



# Microjustice

## Legal Rights Protection Barometer EGYPT REPORT Final version 2023



July 2023

[www.microjustice.org](http://www.microjustice.org)

Microjustice is a Dutch foundation that works for the legal empowerment and inclusion of marginalized people and victims of humanitarian disasters. To achieve this aim, the foundation enables these people to exercise their fundamental legal rights and facilitates their access to legal aid through its Legal Rights Protection Program.

Since 2018, Microjustice has developed the Legal Rights Protection Barometer of Civil Justice, which aims to map the justice gap from the perspective of ordinary people in society, and to identify how to set up a Digital Legal Aid Platform. So far, Barometer research has been undertaken in Serbia, Bolivia, Kenya, Egypt, Jordan, and Ukraine.

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# INTRODUCTION

## A.

### RESEARCH METHOD

The Microjustice Legal Rights Protection Barometer has been developed by Microjustice as a tool to scan, monitor, and enhance the access to justice component of United Nations Sustainable Development Goal (SDG) 16. So far, Barometer research has been conducted in Bolivia, Serbia, Kenya, Egypt, Jordan, and Ukraine.

This report concerns the Barometer research for Egypt: a quick overview of the legal rights protection situation through indicators on a country level. The research questions relate to the extent to which all people in Egypt – both Egyptian citizens and foreign nationals residing in the country, including migrants and refugees – are legally protected and included in society through the analysis of **three indicator categories**: 1) the financial and educational capacities of the **general population and particular vulnerable groups**; 2) the **accessibility and efficiency of the way the Egyptian state** has organized the **procedures** for legal rights protection in private and administrative law, and the effectiveness of the available enforcement mechanisms, and 3) the accessibility and **affordability of quality legal aid** in Egypt.

The research has been implemented through social interaction with various Egyptian and international organizations. A large number of consultations and interviews were conducted with Egyptian attorneys, legal experts, civil society representatives, representatives of state institutions such as the Ministry of Justice, National Council for Human Rights, Bar Association of Egypt, women's legal organizations and their private and state leaders, social organizations, and churches.

Microjustice conducted field research in Egypt between November 2021 and February 2022. During this period, Egyptian attorneys with experience in private and administrative law related to the basic legal needs of people also entered the data regarding the research questions related to the above three indicator categories into the Legal Rights Protection Barometer database. On the basis of this research, the Justice Gap was defined, and as a solution, a proposal for setting up a digital Legal Aid Platform was developed.

In late 2022, further research was conducted on the specific legal needs of the population in order to prepare this platform. At a meeting with stakeholders to launch the Program in Cairo in March 2023, the barometer report was presented, and on the basis of the comments the report was further finalized.

The identification of the problematics of legal practice in regard to the main legal needs of the population is the focus of this Barometer report, which will in turn enable us to identify precisely which legal services are needed. This report serves as a baseline for setting up a digital Legal Aid Platform in Egypt, which will provide legal services that have been identified in the Barometer research. The document will be a living document, developing according to the issues the network of lawyers encounters as they solve the legal cases of people who visit the Platform.

## B.

### A DIFFERENT PERSPECTIVE

In a departure from many of the reports on the state of the justice sector in Egypt, this Barometer research report analyses the justice system from the perspective of the people. Rather than describing the system from an institutional perspective, this report aims to show the challenges involved in obtaining legal rights protection from the people's point of view: how can people have their basic legal needs met? What problems do they face? All people need to be embedded in the system of the country in which they live to access the benefits of the system and to be able to protect their rights. The key question of this study is: to what extent are people in Egypt able to protect their rights? As a first step towards answering this question, this study aims to identify the precise and often technical problems people face on the procedural level.

## C.

## LEGAL CONTEXT

## LEGAL CONTEXT

- The French continental law system was introduced in Egypt by Napoleon Bonaparte in 1798.
- Egypt was part of the Ottoman Empire from 1517 until 1922. The Ottoman rulers of Egypt created different types of citizenship, depending on one's religion and ethnicity. This is still relevant today with regard to the legal rights protection of the individual, particularly in family law.
- With *King Fuad*, who was first sultan (1917–1922) and then king (1922–1936), and his son *King Faruq* (1936–52), all laws were modernized and developed into an adequate high quality legal system in the European tradition. The Council of State was established under Faruq in 1946. In 1948, a new civil law was issued based on the Code Napoleon and case law. Dr Sanhoury was the author of this new civil code, which is still the basis of legal practice today.
- Family law is, however, not part of civil law. The Personal Status Law, that includes family law, was issued in 1920, based on *shari'a* or Islamic law. In a continuation of the legal situation on the country during Ottoman rule, the Constitution allows non-Muslims to resort to and apply their own regulations related to family law. Thus, in parallel to the Family Law that applies for Muslims, non-Muslims apply their own regulations when it comes to marriage, divorce, and (supposedly) inheritance. However, the Islamic Personal Status Law applies to non-Muslims as well if the involved parties are members of different denominations, and also in some issues such as alimony (*nafqa*). The Personal Status Law is currently undergoing a complete revision, and the new version of this law is expected to be passed in the near future.
- *Gamal Abdel Nasser* (president from 1954 to 1970) imposed a socialist system on Egypt, abolishing the monarchy and confiscating their property, and nationalizing the real estate and businesses of other land-owning and business-owning classes. Nasser implemented social welfare programs and many other socialist laws. The legal system was put on hold in as far as socialist legislation, which was called “exceptional laws”, was not in agreement with it. This situation remained unchanged until 1996. In that year, the Government issued a law to revive the entire Civil Law of 1949, with the exception of contracts written up to 1996, which are still governed by the socialist exceptional laws of the Nasser period today. This particularly affects the “old law” rental contracts, which can be passed on to one succeeding generation of family members, for the same very low prices agreed on in the 1950s.
- The governments in power in the country since the 1950s have imposed a centralized regulatory framework in many legal matters, including on an already existing legal system, making the situation extremely complex.


