state repressive policies.⁸¹ The state exploited the conflict between the Muslim Brotherhood and the former head of the syndicate lawyer Ahmed el-Khawaga to control its management. The Muslim Brotherhood isolated other government opponents, for instance, by waging a campaign against lawyer Ahmed Nabil el-Hilaly's election to the syndicate's Management Council in 1992. They claimed that he was a communist who embraced controversial religious views after he had been elected in all successive councils from 1968 to 1992.⁸² Subsequently, the state put the syndicate under judicial *sequestration* by a court decision cancelling the 1992 election results and amending Lawyering Code No. 17 of 1983 to pass the syndicates' management to a judicial committee consisting of the president of Cairo's Court of Appeal and six members. Parliament also issued law 100 of 1993 giving the executive authorities free reign over professional syndicates under the

pretext of combating the Muslim Brotherhood's control over these syndicates.⁸³ These developments coincided with state propaganda about the need of professional syndicates to focus on problems of the concerned profession without exercising any political work. By this time, it became clear that the space available for cause lawyering through the Freedoms Committee was greatly eroded. This encouraged activist lawyers to develop the work of the newly established human rights movement by adopting litigation as a central strategy to engage with cases concerning social movements and confront the state over issues of democracy, human rights and social justice.⁸⁴

II.2.3 Cause lawyering at the core of the human rights movement (1990-2013)

In addition to state control over the Lawyers' Syndicate, which impaired the effectiveness of the Freedoms Committee, the human rights situation severely deteriorated from 1985 to the early 1990s, amid an escalation of violence between the state and Islamic armed groups.⁸⁵ Torture became systematic and widespread; security agencies carried out extrajudicial executions and most politically sensitive cases were referred for trial to the Emergency Supreme State Security Court and military courts rather than to ordinary courts. The authorities also used administrative detention orders against political and common law prisoners to hold them without charge or trial, and bypassed court release orders.⁸⁶ This period also witnessed the collapse of the Soviet Union, which affected the Egyptian leftist movements and ignited many debates on topics such as human rights, civil society and the need to adopt a new approach to exercise political opposition outside the conventional organizational framework of leftist organizations.⁸⁷ These developments constituted the political and social background for the emergence of the first wave of human rights organizations with the establishment of the Arab Organization for Human Rights in 1985 and the Egyptian Organization for Human Rights (EOHR) in 1989.⁸⁸

EOHR focused on monitoring the human rights situation and referring complaints it received to the relevant government bodies.⁸⁹ While the organization included some cause lawyers among its staff and network at the time, it did not focus on



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litigation or provide victims with legal counsel. It observed trials and reported on human rights concerns such as the use of emergency courts and administrative detention.

In 1993, a group of doctors established El Nadeem Center for the Rehabilitation of Victims of Violence to provide medical and legal support for victims of torture. The center represented victims before courts through its legal unit and provided them with technical advisory opinions which were used by victims in litigation.

It is only with the establishment of the Legal Aid Center for Human Rights that litigation was used as a central strategy. The Legal Aid Centre focused on legal aid for victims of human rights violations provided by salaried professional lawyers and relied on foreign fund to secure sustainability for its work.⁹⁰ It provided legal representation for victims of human rights violations in more than 3,000 cases between 1994 and 1997.⁹¹ It was also the first NGO to use strategic litigation to change state policies by bringing cases before the Supreme Constitutional Court (SCC). Through this strategy, the Center tackled legal changes affecting entire social and political groups and their enjoyment of human rights. For example, it contributed to the legal effort before the SCC to drop Article 195 of the Penal Code, which held newspaper editors-in-chief criminally responsible for what their journalists write.⁹² The court considered this article to be in violation of the principles of presumption of innocence and individual criminal liability.⁹³ The Centre also challenged the Labour Unions Law (Law No. 35 of 1976) by representing workers and unionists.⁹⁴ In February 1998, the SCC ruled in favour of the Centre when it considered that Article 36 (c) of the Labour Unions Law was unconstitutional because it deprived members of workers unions of nomination in elections for management positions if their membership was less than a year.⁹⁵ The court said:

*“This requirement restricts freedom of expression, the workers’ right to choose their representatives from a wider circle of nominees, the democratic nature of unions activity and freedom of association, thus it violates Articles 47, 54 and 56 of the Constitution”.*⁹⁶

The Legal Aid Center inspired the establishment of more specialized organizations such as the Center for Women's Legal Aid in 1995, which focused on human rights



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of women, the Land Center for Human Rights in 1996, which worked on farmers' rights and the Human Rights Center for the Assistance of Prisoners.⁹⁷ At the time, a new movement of cause lawyers belonging to human rights organizations was formed. In 1999, prominent lawyer Ahmed Seif al-Islam, together with the director Gasser Abdelrazik and other lawyers who worked in the Legal Aid Center, established the Hisham Mubarak Law Center. It became the main human rights NGO providing legal aid for victims of human rights violations in civil and political rights and in labour rights in the first decade of the 2000s.

While the Hisham Mubarak Law Center followed the model of the Legal Aid Center by not specializing in a specific human rights topic, it inspired a number of lawyers and activists who worked or collaborated with the Center to launch more specialized organizations. In 2002, the Egyptian Initiative for Personal Rights (EIPR) was established by activist and investigative journalist Hossam Bahgat to support members of persecuted groups, such as the LGBT community by providing them with direct legal support in criminal trials and prosecutions based on sexual orientation. EIPR also supported religious minorities through the provision of individual aid, and, more importantly, through strategic litigation, which, for instance, was successful in securing legal recognition for the Baha'i religious minority.⁹⁸

In 2004, the Arabic Network for Human Rights Information was established first as a digital platform to issue publications of human rights organizations. It subsequently provided legal counsel for journalists, bloggers, users of social media platforms and political activists prosecuted for their opinions.⁹⁹

In 2006, the Association for Freedom of Thought and Expression (AFTE) was established by human rights lawyer Emad Mubarak, who also worked at the Hisham Mubarak Law Center. AFTE focused on students' movements, access to information, freedom of the media, censorship of artistic expression and digital rights.¹⁰⁰

The organization, Nazra for Feminist Studies, working on issues of gender equality and the human rights of women, also used litigation to challenge discriminatory practices and gender-based violence. The organization was successful in defending survivors of sexual harassment.¹⁰¹



In 2009, prominent human rights lawyer Khaled Ali, who led labour rights litigation in the Hisham Mubarak Law Center, established the Egyptian Centre for Economic and Social Rights (ECESR). It has since represented workers before different courts in cases, including arbitrary dismissal, strikes, and compensation for employers' misconduct. ECESR played a major role in developing strategic litigation in Egypt in an unprecedented manner. It was successful in transforming longstanding demands of workers movements in securing a national minimum wage and independent unions into recognized rights enshrined by law.¹⁰²

II.3 The dialectical relationship between social movements and their lawyers

Cause lawyers have been instrumental in supporting popular mobilizations. By achieving remarkable legal victories, they have directly contributed to reshaping the battle lines of the Egyptian political landscape, durably influencing the relations between social movements, unions, political parties and the state.

On the other hand, social movements have also influenced the thinking and attitude of lawyers. The mass mobilizations that emerged in the aftermaths of the 2011 revolution have contributed to enlarging the focus and interest of Egyptian cause lawyers: while strategic litigation had been mostly on labour rights and criminal justice issues before the 25 January Revolution, it has extended to state sovereignty, electoral rights, freedom of information and other topics after the 2011.

By examining decisive legal battles and victories cause lawyers won on behalf of individuals and collective movements, this section analyzes the dialectical relationship between social movements and their lawyers.

Many social movements in Egypt relied on the technical expertise of cause lawyers to obtain state recognition of their demands. The labour movement used court rooms of the administrative judiciary as battlefields for their struggle for fair wages and independent unions. Individual activists and political groups also used the services of cause lawyers to confront arbitrary detention and unfair trials aimed at silencing state opponent. Political organizations and opposition groups also used



cause lawyers to maintain close links with their support bases by providing them with legal aid and counselling, thus gaining control over members of social movements. They worked on the legal empowerment of religious minorities and supported women in their struggle against the discriminatory legal framework and for the criminalization of sexual harassment.

Transforming social demands into recognized rights: Egyptian cause lawyers have been successful in transforming long-standing economic and political demands of social movements and individuals into recognized rights by virtue of law and by granting these rights constitutional protection. The judicial trajectory for some cases adopted by cause lawyers was associated with the rise of certain social movements. For instance, workers' protests from 2006 to 2011 paved the way for the Administrative Court's decision on the national minimum wage and the state's recognition of unions independent from the pro-government Unions Federation. The 25 January Revolution also provided greater opportunities for strategic litigation. One of the most important examples of cases won by Egyptian cause lawyers pertained to the Administrative Court's decisions to allow Egyptian expatriates to vote in elections.¹⁰³

After three years of an unprecedented rise in the workers' movement starting with the 2006 and 2007 strikes by Al-Mahalla textile workers and by the workers of real estate taxes in 2008 against their affiliation to municipalities rather than the Ministry of Finance, which affected their salaries and other social benefits, the question of wages became dominant for the Egyptian opposition and labour activists.¹⁰⁴ Article 34 of Labour Law obliges the government to establish a National Council for Wages tasked with setting a national minimum wage.¹⁰⁵

In February 2009, lawyer Khaled Ali filed a case before the Administrative on behalf of worker and labour activist Nagy Rashad, calling for the overturn of the government's passive decision refraining from setting a national minimum wage (given the steady rise in the prices of basic good) and the necessary measures to achieve a balance between wages and prices.¹⁰⁶

Although the government did not issue any decision concerning Rashad or other workers, the plaintiff and his lawyer, Khaled Ali, used a legal tactic to create an administrative decision and appeal against it using court precedents. According to



Article 10 of the State Council Law, the Administrative Court has jurisdiction over, *inter alia*, requests from individuals and bodies to overturn final government administrative decisions.¹⁰⁷ According to court jurisprudence, the government issues active decisions when it takes a positive action that affect a settled legal status, but also its decisions can be appealed when it refrains from taking an action that should have been taken, which was the case in Rashad's case.¹⁰⁸

In determining whether there is an appealable administrative decision, the court considered the government's failure to respond to a telegram sent to the Minister of Planning in December 2008 by Rashad in his capacity as a worker in the South Cairo Mills Company, in which he demanded a national minimum wage as a passive administrative decision.¹⁰⁹

Khaled Ali argued that Article 34 of Labour Law No. 12 of 2003 stipulated that the government should establish a National Council for Wages tasked with setting a minimum wage at the national level. The government responded before the court that the article simply aims to encourage the state to give more attention to wages but does not oblige the government to set a minimum wage for all workers. The court considered the legal obligation on the government's side in Article 34 to be very clear and further demonstrated by the article's reference to the government's obligation to review the national minimum wage every three years to be consistent with the increase in prices.¹¹⁰ Ali also relied on the language of the International Covenant of Economic, Social and Cultural Rights with regards to labour rights in fair wages, which has been a main source for Egyptian cause lawyers in strategic litigation.

It is worth noting that workers' protests from 2006 to 2008 against decreases in real wages and the Administrative Court's decision encouraged the political opposition to prioritize workers' rights. This was evident in the protest organized by many political groups in April 2010 in front of the cabinet headquarters calling on the government to set a national minimum wage no less than 1200 EGP per month, seen as the absolute minimum to meet the basic costs of living.¹¹¹

Cause lawyers and workers social movements collaborated again after the historical sit-in by workers of real estate taxes in September 2007. Inspired by the 2006 Al Mahallah textile workers' strike, real estate taxes workers decided to use



the same tactic by organizing a sit-in in front of Cabinet headquarters in downtown Cairo, home to most of government offices, rather than at their workplace in order to attract more attention.¹¹² Their demands revolved around changing their administrative affiliation to receive equal treatment like other taxes workers.¹¹³ Influenced by the organizational experience of Al Mahallah workers', the tax workers developed a sophisticated organizational model with the Supreme Committee for Striking representing workers in negotiations with the government and taking decisions on the duration of the sit-in.¹¹⁴ This committee was established to circumvent the lack of an independent union representing workers. The existing union was affiliated to the pro-government Unions Federation like all other workers unions in Egypt and opposed the sit-in.¹¹⁵ At this time, the Unions' Law did not allow for union pluralism and all workers' unions had to be registered under the pro-government federation.¹¹⁶ Article 7 of the law sets forth that the unions' federation sat at the top of the structural pyramid of unions. Therefore, the domestic law did not allow real estate tax workers to establish their own union. However, workers and their lawyer, Haitham Mohamdeen, resorted to the standards of the International Labour Organization (ILO) to find answers to the workers predicament.¹¹⁷ Workers transformed the Supreme Committee for Striking into an independent union and called on workers to withdraw from the pro-government union and to join the new body. Government recognition was needed to separate between the pro-government Unions Federation and create their own structure. Lawyers argued that the domestic law was in violation of the ILO's Convention concerning Freedom of Association and Protection of the Right to Organize No. 87 of 1943 which guarantees union pluralism and freedom of association for workers and employers. With the sit-in generating unprecedented media coverage and attracting government and opposition attention, workers formed a delegation to meet with the Minister of Labour and hand him relevant documents on the establishment their new union. In doing so, they ignored Law 35 of 1976, which stipulates that the Unions Federation should recognize any new union to receive legal personality.¹¹⁸

This incident marked the beginning of a new era for confrontations between independent unions and the state. While many workers from different sectors established their independent unions and unions' federations from 2008 to 2012, the state launched a crackdown on the labour movement and independent unions



after the arrival of President El-Sissi to power in July 2013.¹¹⁹ In 2016, the Administrative Court heard a case filed by the pro-government Unions Federation demanding that the Minister of Labour dissolve independent unions. The Federation argued that, in allowing the existence of independent unions, the Minister was violating Articles 4, 7, 13 and 63 of the Unions Law No 35 of 1976, which stipulated that unions with a legal personality must be registered with the Unions Federation. Cause lawyers under the leadership of Khaled Ali interfered in the case and called on the court to refer these articles to the Supreme Constitutional Court to examine their unconstitutionality. The Administrative Court responded to their demands marking a new victory for cause lawyers and labour movements.¹²⁰