The current Egyptian legal system is based on a combination of *shari'a* (Islamic law) or Christian family law, and the Napoleonic Code, which was first introduced during Napoleon Bonaparte's occupation of Egypt in 1798 and consolidated with the subsequent education and training of Egyptian jurists in France.


As a continental civil law system, the Egyptian legal system is based on a well-established system of codified laws. Egypt's supreme law is its written constitution. The 2014 Constitution grants equal rights to all citizens without discrimination (Art. 9).


## D.


## HIGHLIGHTS


## HIGHLIGHTS


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There are **over 50,000 laws** and different practices according to the specific requirements of the relevant institutions and courts throughout the country. There is no overall legal information available, and legal literacy is felt to be an important need by all. There are around **700,000 registered lawyers** in Egypt, a large number of whom are actively exercising the legal profession, but they often do not have clarity on the requirements of a specific procedure.
- 

As result of the above, the **legal system and practice of law in Egypt is extremely complex.**
- 

People do not know how to protect their legal rights and **need access to a quality lawyer.** Lower-income groups, which we estimate represent about 80% of the population, lack the financial resources needed to get a good lawyer.
- 

The challenge in accessing legal rights protection is that there are **strong customs and social traditions** that are often not in line with Egyptian law. These customs may vary according to region. This negatively affects women in rural areas in particular. For example, in Upper Egypt, it is customary for agricultural land to be registered in the name of the husband. According to the National Council for Women (NCW), the result of this is that only **3% of the agricultural land in Egypt is owned by women, despite the fact that 49% of the agricultural workforce are women.**<sup>1</sup>
- 

Regarding civil documents, the biggest challenge is to correct mistakes and inconsistencies between various official papers. A real problem with **birth certificates is that women are not allowed to register their own child.** The very existence on paper of a newborn depends on the father's willingness to register them.
- 

In family law and inheritance, the **Family Courts** are competent in the first instance. An appeal against the decision of the Family Court has to be filed with the family chamber of the Appeal Court. No cassation (abrogation or annulment by a higher authority) appeal against this decision can be made with the Supreme Court. This leads to the situation where by there are eight different family case laws, which differ among the eight appeal courts in the various administrative departments of Egypt (*Alexandria, Cairo, Asyut, Beni Suef, Ismailia, Mansoura, Tanta, and Qena*). The way these appeal courts interpret Egyptian law also depends on social traditions and customs, especially in Upper Egypt.

<sup>1</sup> "Rural women in Egypt represent 49% of the rural population," National Council for Women, December 1, 2016, <http://ncw.gov.eg/News/2032/> ناكسلا-ددعت-ةسب-ن-م-49-ل-ث-م-ت-ر-ص-م-ي-ف-ة-ي-ف-ر-ل-ة-أ-ر-م-ل



For women and children, but also men, it is important to have access to legal information on **family law** related to marriage, divorce, custody, the educational mandate, and child support. After a verbal divorce by the husband (*talaq*), the wife has no other choice than to request a formalization of the verbal divorce and to file a series of claims before the Family Court. She will then face the challenge of building the proof of *talaq*. If she succeeds, this may turn out to be very expensive for the husband, putting him in a legally insecure position. The best option for both men and women is therefore a divorce by agreement, or *talaq 'ala al-ibra'*.



Less than **5% of real estate in Egypt is registered** in the property registration system,<sup>2</sup> and while the state urges people to register their property, the procedures involved in property registration have long been dauntingly complex. The 2022 amendment to the property registration law was issued to change this, but to gather together all the necessary paperwork is still difficult, and the implementation of the amendment is not yet clear.



In **inheritance** there is a huge need for legal information and assistance. This is important for both urban and rural populations, especially women, bearing in mind that practice shows that women tend to be overlooked in or even left out of inheritance decisions.



For the rural **agricultural population**, awareness on these topics is essential, and there is a need to introduce legal tools to unite fragmented land, in order to reduce costs and water consumption while increasing the productivity of the land.



The huge **informal sector** and legal insecurity in labour-related rights and obligations is also a big problem. A general estimation among Egyptian lawyers is that over 50% of the labour force only have oral contracts, and Employers generally ignore the fact that workers with no written contract in fact enjoy the same rights in law as those with written contracts.

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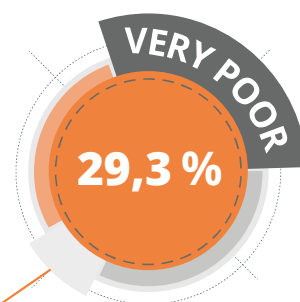
<sup>2</sup> David Sims, *Supporting Participatory Agricultural Land Consolidation for Sustainable Development and Food Security in Egypt, final report for general distribution* (Cairo: March 6, 2022), 2–3.

# I THE CAPACITY OF THE POPULATION TO ACCESS AND PROTECT THEIR RIGHTS

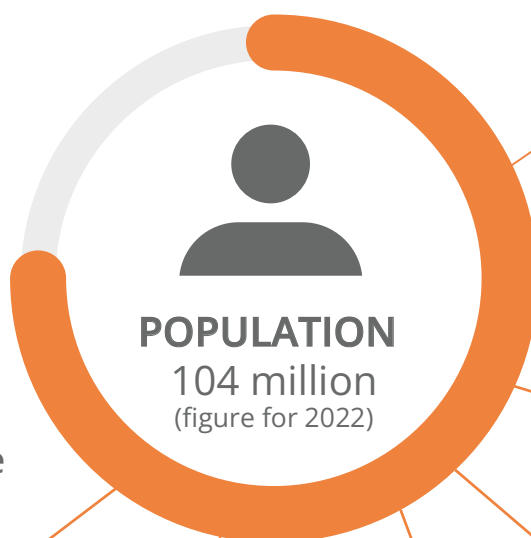
## Poverty based on income and informality indicators

On the basis of the following indicators,<sup>3</sup> the vast majority of the population is at risk of being legally unprotected due to a lack of resources:

**01** The very poor (i.e., those in extreme poverty): **29.3%** of the population are under the poverty line, with a monthly income under **€48**



**02** Low-income groups:



Average consumer basket: For a family of four, the estimated monthly costs are US\$1,376, excluding rent. For a single person, the estimated monthly costs are US\$385 excluding rent.

The national minimum wage is €120 per month (with a written contract)

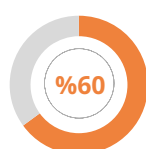
Average monthly income: €511

GDP = 3,547.87 USD (2020)  
= around **€ 265 a month**

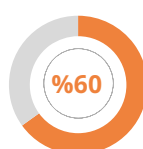
Gini coefficient 31.5%

## INFORMALITY INDICATORS:

Due to the recent and ongoing sharp devaluation of the Egyptian pound, this report does not provide figures in Egyptian pounds.



**OF BUSINESSES ARE INFORMAL**



**OF EMPLOYEES HAVE NO WRITTEN EMPLOYMENT CONTRACT**

<sup>3</sup> Unless otherwise stated, figures are for 2022.

## Other indicators defining risks of legal exclusion



### **Language:**

not an issue for legal inclusion. The majority of people speak the official language, which is Arabic.



### **Education level:**

Education quality is sub-standard. In 2017, only 38.81% of the population had completed secondary school. About 25% of the population in Egypt (i.e., aged 10 years or above) were illiterate (2017).



### **Internet:**

57% of the population has access to internet at a very low speed. Access to Smart phones and the internet is not an issue.

# II

## THE STATE: Affordability & accessibility

# A. Procedures and institutions

## Identity-related documentation



All identity-related documents are issued by the Civil Registry (Ministry of the Interior), which has its offices in police stations. These documents include: birth certificates, national identity cards (IDs), death certificates, marriage certificates, divorce certificates, and the Family Paper.

The relevant laws in regard to these documents are: Personal Status Law, Child Law, and the implementation regulations of these laws.

## Birth certificates

**Problematics:** According to Article 20 of Personal Status Law 143 of 1993, the mother is also responsible for registering a newborn, but in practice, only the father can register a child. As a result, if the father does not want to register his child, a child does not get his/her birth certificate. Thus, a child needs to have a father willing to register them in order to access the system (education, health care, etc.). In addition, as a consequence of a father being able to register a child alone, the situation can arise where a father gives the child a different name from the one agreed on with his wife.

**Procedures:** the father, or his father, brother, or grandfather has to register the child at the district Health Agency, showing his ID card and that of the mother (every district has its own Health Agency). The Health Agency then issues the proof of birth. In Cairo, the marriage certificate is sometimes asked for, but this is not standard practice. With the proof of birth, the birth certificate can be obtained at the Civil Registry.

The registration should be carried out within 15 days of the child's birth. After this period has passed, only a fine (around €6) needs to be paid. However, if the registration only takes place after years have elapsed, the Health Agency is required to investigate and estimate how old the child is, involving additional costs. In the case of late registration, there are plans to increase the fine and to make the father face criminal charges, including potential imprisonment for late registration.

Regarding birth certificate issuance procedures, people often neglect the deadline; it can often be difficult to obtain birth certificates in rural areas due to the sometimes significant distances that need to be travelled to reach the registration offices; issuance costs are relatively high; procedures for modifying mistakes are long, complicated, and require a court decision in most cases; and corruption and bribes are part of the system.

Particularly in rural areas, many people do not have a birth certificate due to the fact that the mother was under the legal marrying age at the time of the birth. As it is a crime under Egyptian law to marry under the age of 18, people do not register these children until the mother is 18; to register the child earlier would mean that the father would face criminal charges.