This struggle culminated in the replacement of the Unions Law No 35 of 1976 with Law No. 213 of 2017 that allows for unions pluralism and the recognition of independent unions. Despite relentless crackdown on labour movements and independent unions for the past five years, and the interference of the government in the last labour elections, the amendment of the Law represented a transformation of a longstanding demand into a recognized right even if only at the level of legal text.¹²¹

Part III: Challenges and prospects of the cause lawyers' movement in the counter-revolution context

III.1 Limitations and contradictions of Egyptian cause lawyers in the aftermath of the revolution

Taking the state to court has proved to be effective in providing another dimension in questioning the legal ideology of the state and opening different perspectives to confront it and mobilize for alternative democratic legal interpretations of rights and freedoms. Nonetheless, cause lawyering has its



limitations and contradictions.

Prominent social movements with active stakeholders demanding their rights played a crucial role in most court victories of cause lawyers in cases against the privatization of public sector companies, in favour of the setting of a national minimum wage and the recognition of independent unions. The role of lawyers in the process of public struggle for justice, democracy and human rights must be seen in the context of the broader social movement. Court cases were driven by a rise in workers social movements that paved the way for cause lawyers and triggered their creativity in judicializing economic and political public affairs.

In addition to the limited capacity of cause lawyers to make a difference without the driving force of social movements, it is worth noting that cause lawyers are not monolithic and promote different political and social beliefs even while embracing shared legal practices. The term “cause lawyers” is more accurate than “human rights lawyers” in describing the “whole” community of Egyptian lawyers who work on cases in order to go beyond the direct interest of the client and extend it to the interests of certain groups in society. It is significant, in this regard, that before the expression “human rights lawyers” appeared in the mid-1990s with the birth of human rights organizations providing legal aid, other terms were used to refer to such lawyers, such as “labour”, “freedoms” and “volunteer” lawyers. Such distinctions are much more appropriate to refer to this category of lawyers since they reflect significant differences inside the cause lawyering movement. Such differences amount to contradictions if we think, for example, of the reluctance of some lawyers to work on certain cases or to embrace certain human rights positions. For instance, some lawyers refrained from providing legal aid to Muslim Brotherhood’s supporters during the authorities’ crackdown on the organization after the ousting of president Mohamed Morsi. Other lawyers supported the imposition of the death penalty and refrained from defending members of LGBTIQ community.

As such the counter-revolution in Egypt has played a significant role in widening political polarization among lawyers and restricted their use of strategic litigation given their dependency on social movements for support.

III.1.1 The upper hand of social movements

Some political groups in Egypt argue that the “legal struggle”, especially through human rights groups, undermines social movements by integrating them into the legal ideology of the state, which aims at reproducing social and political repression. However, the experience in Egypt shows how cause lawyering has been able to defeat the authorities in many rights battles and empower social movements in their struggle to achieve social and political justice. However, there the legal struggle is not without limitations. For example, in cases of criminalization of LGBT, cause lawyers have not been able to publicly demand recognition for same sex relationships but challenged instead the legality of arresting individuals on the basis of their "perceived" sexual orientation, the lack of due process and the defendants' rights not to be tortured or otherwise ill-treated.

The ability of cause lawyers to win cases for social movements in Egypt is linked to the latter's ability to confront state policies through various forms of protests, such as strikes, sit-ins and demonstrations. It is also contingent on the political environment, including the ability of certain groups to raise demands publicly without being subjected to severe repression.

In her examination of the relationship between labour movement struggles and strategic litigation, unionist and leftist activist Fatma Ramadan argues that while cause lawyers have been able to obtain favourable court rulings for workers, the enforcement of these rulings depended on the workers' ability to organize themselves, protest and to build wider political coalitions with activists and lawyers.¹²² Ramadan goes further by stating that the large number of workers' protests in the years leading up to the 25 January Revolution influenced the Administrative Court's position on the privatization process launched in mid-1990s. She argued that the time that passed between selling public companies to private investors and the court cases was enough to prove the deception in the promises made by the state about the benefits of privatizations. She posits that strategic litigation has been connected to the labour movement both in its rise and fall.¹²³ She uses the example of the Omar Effendi Company as a



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success story for strategic litigation backed up by a strong movement which helped in the enforcement of the administrative Court's ruling to return of the company to public sector due to demonstrated corruption in the sale of the company. On the other hand, other workers who won similar rulings were not able to enforce them due to the political environment, especially after 30 June 2013 protests and the diminishing public space with severe restrictions on workers protests. Ramadan also gives the example of the Steam Boilers Company “*al Marajel al-Bukharia*” that was privatized in 1994 in a corrupt deal, when workers were not yet aware of the consequences of privatization, and the political environment at that time did not allow any kind of protests under the per-text of counter-terrorism. When the circumstances changed after the 2011 Revolution, workers resorted again to the court, but the company's assets were already dismantled and sold and no company was left to be returned to the public sector even with court's overturning of the selling contract and the workers' willingness to fight for its return.¹²⁴

This pattern does not only apply to cases of privatization of public companies, but also to the flourishing relationship between cause lawyering and the rise of militant social movements. It could be argued that from the proliferation of workers unions in the 1940s, to the students mass protests in early 1970s, the peoples' uprising in 1977, the Al Mahalla workers strike in 2006, the sit in of Real Estate Taxes workers in 2007 and finally the 2011 Revolution, people's movements provided lawyers with inspiration and fed their legal creativity before the courts. The shrinking of these movements created an enabling environment for courts to rule against them or at least for the state to ignore unfavourable court decisions.

The struggle for recognizing the rights of members of LGBT community in Egypt is a clear example of the link between growing social movements and the success of cause lawyering in achieving legal recognition for such movements through court rulings. There was no strategic litigation in front of Egyptian courts against the criminalization of same sex relations in Egypt. It is also rare for a court to acquit a person charged with involvement in a same sex sexual relationship.¹²⁵ As lawyers could not successfully raise the rights of consenting adults to engage in sexual relations with same sex partners before the courts, they looked for loopholes to cast doubt on the integrity of the procedures of arrest, search, seizure and

interrogation. EIPR lawyer, Adel Ramadan, notes that raising the issue of the individual's right to choose their sexual orientation would provoke judges, who would perceive such identities or behaviours to be against their religious beliefs and masculine social norms, and lead to the incarceration of their clients. To avoid losing, Ramadan said that cause lawyers would instead focus on issues of mistreatment of detainees that would render their "confessions" void.¹²⁶ Lawyer Mahmoud Said agrees with Ramadan that some lawyers even refrained from raising concerns regarding the use of "anal examination" against individuals arrested due to their actual or perceived sexual orientation before the 25 January Revolution so as not to increase the risk of convictions.¹²⁷

III.1.2 Cause lawyers and the post-2011: Political polarization and incoherence

The 25 January Revolution provided the cause lawyering community with an opportunity to expand and strength as it attracted members from outside the traditional circles of political activism, namely leftist and Nasserist. However, casting a wider net constituted a challenge for this community in maintaining its holistic human rights approach in the face of fierce political changes Egypt witnessed since 2011.