### AT-RISK GROUPS:

- Children (the group most at risk)
- Women, especially under-age women who give birth
- Migrants: it is difficult to obtain residence permits, and without a residence permit, a birth certificate cannot be issued
- Low-income groups, especially rural populations

### SOURCES OF DISCRIMINATION:

Religion: a citizen's religion is recorded on their birth certificate

Gender: a woman cannot register her own child

### LEGAL ASSISTANCE IS NEEDED:

- if the father does not register the child; in this case, the mother needs legal assistance to file a recognition procedure (see below)
- in procedures connected with correcting a mistake on the birth certificate
- in cases of late registration
- if parents are migrants who do not hold residence permits.

### PRACTICAL SOLUTIONS:

- A practical solution used is that the father of the woman who gave birth registers the child with himself and his wife as parents. In this way, the child officially becomes the mother's brother or sister
- The child registers him/herself in a late registration procedure

### RECOMMENDATIONS TO SOLVE LEGALITIES:

- Children could be registered automatically in hospitals, and issued with a birth certificate even if the father does not want to appear on the birth certificate.
- Ensure that the mother is allowed to register her child in practice – she already has the right to do this according to the law and some court decisions.

## Recognition of children

### Problematics:

Recognition is an important procedure (see birth certificates above), but does not happen often because the procedure is difficult. It concerns cases where the father refuses to register his child, whether he is married to the mother or not. This is a significant problem, as men who have a child outside of marriage tend to refuse to register the child.

If no man agrees to register the child, even if a woman is in an official marriage, she has to do the recognition procedure. For this, **proof of marriage** is needed, which is easy when there is a marriage contract. When there is an **'urfi or customary or unofficial marriage**, the woman needs to prove the marriage exists by providing two witnesses to attest the marriage (see *'Urfi* marriage below).

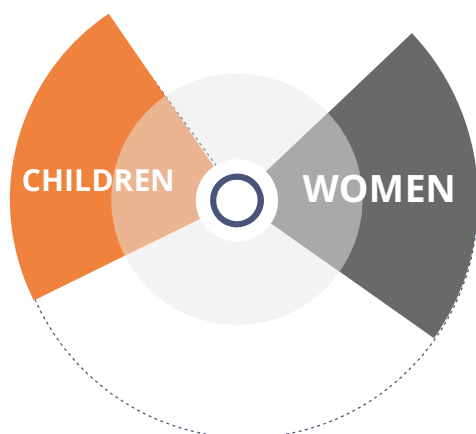
If there is no proof of *'urfi* marriage, then DNA tests might be called for. But as the general rule is: "no marriage, no child", the legal status of DNA tests is not clear, and court practice is not united on this matter. Men are not obliged to provide DNA, and it is expensive. Some judges also deny the scientific value of DNA tests. A judge will normally ask the man to take an oath when there is no proof of marriage: his verbal statement in this context is then considered as the truth.

Once there is a court decision recognizing the de facto marriage, and thus fatherhood, the mother can then register the child at the Civil Registry.

In a famous recent case involving two Egyptian actors, the judge took as evidence of fatherhood the fact that the woman had two witnesses of their *'urfi* marriage, combined with the fact that the man refused to take a DNA test.



## AT-RISK GROUPS:



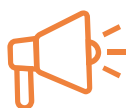
## SOURCES OF DISCRIMINATION:

Gender

## LEGAL ASSISTANCE NEEDED:

Hiring a lawyer is a necessity, but this can be extremely expensive due to the cost of the DNA test, court procedures, and high lawyer's fees due to the fact that procedures in this instance are complicated.

## PRACTICAL SOLUTION:



If the father refuses to register the child, one solution is to threaten him with the prospect of recognition procedures being initiated. To do this, the mother has to collect all the proofs of 'urfi marriage – witnesses who saw you together as a married couple, WhatsApp conversations, all intimate sources of proof and show these to the father.



## RECOMMENDATIONS TO SOLVE LEGALITIES:

- Make DNA tests obligatory
- Make DNA proof of fatherhood
- Reduce the costs of the procedure.

## ID cards/citizenship

**Problematics:** At the Civil Registry Office, an ID card application form is filled out, the required documents are provided, and the fees are paid. The system is digitalized, but not all databases and documents have been digitalized. There is a fine for late modification/renewal and registration. The costs and the fine of late registration/renewal are high. Corruption is a characteristic of the system; bribes are part of the procedure.

People in rural areas sometimes need to travel long distances to reach a Civil Registry office.

“Unrecognized” religious groups, i.e. religious groups not recognized by the Egyptian Government (in practice, the *Baha’i* community), have (-) on their ID cards instead of the name of their religion. In law, anyone whose ID card is marked in this way cannot renew their ID card, and also has no right to have any other legal administrative document issued, unless they convert to Islam. This concerns relatively very few people in reality.

Overcrowded civil registry offices lead to documents being lost, but many offices are now located in malls where there are no crowds, but the civil documents – ID cards, passports, and marriage, divorce, and death certificates – are more expensive in these centres.

### AT-RISK GROUPS:

- People without birth certificates cannot be issued with ID cards (see above)
- Those who have no address to put on their ID card: the homeless and people in extreme poverty
- Groups whose religion is not recognized by the state

**SOURCES OF DISCRIMINATION:** a person’s religion is recorded on their ID card, and the Egyptian Government recognizes only what it refers to as the three “heavenly” (*samawiya*) or “recognized” religions – Islam, Christianity, and Judaism. Egyptian citizens do not have the option to request a religious identification different from one of these, or to identify him or herself as having no religion.

Government officials responsible for administering personal documents regularly deny Egyptians the option of changing their religious identity from Islam to Christianity (or any other religion). They limit religious identification to the three religions, and refuse to permit conversions away from Islam.

### LEGAL ASSISTANCE NEEDED:

People rarely need legal assistance to have an ID card issued, the only exception being in regard to the procedures necessary to correct mistakes in mentioned personal data.

### RECOMMENDATIONS TO SOLVE LEGALITIES:

- ☑ Increase the number of Civil Registry Offices in rural areas
- ☑ Send officials to villages to help people living there to register for ID cards.

# Death Certificate

**Problematics:** Registering a death involves many steps and documents, such as an ID card or birth certificate and a medical report. Bribes are used to change the cause of death; if there are any missing documents; to cover up crimes, as families want to deny suicide or other crimes that led to the death (doctors often face pressure from the family of the deceased to change the real cause of death); and if the hospital issuing the necessary medical report is far away from where the death is being registered.

Where a death certificate needs to be obtained after the legal issuance period has ended the additional issue in this case is increased costs due to fines. Family members (immediate family) face many problems if they do not obtain a death certificate quickly; in cases of delayed issuance of death certificates the state presumes that a criminal act was involved in the death.

Procedures for correcting mistakes (in name or dates) is complicated, and a lawyer is needed to gather the evidence. Consistency between the personal data on the death certificate and the civil documents of the family members is needed for inheritance procedures to go ahead.

## AT-RISK GROUPS:

- Those is extreme poverty and the homeless
- Groups whose religion is not recognized by the state
- Migrants and asylum seekers

## SOURCES OF DISCRIMINATION:

Religion

## LEGAL ASSISTANCE NEEDED:

Legal assistance is required when correcting mistakes on the death certificate, as the procedure is complex.

# Family-related documentation

## The role of the *ma'zoun* and the Family Court

### The *ma'zoun*

In all districts there is one *ma'zoun* (official authorized to perform Muslim marriages) who falls under the Ministry of the Justice. There is a Muslim *ma'zoun*, who has his own office, but there is also a Christian *ma'zoun* (usually a priest) who usually has his office in the church. The Muslim *ma'zoun* is not necessarily a religious person, contrary to popular opinion. He is often confused with the *sheikh* (respected elder imam or worship leader in Sunni Islam). A *ma'zoun* will have studied law, and is responsible for: a) the marriage contract, 2) registration of divorce by agreement (*talaq 'ala al-ibra'*), and 3) registration of the verbal divorce by the man (*talaq*); in the case of the latter, the *ma'zoun* will send a letter to the wife to confirm the *talaq*.

### The Family Court

The Family Court was created in 2004 in order to make family law work for all. People do not need a lawyer to represent them in the Family Court, and the court fees are very low. The legal practice is not clear cut however, as under family law one can only appeal once to the Court of Appeal, and no cassation appeal with the Supreme Court is possible.

The Family Court deals with all family-related legal needs: recognition of children, proof of informal marriage, divorce, custody, and alimony. Financial issues related to household expenses and custody fall under the Family Court. Financial obligations relating to the furniture list (see below) are covered by civil and criminal law.

### The Family Court Settlement Bureau

Fifteen days before filing a lawsuit with the Family Court, the case should first be presented at the Settlement Bureau, which will try to solve the problem with the parties involved. Only after these efforts have failed can a case be presented at the Family Court.

This Bureau will also give the permission required to go ahead with the divorce agreement by putting an implementation stamp on it. The divorce agreement then can be directly registered with the *ma'zoun*.

## Personal Status Law

The source of family law is the Personal Status Law, which is based on *shari'a* or Islamic law. When there is a gap in the law, *shari'a* rules in line with the *Hanafi madhhab* school of Islamic jurisprudence are applicable. For Christians, the Personal Status Law and the Christian by-laws are applicable. This Barometer report refers to the various legal concepts, rules, and requirements in the Personal Status Law based on *shari'a*, unless the bylaws of Christian denominations are specifically mentioned.

Islamic law is based, among other sources, on *shari'a* and *fiqh* (Islamic jurisprudence). *Fiqh* is the human understanding and practice of *shari'a*, or divine Islamic law as revealed in the Quran and the Sunna (the teachings and practices of the Prophet Muhammad). *Fiqh* is the development and expansion of *shari'a* through jurisprudence for application in day-to-day life. While *shari'a* is considered immutable and infallible by Muslims, *fiqh* is seen as fallible and changeable. There are four major Sunni *madhahib* (sing. *madhhab*) or schools of thought in *fiqh*: Hanafi, Maliki, *Shafi'i*, and Hanbali. If any gaps in the law remain regarding a particular issue, Egyptian law chooses *shari'a* rules issued in accordance with the Hanafi *madhhab* to fill these gaps.

*Fiqh* deals with the observance of rituals, morals, and social legislation in Islam as well as political systems.<sup>4</sup> A *faqih* or Islamic jurist creates *fiqh* by derives religious rulings from the sources of Islamic law (the Quran and Sunna) through the scholarly interpretation of these sources Al-Azhar University is considered to be the supreme religious authority in the development of *fiqh*.