Debates always existed between cause lawyers regarding issues such as the limits of freedom of expression and whether "human rights lawyers" could file defamation cases against journalists or politicians, who incited the government or the public against political activists. The main view among the human rights community was that "speech should not go to court".¹²⁸ However, there were a few voices arguing that this was a kind of idealism, especially in cases when the speech involved incitement or hatred and that cause lawyers should not only defend the victim but also attack the perpetrators even if they were non-state actors.

Such discussions were kept at a very narrow scope until the 30 June 2013 mass protests that ultimately resulted in the ousting of president Mohamed Morsi and the military coup. In the wake of the arrest of thousands of Morsi's supporters and the killing of at least 900 individuals in the dispersal of their protest sit-ins,



questions were raised on the role of cause lawyers who belonged to rights groups and participated in the movement and protests that removed Morsi. Leaders of many human rights groups rejected and condemned the disproportionate force and violence against the Muslim Brotherhood. However, other members of the human rights community joined state supporters calling on the dispersal of the Muslim Brotherhood sit-ins and attended meetings in the Ministry of Interior before the dispersal.¹²⁹ From this moment, the lack of cohesion and contradictions among the cause lawyering community became obvious. This was evident in a statement issued by the Front for Defending Egypt Protesters - a network of lawyers established in 2008 during Al Mahalla protests to coordinate the defence of state opponents. The group used very hostile language against Muslim Brotherhood supporters who were targeted by security forces.¹³⁰

Before the 2011 Revolution, cause lawyers usually received some political education through their organizations or movements helping them to maintain a human rights-based approach. However, when newcomers arrived in the few years leading up to the Revolution and during its unfolding, the movement did not have the necessary mechanisms to absorb the new generation of lawyers who wanted to engage in public interest litigation, but whose political beliefs were not necessarily consistent with a holistic human rights approach that included defending unpopular causes such as the rights of the LGBT community or opposing the death penalty.

Lawyer Mahmoud Said notes that cause lawyers who belonged to Marxist or anarchist schools of thought have been willing to defend members of the LGBT community, while some lawyers who joined the human rights movement after the Revolution embraced populist ideas regarding human rights.

AFTE's former director, Emad Mubarak stated that the term "human rights lawyer" does not apply to all of those who work in human rights organizations as some can be selective in defending certain human rights depending on the political identity of the victim or the personal position of the lawyer. He believes that a distinction between human rights lawyers and lawyers working in public interest litigation is important to understand why some lawyers take positions that seem inconsistent with human rights standards such as during the dispersal of Rabaa sit-in.



The founder of CEWLA and feminist lawyer, Azza Soliman, notes that women's rights is an issue that exposes contradictions among cause lawyers in Egypt. For instance, some lawyers shied away from working on cases of sexual harassment raised against members of the opposition. On the other hand, they urge the authorities to open investigations against alleged perpetrators who are supporters of the government.¹³¹

III.1.3 Defending Islamists in the post-July 2013's storm: the rise of a new generation of cause lawyers

The military coup of 3 July 2013 and the ousting of Mohamed Morsi affected all manifestations of political and social life, including cause lawyering. First, the scale of human rights violations exceeded the capacity of existing organizations to offer legal services to an increasing number of victims and deal with the types of violations such as enforced disappearance and extrajudicial executions.¹³² The second major impact of these events was the development of stark divisions within the groups of cause lawyers towards providing legal support to members of the Muslim Brotherhood and supporters of the ousted president facing the worst crackdown in the entire history of the organization.¹³³ Third, the government escalated its crackdown against the human rights community in 2014 after realizing that reporting on human rights violations in Egypt had contributed to the activism wave against state repression between 2005 and 2011. The government also accused human rights organizations of inciting the international community against the authorities' human rights record. The authorities banned human rights defenders from traveling, froze their assets, shut down the office of El Nadeem Centre for the Rehabilitation of Victims of Torture and arrested prominent human rights lawyer Azza Soliman.¹³⁴

All these factors contributed to the establishment of a new wave of human rights organizations that use litigation as a strategy to protect human rights. There are two major differences between these new organizations and their predecessors. First, unlike the previous generation of cause lawyers, who belonged mostly to the left, the new group of lawyers adhere to political Islam. The lack of capacity within



the existing organizations to cover violations and the reluctance of some to provide legal aid to Morsi supporters due to their opposing political views were key contributing factors.

Lawyer Mohamed al-Bakker believes that the new wave uses cause lawyering as a tool for their political struggle against the regime's crackdown on the Muslim Brotherhood. Most lawyers who engaged in human rights cases had previously worked in private law firms owned by members of the Muslim Brotherhood or other Islamist political groups. During interrogations and court sessions of Muslim Brotherhood members in 2014 and 2015, these lawyers met with lawyers working in the human rights community, and observed their tactics, language use and strategies in defending victims of human rights violations.¹³⁵ Al-Bakker contends that this interaction influenced the attitude of Islamist lawyers to taking the same trajectory as the previous generation by establishing umbrella organizations for their lawyering work and to use the human rights language in their pleadings and publications.¹³⁶

The Muslim Brotherhood's strong organization and their large network across Egypt provided these new cause lawyers with an unprecedented access to information and documents of legal cases, which helped them in providing legal aid to many victims. This advantage, together with their exposure to the human rights community, encouraged them to adopt the model of human rights organizations to organize their cause lawyering work.¹³⁷

The Egyptian Coordination for Rights and Freedoms, which was established in August 2014 in Cairo, is at the forefront of such organizations.¹³⁸ It focused on providing *pro bono* legal aid to relatives of victims of enforced disappearance, which has become an endemic phenomena after the assassination of former Public Prosecutor Hisham Barakat in June 2015.¹³⁹

Meanwhile, the dialectics of the "dual state", have remained the basic framework in which Egyptian cause lawyers can advance their causes. This paradigm has received notable limitations, after the Tiran and Sanafir case.

III.1.4 Tackling the limits of the dual

state: the Tiran and Sanafir case

In April 2016, the Egyptian government took the decision to hand over Tiran and Sanafir, two islands in the Red Sea, to Saudi Arabia, triggering significant public anger. Cause lawyer Khaled Ali took the case to the Administrative Court.

Against lawyers of the Egyptian government who fought to prove that the islands were not Egyptian, on 21 June 2016, the Administrative Court ruled that the two islands are Egyptian and that the agreement between the Egyptian government and its Saudi counterpart was null and void because the President did not have jurisdiction over the matter and that he abused his power and constitutional provisions protecting state sovereignty over its territory.¹⁴⁰

Until this stage, the state stuck to its old strategy of “the dual state” where lawyers of the government attended court sessions and submitted their arguments in respect to the “normative state” represented in Administrative judiciary. On the other hand, outside the court room, the “prerogative state” was doing its tireless job of detaining protesters against the Saudi-Egyptian agreement’s and lawyers engaged in the case as well as trying to erase signs that proved Egypt’s ownership of the islands. This was very clear in changes introduced in schoolbooks by removing any mention of the two islands, previously identified in school’s history books as “Egyptian Natural Reserves”.¹⁴¹

The state appealed against the ruling of the of Administrative Court before the Supreme Administrative Court, which upheld the ruling on 17 January 2017.

At this stage the regime decided to side-line the “normative state” and unleash the “prerogative state”, not through security agencies as was the norm, but through institutions of the “normative state” represented in its highest court, the Supreme Constitutional Court. Government lawyers argued before the administrative judiciary that its courts had no jurisdiction over the matter because it was related to sovereignty questions and balance of power between the executive and legislative authorities. However, the court refused this argument and proceeded to examine the case. The government filed several cases before the Court of Urgent Matters calling for the suspension of the enforcement of the administrative judiciary's decisions despite previous rulings by the administrative and



constitutional judiciary that the Court of Urgent Matters had no jurisdiction over the enforcement of administrative judiciary decisions. However, the Court of Urgent Matters ruled for suspending the enforcement of the ruling of the Administrative Court creating a conflict over the jurisdiction of the administrative judiciary and the Court of Urgent Matters. Such a conflict could only be resolved before the Supreme Constitutional Court, which was the government's strategy from the start.

On 3 March 2018, the Supreme Constitutional Court overturned all court decisions issued by Administrative Court and the Court of Urgent Matters, stating that the treaty signed by Egypt and Saudi Arabia was a political act not subject to the judiciary's jurisdiction, but under the joint jurisdiction of the executive and legislative branches.¹⁴²

The case explicitly reveals the limitations of cause lawyering and the inability of lawyers to bypass the barriers set up by the legal system, which is itself a product of power relations in the society.

III.2 Challenging the legal ideology of the state

Although cause lawyers lost the legal battle before the Supreme Constitutional Court, the experience was a public opinion victory. In this regard, the Tiran and Sanafir case is representative of the decisive role cause lawyers are likely to play in challenging the state's narratives and, more broadly, its legal ideology.

III.2.1 Countering the state's narrative

President El-Sissi came to power promising to rescue the state from collapse and maintain its status internally and externally. To convince a society in revolt since 2011, El-Sissi accused his "enemy" – first the Muslim Brotherhood and then all opposition – of working against "the state". The regime used the need to ensure the survival and well-being of the state as a pretext to justify human rights violations and abuse of power. Patriotism, the state, and national security have



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become recurrent words for all supporters of the new leader, while those who dared to criticize him have been described as traitors, defenders of foreign agendas and supporters of terrorism.¹⁴³ El-Sissi's military background played an important role in moulding this image of a regime that is synonymous with the Egyptian army and the protector of the state from serious threats.

Although lawyer Khaled Ali had been using strategic litigation for over 20 years on cases related to human rights, the case Tiran and Sanafir was a different. It presented a conflict opposing the state's narrative (that activists, human rights defenders and opponents are traitors or at least individuals who do not wish well for the state) and the narrative of cause lawyers (that they are more interested in and protective of the integrity of state's territories and its sovereignty than the ruling regime).¹⁴⁴

Lawyers of the Egyptian government fought before the court to prove that the islands were not Egyptian. They argued that Egypt took the Islands through an agreement with Saudi Arabia to protect them and achieve political and military goals during the conflict with Israel. They insisted that Saudi Arabia did not give up its sovereignty and ownership of the islands even if they granted Egypt the right to manage them for a specific period.¹⁴⁵

What distinguished the cause lawyers' defence strategy is the way they collected all necessary documents to convince the court that the islands are indeed Egyptian. In his introduction to a documentary book on the case published by ECESR, Khaled Ali said:

*"The day we filed the case we had very few documents to convince the court that the islands are Egyptian or to help it rule that the agreement between the two countries is void. I posted on my Facebook page that we need volunteers to provide us with any maps, studies or documents they see as important in the case. This coincided with many initiatives from Egyptian researchers... who collected important documents and published them on the internet. Hundreds of Egyptian citizens collected other documents and sent them to us"*¹⁴⁶

Although cause lawyers lost the case before the Supreme Constitutional Court, it has become prevalent in public consciousness that the two islands are Egyptians

and that the government under the leadership of President El-Sissi have given them away illegitimately to another state. While the regime seems victorious and stable at the moment, it is likely that in any future internal political crisis, the Tiran and Sanafir case would be an instigator in discussions about accountability or political reform. The case also helped cast doubts in public opinion on the veracity of the state's narrative as the defender of national sovereignty.

III.2.2 Dismantling discriminatory structures

Efforts to dismantle discriminatory legal structures picked up speed in 1995 with the establishment of the Center for Egyptian Women Legal Assistance (CEWLA). The founder of the Centre, human rights lawyer Azza Soliman stated that, in addition to providing legal aid to women facing discrimination in divorce, alimony and child custody,¹⁴⁷ CEWLA established legal units in seven governorates to provide women with legal counsel.¹⁴⁸ It also played a major role in bringing to state's attention the so-called "honour crimes", in which women were subjected to violence including murder by their family members for allegedly bringing shame on their families including by engaging in relationships outside marriage. Judges in such cases applied Article 17 of the Penal Code, which gave judges the authority to decrease the punishment at their discretion and which led to rampant impunity of perpetrators.¹⁴⁹ Soliman stated that raising the issue by CEWLA's lawyers in courts and in their shadow report for UN CEDAW mechanisms forced the government to acknowledge the problem even without amending the law.¹⁵⁰ The work of CEWLA's lawyers also succeeded in including mothers' names in their children's birth certificates after a case involving the birth of a child out of wedlock led to the amendment of Child Law No. 12 of 1996 to recognize mothers' right to obtain birth certificates for their child.¹⁵¹

Egyptian laws contain multiple provisions that discriminate against women, religious minorities, economically vulnerable and marginalized groups and members of LGBTQI communities. This stems from the law's function as a paradigm for maintaining the existing social order and a mechanism for tailoring individuals' behaviour in the Egyptian society. In the state's view, individuals must



follow the widely accepted social norms to be considered *Muatinun Shurafaa`* (honourable citizens). To fit this description, individuals must comply with what is perceived to be the “normal” characteristics of the majority of the population and refrain from publicly expressing religious beliefs or sexual preferences diverging from the unitary social paradigm. Diverging from such norms is viewed as unacceptable and might lead to criminal liability or at least to the deprivation of state protection against harassment by conservative groups or individuals.¹⁵² According to this paradigm, women are also perceived as living under a patriarchal authority. Their entitlements to legal protection against sexual and gender-based violence is contingent upon their acceptance of their place and roles within the patriarchal society. For instance, while sexual harassment is criminalized in the Penal Code under Article 306 (a)bis, the offence was until 2014 called “breaching female decency”. This description implies that a woman’s behaviour should be “decent” in society’s view for her to be entitled to protection and for sexual harassment to be considered a violation.