The opinion of Al-Azhar is one of the sources for enacting the Muslim Personal Status Law, which is currently being revised. In this revision, civil society and government agencies also give their input, and the process involves a lot of opposing opinions from and disputes between traditional and liberal forces. Some liberal forces are currently proposing that family law based on religion be cancelled all together, and that a civil law for all should be introduced, as has been done in Tunisia.

The bylaws for non-Muslims used to be applied for both Christians and Jews. However, since the creation of the State of Israel, the Jewish community has all but left Egypt, and in practice the application of bylaws now only concerns the regulations of various Christian denominations. In total, 12 Christian denominations have presented their regulations (4 Orthodox denominations, 7 Catholic denominations, and 1 Evangelical denomination) in addition to 2 Jewish movements (denominations) as bylaws of the Personal Status Law. These bylaws are applicable when the involved parties belong to the same denomination; if not, the Personal Status Law – i.e. Islamic law – is applicable. By far the largest Christian denomination in Egypt is the Coptic Orthodox Church, which has a series of bylaws dating from the Ottoman Empire; these were updated in 1938, and further amended in 2008. In practice, Christians apply their own regulations when it comes to marriage, divorce, and supposedly, inheritance, but not with regard to custody and *nafaqa* (see below *nafaqa*), which are considered general rules laid down in the Personal Status Law.

### RECOMMENDATIONS:

In the revised Personal Status Law currently being prepared, all the *shari'a* rules that are in active usage while not written down in the law, should be written down and included in the new law. The applicability of these non-written rules in case of the open-ended concept 'a gap in the law' creates legal insecurity.

<sup>4</sup> "Fiqh," Wikipedia, Wikimedia Foundation, last modified February 1, 2023, <https://en.wikipedia.org/wiki/Fiqh>.

## *Nafaqa* and claims during and after marriage

An important concept in family law is *nafaqa*, or **financial support by the husband for his wife during and after marriage**; this concept covers all types of claims by women during marriage and after divorce related to the household, custody, and compensation for a variety of damages.

There is a practice of **filing multiple requests** for *nafaqa*; the reasons for this are as follows:

- Different agencies are involved in the enforcement of these claims.
- Strategically, to convince the judge, it is better to ask for a small sum of money in separate cases, than a large sum in joined cases. For each lawsuit, there is a new investigation on the income.
- These lawsuits do not take place at the same time; lawyers often receive a request every few weeks to file another case to claim different expenses. This is also done to make the life of the (ex)husband difficult.
- For school fees, a new lawsuit has to be filed every year.
- Family Court fees are very low, so it costs very little to file all these separate cases.

A man may also file claims during and after marriage:

- to request the woman to submit to his matrimonial authority (*ta'at al-zawj* or obedience to the husband);
- to have access to his children (also during marriage);
- to decrease the amount of alimony he is required to pay; and
- to take the custody of his children away from his wife.

### RECOMMENDATIONS:

This practice of filing multiple requests for *nafaqa* needs to be tackled in order to avoid overloading the Family Court, because it is inefficient and results in high lawyers' fees. All claims should be made in detail, based on precise needs, and included in just one court case.

## The Family Paper

The Family Paper, which contains the name of the male family head and those of his wives and children, and the personal data of all of the above family members, can be obtained at the Civil Registry. Both husband (male family head), and his children or father (immediate family) can request this paper, but not the (future) wife.

This paper is mainly used by only sons to request an exemption from military service. But if a (future) wife has doubts about the personal status of her (future) husband, the family paper would serve as proof of his marital status and children.



### LEGAL SERVICES NEEDED:

Request to court to provide an instruction to the Civil Register to provide the paper to the (future) wife.

### SOURCES OF DISCRIMINATION:

Gender

### PRACTICAL SOLUTIONS:

The wife could ask her children to obtain the Family Paper on her behalf.



# Marriage

Marriage is a covenant between spouses containing a straightforward contractual agreement, which is signed with the *ma'zoun* in the presence of two witnesses. With the registered marriage contract, the marriage certificate can be obtained at the Civil Registration offices (Ministry of the Interior).

Muslim men can marry a maximum of four wives, while women can only marry one man. Marriage is allowed between Muslims and Muslims, Christians and Christians, and Christian women and Muslim men, but not vice versa. These rules are not included in the Personal Status Law; they are *shari'a* rules that have been applied to fill a gap in the law.

All those who are considered members of religions other than the three religions referred to by the Egyptian Government as “heavenly” (*samawiya*) or “recognized” religions – Islam, Christianity, and Judaism – cannot conclude a marriage contract. There is no civil marriage, only religious marriage. Churches can prevent a marriage if one of the parties has any just cause or impediment why the marriage should not go ahead. The costs of organizing a marriage depend on the area one resides in and the value of the dowry.

## As a consequence of marriage:

- The husband should pay for the housing, household, and the children, and if he does not do so, during marriage his wife may claim in court the various expenses related to the household, the house, and the custody of her children (see below under Pre-nuptial agreements and financial consequences of marriage).
- The wife must submit to the husband's matrimonial authority (*ta'at al-zawj* or obedience to the husband). She can only travel if he allows her to do so; the husband is allowed to prohibit his wife from travelling without his consent according to *shari'a* and a Hadith or Saying of the Prophet Muhammad, which translates as “Every man is responsible for his family.” She is under his wardship (*al-qawama*), i.e. she cannot leave the house without his permission according to Article 25 of the Personal Status Law of 1920), but financially she remains completely autonomous (see below, Financial consequences of marriage).

## Marital status is included on the ID cards of each of the spouses, but in different ways for each.

- Men's ID cards only bear the word “Married”; a woman cannot know from an ID card if a man is still married, and to how many wives. A man can claim that he is divorced while his ID still bears the word “Married”. The only way to find out is to check his personal/ marital status through his Family Paper (see above).
  - In Muslim marriage, a wife generally keeps her own name. Her own name is recorded on her ID card, along with that of her husband.
-

## The marriage contract

The names and personal details of the spouses are recorded in the marriage contract, along with the amount of the dowry, and the name(s) of other wives. In practice, men often do not include the latter, agreeing with the *ma'zoun* not to record the name(s) in the marriage contract.

### Special conditions in the marriage contract

Special conditions can be put in the contract, as long they respect the public order and are in line with *shari'a*. As a result, the following conditions are the ones that may be inserted:

- The woman may divorce herself, but only if a specific clause is used in which the man delegates the *talaq* form of divorce to his wife, which is called *'isma*, or a woman's right to an uncontested divorce (very few men agree to this condition);
- The woman is granted a divorce if her husband marries a second wife. This situation can also be a reason for divorce even if this special written condition is not included in the marriage contract, but with this condition in place a woman's position is stronger, and divorce will be immediately granted, while otherwise it may take a year to prove the moral damage caused to her by the second marriage (see Divorce by the woman, section c. *Talaq li-l-darar*, in Divorce, below);
- The specific area the woman wants to live once the couple are married; and
- The woman may travel on her own without the permission of her husband (i.e. in a departure from the decree above stating that a wife needs to obey her husband and only travel with his agreement). Even though this clause is against the public order, it gives the woman agency.

#### *Special conditions in practice*

In practice, most people view the marriage contract as a formality and do not consider the possibility of inserting special conditions. People are not aware of the possibility of inserting special conditions and, if they are, they often think this is limited to the physical space available on the relevant marriage contract page, which gives only six lines for special conditions, which the *ma'zoun* adds by hand when the contract is signed. However, many more special conditions than this space allows for can be put in an annex to the marriage contract – a fact that even most lawyers are often not aware of. In the past, women would require many pages of special, often very specific, conditions. Books have been written on these special conditions.

Foreign nationals who marry Egyptians complete the marriage contract at a public notary office (*al-shahr al-'aqari*), and can put as many conditions as they wish in the contract as long as they respect public order. There are many of these offices throughout the country; they are part of the Property Register in the Ministry of Justice.

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## The furniture list

When the marriage contract is signed, an additional document has to be signed by the man and witnesses of the marriage, called the furniture list, which documents the furniture and the household machines, and the dowry and the gold gifts (jewelry). The families of the spouses have a large say in this, which is a significant source of conflict, especially since the financial aspects of the marriage tend to be agreed verbally.

The financial value of each item is stipulated next to its name on the list. In case of divorce, if the husband does not pay the total amount of all the items on the list to the wife, private law, and not family law, is applicable. Non-compliance of a financial obligation according to Egyptian Civil Law may lead to a criminal prosecution. Men often end up in prison after their ex-wives go to the police to denounce them for not having paid the total value of the furniture list. The proposed new Personal Status Law would make the furniture list part of the marriage contract, make any issues regarding this list subject to family law in the Family Court, and decriminalize non-payment of the list.

In practice, the items included in the furniture list can differ. Nowadays, furniture may be divided between couples, and a woman can participate in providing things that are usually on the list. However, according to *shari'a*, the law, and the custom, the furniture list is solely the obligation of the man. If a woman buys items and records them in the agreed furniture list as bought by her, in a divorce he is obliged to reimburse her for these items.

In any marriage contract, the amount of the dowry is stipulated, including the jewelry. If the jewelry has not been received by the wife, it has to be put on the furniture list, and in this way, becomes a financial obligation towards the wife. In the marriage contract, the dowry is often valued at EGP1 to avoid high government fees being charged for the marriage. However, in the furniture list a higher value for the dowry can be recorded.

In *khul'a* (unilateral divorce by the woman – see below), the wife has to return the part of the dowry that she has received, but the part of the dowry that is on the furniture list still has to be paid out to her by the man, as all items on the furniture list are considered to be financial obligations.

## 'Urfi marriage: customary or unofficial marriage

This informal type of marriage is not performed by the *ma'zoun*. The wife does not enjoy the legal security and financial rights connected to a formal marriage in the unofficial '*urfi* marriage.

'*Urfi* marriage can be organized in several ways. A contract is often signed with two witnesses, with each one receiving a copy, but '*urfi* marriage can also be organized without a contract or witnesses. In the latter case, the marriage is difficult to prove.