Lawyer Moustafa Mahmoud contends that before the amendment of this article in 2014, which introduced a new language, the expression “sexual harassment” did not resonate well in official circles, including when survivors of sexual harassment tried to file complaints in police stations against perpetrators. In particular when using the language of rights, survivors were met with denial, negligence and lack of support.¹⁵³ Mahmoud added that the work of cause lawyers supported efforts of the Egyptian feminist movement and women’s rights organizations in their struggle for setting a legal definition of sexual harassment in the Penal Code.¹⁵⁴

Before the 2014 amendment, conventional lawyers avoided working on sexual harassment cases due to the lack of defence witnesses or evidence to prove their claims. Mahmoud explained that cause lawyers insisted before courts for the authorities to present in court the content of the cameras on streets where frequent incidents of sexual harassment were recorded. Even though courts did not usually grant such requests, persistence and other strong arguments helped win cases and ensure accountability for victims.¹⁵⁵

Setting a legal definition for sexual harassment was not possible without the long struggle of Egyptian feminists in the wake of mob rape and other sexual violence against women during protests at Tahrir square between 2011 and 2013. Two



years after amending Articles 306 (a)bis and 306 (b)bis of the Penal Code, the director of Nazra for Feminist Studies, Mozn Hassan stated that her organization had “won more than 50 sexual harassment cases, mostly involving prison terms since the authorities directly criminalized sexual harassment in June 2014, days before President El-Sissi's inauguration”.¹⁵⁶

In the field of freedom of religion, Egyptian law contains several provisions that discriminate against religious minorities as well as those who do not embrace any religion. The Penal Code criminalizes criticizing religious figures or established beliefs in Abrahamic religions and considers expressing such opinions a blasphemy punishable by up to five years in prison.¹⁵⁷ The authorities prevented members of religious minorities, such as Shia, from organizing or participating in public religious ceremonies, establishing non-governmental organizations or receiving any kind of legal recognition.¹⁵⁸ They also forced members of the Bahai religion to be considered as Muslims or Christians in official documents.

Lawyer Adel Ramadan from the Egyptian Initiative for Personal Rights (EIPR) points out that cause lawyers have been able to help religious minorities confront state repression and discrimination before the 2011 Revolution. For instance, EIPR lawyers successfully argued for the release of individuals accused of blasphemy without referring them to trial.¹⁵⁹ In a case brought by the EIPR in 2009, the Administrative Court overturned an administrative decision forcing Bahais to be recognized in official documents as Muslim or Christians. As a result, the Minister of Interior issued a decree allowing Bahais to conceal their religious identities rather than be forced to mark in official documents a religion to which they did not adhere.¹⁶⁰ While the ministerial decree did not allow Bahais to indicate their actual religion in their identity cards, this case is an important example of how cause lawyering could affect the lives of members of religious minorities as such documents are vital to access other rights including inheritance, marriage and divorce. This case could also be considered as an important step that paves the way for more victories in the future.

III.3 Widening the space for Free Expression



Since 2006, lawyers of the Association for Freedom of Thought and Expression (AFTE) have been working to widen the space for free expression in Egypt. AFTE's founder, lawyer Emad Mubarak, considered the legal unit central to implementing the mandate of the organization. The unit focused on providing legal aid to victims of violations of the right to freedom of expression, changing state policy through strategic litigation and offering technical expertise for the organization's research work.¹⁶¹ AFTE started with providing legal support to members of student movements facing arbitrary expulsion, arrest and other repressive measures by universities' administrations and security agencies because of their political activism on campus or their attempts to influence activities of students unions were controlled by security apparatuses and pro-government students.¹⁶² AFTE also started to use litigation to challenge the hostile environment against freedom of information by filing cases before the Administrative Court to reverse government decisions depriving individuals of their right to information.¹⁶³ It has also specialized in providing legal aid for artists in cases of violations of artistic expression, including the government's use of the pretexts of upholding public decency and religious values to censor artistic content.¹⁶⁴ AFTE also established a new program focusing on digital rights, which used litigation to defend users of social media platforms and challenge government blocking of websites before Egyptian courts.¹⁶⁵

As demonstrated by the topics prioritized by AFTE lawyers, the organization has strategically narrowed the scope of its work. In 2017, EFTE won an important case (Case No. 8830 of the 70th Judicial year) against the Minister of Justice's decision to grant the managers of the Theatrical Professions Syndicate the police authority allowing them to arrest suspects among the theatrical professions performing any artistic roles without the syndicate's permission. AFTE's lawyer Mahmoud Othman clarified how the court decision in this case benefited a large community of artists, negatively affected by the Minister's decision. The wide impact of such a decision was a key motivation behind AFTE's lawyers' engagement in the case. Othman argued that the authority to register crimes and arrest the perpetrators is exclusive to the police, with some exceptions granted to other public officers, such as employees in the tax sector. Members of the Theatrical Professions Syndicate do not have this capacity as they are not representatives of any government authority. Othman's second argument was how the Ministry of Justice's decision



imposed unnecessary restrictions on artistic expression and artists, who should not be compelled to obtain any permission before performing. The court overturned the Minister of Justice's decision and referred two articles of the law to the Supreme Constitutional Court – an action considered a significant victory for the artistic community in Egypt.¹⁶⁶

Conclusion

Egyptian cause lawyers can be seen as a political movement whose aim is to confront state repression and injustice on the juridical front. A number of factors enable the development of such a movement including the lawyers' political backgrounds. The institutional and educational support received from political and rights groups have also facilitated the work of cause lawyers by compensating for the substandard quality of legal education in Egyptian universities and the weak institutional role of the Lawyers' Syndicate. Throughout their history, cause lawyers in Egypt have been able to develop legal tactics and the language that contributed to shaping their identity as supporters of different social movements and an integral part of civil society. This includes adopting human rights language in the judicial Egyptian context and maximizing opportunities provided by certain judicial platforms, particularly the administrative judiciary.

The history of Egyptian cause lawyering in the twentieth century shows how different social movements affected the profession. Labour movements and political organizations helped to develop cause lawyers' distinct identity from the 1940s onwards. The Freedoms Committee of the Lawyers' Syndicate was instrumental in extending cause lawyering beyond labour cases. The erosion of the role of the Lawyers' Syndicate by the end of the 1980s, the transformation of the political scene in Egypt after the collapse of the Soviet Union, the rise of the Islamic movements and the gradual shrinking of the hard-won civic space were all factors contributing to the establishment of the first wave of human rights organizations. These organizations embraced cause lawyering as key effective strategies in their work. Cause lawyering itself has been affected by the rise and fall of social and political movements in Egypt. From the 2006-2007 al-Mahalla strikes to the 25 January 2011 uprising, cause lawyers took part present in relevant political debates and developments. They were involved in addressing the arrest



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of political activists and in supporting workers in lawsuits against privatization. They also played a role in efforts to combat impunity, including the trial of former president Hosni Mubarak over charges of ordering the killing of protestors in January 2011.

The ability of social movements to confront the state empowered and inspired cause lawyers in their battles in front of judicial platforms. Similarly, the weakness political movements in the face of rising state repression impacted the effectiveness of cause lawyers. In addition to the influence of the broader political movement, the nature of the legal field in Egypt also played a role in identifying cause lawyering as a political movement. The dual structure of the legal field between the normative and prerogative institutions and apparatus paved the way for cause lawyering, which succeeded in some instances to threaten the prevailing narrative of the state.

The success of Egyptian cause lawyers did not come without drawbacks. The polarization of democratic movements in Egypt triggered by the 2013 military coup extended to cause lawyers. The movement was deeply divided over the merits of representing Muslim Brotherhood members who have been arbitrarily detained, forcibly disappeared, tortured or extra-judicially executed by the authorities. Some cause lawyers refrained from providing them with a legal counsel on the ground that they were political enemies, partially responsible for the deterioration of the political situation by their exclusion of other groups from political participation during their time in power. Further, some cause lawyers showed reluctance to work on certain cases or to adopt principled human rights positions, particularly in cases involving members of the LGBTQ community targeted by state and non-state actors because of their sexual orientation or gender identity. Such positions bring to light the difference between cause lawyers – as an umbrella term used to describe those engaged in public interest litigation – from human rights lawyers who defend victims of human rights violations unconditionally.



Endnotes

1. However, the Supreme Constitutional Court reversed these victories on technical grounds. Its ruling claimed that jurisdiction over the Tiran and Sanafir handover lies with the legislative authority (the house of representatives) rather than the judiciary.
2. The author worked as a trainee human rights lawyer in the Hisham Mubarak Law Center from 2004 to 2006, in the Egyptian Centre for Economic and Social Rights from January to June 2009, and from 2007 to 2014 in the Association for Freedom of Thought and Expression.
3. Lawyers have indeed composed the bulk of the staff in major NGOs such as the Hisham Mubarak Law Center, the Arabic Network for Human Rights Information, the Egyptian Initiative for Personal Rights, the Egyptian Center for Economic and Social Rights, Nazra for Feminist Studies, the Association for Freedom of thought and Expression, and El Nadeem Centre for the Rehabilitation of Victims of Violence.
4. Menna Omar, "Lawyering Profession in Egypt Between Registration Conditions and Labour Market" Legal Agenda 5 April 2017, (in Arabic) legal-agenda.com accessed 23 August 2018.
5. Amr Elshalakany, 'The Rise and Fall of Egyptian Legal Elite 4-4', *Shorouknews*, 31 October 2012 (in Arabic), shorouknews.com accessed 8 September 2018.
6. Such abuses led, for instance, to the death in custody of a lawyer in 2015, see Mada Masr, "Autopsy Shows Lawyer Was Tortured to Death at Matareya Police Station" 27 February 2015, madamasr.com accessed 23 August 2018.
7. See Article 13 on requirements for joining the bar association in Lawyering Law No.17 of 1983.
8. Asef Bayat, *Life as Politics: How Ordinary People Change the Middle East*, Amsterdam University Press, Amsterdam 2010, p. 58-59.
9. "Repressing Lawyers' Protest Against the Killing of their Colleague in Police Custody in 1994" Daily Motion video, published in 2015 dailymotion.com accessed 8 September 2018.
10. Revolutionary Socialists, "Lawyers' Syndicate and Guardianship" 1 July 1999 (in Arabic), revsoc.me accessed 8 September 2018.
11. Youm7, "Who Determines Lawyers' Fees" 8 October 2017 (in Arabic), goo.gl accessed 24 August 2018.
12. Peter J. Henning, "Lawyers, Truth, And Honesty in Representing Clients", in *Notre Dame Journal of Law, Ethics & Public Policy*, vol 20, 2014, p213. Henning says in the context of American lawyering that "certain rules discuss the requirement that lawyers not introduce false evidence, mislead a third person, or act deceptively or fraudulently; yet nowhere do they instruct a lawyer - even one representing a client in an adjudicatory proceeding - to ensure that the result of the legal representation reflect what actually happened in the transaction that is the substance of the dispute."
13. J Krishnan, "Lawyering for a Cause and Experiences from Abroad", in *California Law Review*, vol. 94, 2006, p. 575.
14. A Sarat and S Scheingold, *Cause Lawyering: Political Commitments and Professional Responsibilities*, (ed), Oxford University Press, 1998, pp. 3-8. They argued in their introduction to this book that that it is difficult to set an overarching definition for cause lawyering given the difference in context between different sorts of lawyering in the United States and that some forms of conventional lawyering may share common features with cause lawyering.
15. By social movements I refer to the sustained collective actions by a certain group of lawyers against the authorities to achieve specific economic, political or social goals in a political and social context that allow for such actions. See Sidney Tarrow, *Power in Movement: Social Movements and Contentious Politics*, 2nd edition, Cambridge University Press, 1998, p. 10.



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- 1980s and 1990s. He is also a former member in the Egyptian Organization of Human Rights.
16. Mahmoud Kandil is a senior lawyer who has been active the Freedoms Committee of the Lawyers Syndicate during
 17. Interview with lawyer Mahmoud Kandil, 15 August 2018.
 18. Essmat Seif al-Dawla, 'In Defence of the People' (1977) [slideshare.net](https://www.slideshare.net) accessed 8 September 2018.
 19. Judith Miller, "Hisham Mubarak Dies at 35; Rights Campaigner in Egypt", New York Times, 15 January 1998, [nytimes.com](https://www.nytimes.com) accessed 8 September 2018.
 20. Heba Afify, "Ahmed Seif: A Compassionate Fighter, A Legal Scientist", Mada Masr, 23 September 2014 [madamasr.com](https://www.madamasr.com) accessed 8 September 2018.
 21. The Legal Agenda, "Khaled Ali's Advice: How to Advocate Public Cases", 31 July 2013, [legal-agenda.com](https://www.legal-agenda.com) accessed 8 September 2018.
 22. Tamir Moustafa, *Rule by Law: The Politics of Courts in Authoritarian Regimes*, Cambridge University Press 2008.
 23. The Egyptian regime has been using courts and laws to confront and side-line its opponents, except in few circumstances when it used extra-legal methods such as extra-judicial execution, see Amnesty International, "Schoolteacher Among Latest Victims of Egypt's Chilling Wave of Extrajudicial Executions", 8 August 2017 [amnesty.org](https://www.amnesty.org) accessed 9 September 2018.
 24. Interview with lawyer Ahmed Kinawy, 15 August 2018.
 25. Ahmed Nabil al-Hilaly, *Freedom of Thought and Expression: This Is the Case*, Second edition, The New Egyptian 1989.
 26. Ibid, p. 26-27
 27. Interview with lawyer Ahmed Raghib, August 2018.
 28. Interview with lawyer Tarek Abdelaal, August 2018
 29. Ibid.
 30. Interview with lawyer Ahmed Kinawy, 15 August 2018.
 31. Alaa Abdeltawwab, "The History of Strike Between Workers and the Authority", 17 November 2016 (in Arabic), [madamasr.com](https://www.madamasr.com) accessed 9 September 2018.
 32. Case No. 4190 of 1986, the Supreme State Security Court.
 33. A defence note in a protest case, Montada Al Mohamoon Al Arab, 26 February 2016, [mohamoon-montada.com](https://www.mohamoon-montada.com), accessed 9 September 2018.
 34. Ibid
 35. Ahmed Seif al-Islam Hamad, "Defence Notes in Case No. 5498 of 2008", available at [old.qadaya.net](https://www.old.qadaya.net)
 36. Ibid.
 37. AFTE's defence note before the Administrative Court in case No. 1430 of the judicial year No 65. [afteegypt.org](https://www.afteegypt.org)
 38. Unlike other branches of public international law that are being taught in Egyptian universities.
 39. Lawyers Yousif Darwish and Ahmed Nabil al-Helaly are examples for using lawyers as a tool of political struggle.



- tendency and some of them were members in leftist organizations.
40. Most of the prominent lawyers who established the first wave of human rights organizations belonged to the leftist
 41. Statements of the Freedoms Committee in Al Tagammu Party ahewar.org
 42. Legal academics themselves admit that legal education in Egypt is in a bad shape. For instance, Law Professor Amr al-Shalakany argues that legal education in Egyptian faculties of law has consistently deteriorated since 1952 in terms of enrolment requirements, quality of legal research and teaching, lack of material in legal libraries and the availability of reliable legal sources for research. See, Amr Elshalakany, “The Rise and Fall of Egyptian Legal Elite 4-4”, 31 October 2012, (in Arabic) shorouknews.com accessed 8 September 2018.
 43. Tamir Moustafa, *The Struggle for Constitutional Power: Law, Politics, and Economic Development in Egypt*, Cambridge University Press 2007.
 44. Interview with lawyer Malek Adly, August 2018.
 45. EIPR, “28 December: Ruling on Mandatory Premarital Testing... EIPR: Mandatory Testing Violates Human Rights and the Constitution, and Has Led to the Spread of Fraudulent Medical Reports”, 20 October 2010, eipr.org accessed 9 September 2018.
 46. Strategic litigation can be defined as filing a lawsuit before a specific court for the purpose of making a change in favour of a social group and not only the party to the case at hand before the court.
 47. Almasry Alyoum, “Four Rights Groups Calling on the Minister of Labour to Dissolve the Government’s Unions Federation”, 27 July 2011, almasryalyoum.com accessed 9 September 2018.
 48. The petition submitted by ANHRI in the case of Yousif al-Badry against the Minister Culture, 2009, old.qadaya.net
 49. Mohamed Adel, expanding the interpretation of the claimant’s capacity in administrative cases, legal-agenda.com, accessed 09 September 2018.
 50. The concepts of the “prerogative state” and the “normative state” were introduced by the German scholar Ernst Fraenkel in his study of the legal order under the Third Reich, see Ernst Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship*, The Lawbook Exchange 2010.
 51. Tamir Moustafa, “Law and Resistance in Authoritarian States: The Judicialization of Politics in Egypt”, in Tom Ginsburg and Tamir Moustafa (eds.), *Rule by Law: The Politics of Courts in Authoritarian Regimes*, Cambridge University Press, 2008, pp. 132–155.
 52. Although this duality was first analyzed in late 1930s, Ernst Frankel’s theory coincided and was deepened by consistent analysis by two important Marxist theorists, who focused on state mechanisms of domination in the twentieth century. Antonio Gramsci used the dualities of force versus consent, state versus civil society, among others to explain how western states were able to achieve domination over the masses. On the other hand, Louis Althusser introduced the theory of the reproduction of the capitalist regime through the duality of repressive state apparatuses versus ideological state apparatuses and classified law and normative legal institutions under the ideological division.
 53. Khaled Fahmy, “Justice, Law and Pain in Khedival Egypt”, in Baudouin Dupret (ed), *Standing Trial: Law and the Person in the Modern Middle East*, I.B. Tauris, 2004, pp. 85–115.
 54. Tamir Moustafa, *The Struggle for Constitutional Power: Law, Politics, and Economic Development in Egypt*, Cambridge University Press 2007.



- laws that violate international human rights standards, hence it combines the two mechanisms of the dual state in one institution.
55. Tamir Moustafa, “Public Interest Litigation and the Egyptian Movement”, in Anthony Tirado Chase and Amr Nathawy (Eds.), *The Arab Rights in the Arab World: The Egyptian Context*, University of Pennsylvania Press, 2006, p. 138.
 56. It should be noted that in the Egyptian context, the dual state does not refer only to a distinction between ordinary and exceptional courts, but also to a dualism that could exist in either of these institutions. As mentioned above, *Supreme State Security Court’s jurisprudence* (1952-1954, Second Edition on Dar al-Shorouk (2002), pp. 144.
 57. Ibid.
 58. Ibid.
 59. Tarek El-Bishry, *Al-Dimuqratiyah wa-nizam 23 Yuliyu 1952-1970* (1st ftn, Mo` asaat al` bhath al` arabih 1987) 66-84.
 60. Tamir Moustafa, “Law and Resistance in Authoritarian States: The Judicialization of Politics in Egypt”, p. 133.
 61. Ibid.
 62. Hossam El-hamalawy, “Egypt’s hidden history of dissent”, The New Arab, 2015, alaraby.co.uk accessed 23 August 2016.
 63. Tamir Moustafa, “Law and Resistance in Authoritarian States: The Judicialization of Politics in Egypt”, p. 139-146.
 64. OHCHR Status of Ratification Interactive Dashboard indicators.ohchr.org accessed 24 August 2016. Egypt ratified the two international covenants in 1982, the Convention against Torture in 1986, Convention on the Elimination of All Forms of Discrimination against Women in 1981.
 65. Nathan Brown, op. cit. p.98.
 66. The term organic intellectuals has been introduced by the revolutionary Marxist Italian thinker Antonio Gramsci to refer to individuals providing their classes or social groups they belong to with awareness and hegemony in the economic field as well as in the social and political levels. See Valeriano Ramos, Jr, ‘The Concepts of Ideology, Hegemony, and Organic Intellectuals in Gramsci’s Marxism’ (Marxists Internet Archive) marxists.org accessed 1 December 2018.
 67. This is not restricted to lawyers who represent vulnerable groups, but also to lawyers who stand in the side of privileged classes. see Antonio Gramsci, *Selections from the Prison Notebooks of Antonio Gramsci*, Elec Book 1999.
 68. Ibid, p. 134-135.
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About the author



Ahmed Ezzat

Ahmed Ezzat is an Egyptian lawyer and human rights activist and a PhD candidate at the University of Cambridge.

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