'*Urfi* marriage is used both by traditional rural people when women marry under the legal marriage age, and by people living in urban settings – often urban youth – who live together. For Christians, '*urfi* marriage is used if they are unable to divorce and consequently unable to remarry, due to the strict and limited set of circumstances in which a divorce is granted in the Personal Status Law for Non-Muslims. Women may also enter into an '*urfi* marriage if they want to continue receiving the financial aid, wages, or pensions of their dead father or husband. In the case of the pension of the late father, when the father of a daughter or daughters passes away, the daughter or daughters have the right to continue to receive his pension. However, if the single daughter marries, or in the case of multiple daughters, if any of the daughters marry, her/their right to receive the late father's pension is withdrawn. Some women therefore might resort to '*urfi* marriage, as its unofficial nature means that they are officially unmarried, and can therefore continue to claim their late father's pension.

In cases where '*urfi* marriage is organized without a signed contract, as proof of the marriage, two witnesses need to declare in court under oath that they have seen the couple living together as if they were married. See above regarding the relevance of this for birth certificates and recognition.

## CONCLUSIONS REGARDING MARRIAGE

### AT-RISK GROUPS:

- Those in extreme poverty
- Christian men and women
- Women

### SOURCES OF DISCRIMINATION:

Gender: both men and women in general

Religion:

a) if a Christian woman marries a Muslim man, the couple's children are Muslim in the eyes of the law, and she cannot gain custody over them, or receive an inheritance from him, and  
b) if a Christian man marries a Muslim woman, he has to convert to Islam; following conversion to Islam, it is not possible to convert back to Christianity.

### LEGAL ASSISTANCE NEEDED:

People do need legal advice about the marriage contract and its consequences. It is an extremely important contract with regard to the legal rights protection of citizens in general, and for women in particular; for a woman to enjoy legal rights protection, it is critical that a woman fully understands and reviews the marriage contract.

### PRACTICAL SOLUTION:

If a Christian man and Muslim woman want to marry, they should: a) marry abroad in a non-Muslim country, or b) the Christian man can convert to Islam, which is a simple procedure.

## RECOMMENDATIONS

- ◆ Modify the personal status laws for Muslims and Christians, which is in fact already taking place.
- ◆ Include all actively applied *shari'a* rules concerning marriage in the Muslim Personal Status Law.
- ◆ Ensure women have a good knowledge of the marriage contract and the special conditions that they can insert in the contract to help them to avoid a large number of problems.
- ◆ The template of the Muslim marriage contract should be thoroughly reviewed; support for this undertaking can be found in the Quran, which states that marriage is "*mithaqan ghalitha*" or "a solemn covenant" (Surat *al-Nissa'* (Women), Verse 21).<sup>5</sup> The template includes only six lines for special conditions, which are handwritten by the *ma'zoun*. An unlimited number of lines in a digital version would be needed to encourage the use of special conditions in marriage contracts. The *ma'zoun* should only check if the conditions are in line with the basic rules of *shari'a*.

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<sup>5</sup> "Read Surah An Nisa in Arabic with Translation and Transliteration," *My Islam*, accessed February 23, 2023, <https://myislam.org/surah-an-nisa/>

## Co-habitation

There is an established social custom in Egypt that a couple who are not married are not allowed to live together. This social convention is enforced both by Muslims and Christians, including neighbours, the owner of the flat/house where the man and woman live, and the police.

In practice, when people do live together and are not formally married, an *'urfi* marriage is arranged.



## Prenuptial agreements and financial consequences of marriage

Under Egyptian law, each of the spouses must keep his/her belongings and income separate during marriage. No conditions can be included in the marriage contract for joint property ownership and joint income. This is a general rule in *shari'a*, which cannot be changed in the marriage contract or by a prenuptial agreement. Thus, during marriage, women traditionally maintain their full capacity and competence with regard to the disposal of their wealth and income. Spouses do not need the signature of each other for real estate property transactions or taking out loans.

The husband must take a house for the household, and if he has several wives, each one needs her own house. Even if the wife is wealthier and has a higher income than her husband, the man is obliged to pay for the expenses of the household and the children according to *shari'a*. In reality, this often does not happen. Several types of claims related to *nafaqa* (financial support by the husband for his wife during and after marriage) can be brought before the court during marriage: 1) food; 2) clothes; and 3) accommodation.

After divorce, additional law suits may be filed for a number of expenses, including a small budget for expenses related to the woman having custody of her children, and school fees (see below under child support). Also, after divorce the wife may stay in the house as part of the laws governing custody of minors.

### AT-RISK GROUPS:

Muslim  
woman

Muslim  
men

### SOURCES OF DISCRIMINATION:

Gender and religion

### LEGAL ASSISTANCE NEEDED:



Women need legal assistance, especially in regard to gaining full knowledge of what their rights are in the case of a verbal divorce and if a divorce by the woman is agreed in the marriage contract. Thus, a lawyer to represent them in court is not obligatory.

## Divorce

Separation and divorce rates in Egypt are very high. In 2021, there were 808,000 marriages, and 205,000 divorces.

In principle, the power to divorce lies with the man, but there are exceptions to this. There are several ways to divorce in Egyptian law.

1. **Talaq 'ala al-ibra'** or **divorce by agreement**: (most usual and advisable for both parties)
2. **Talaq** or **verbal divorce by the man/male-initiated repudiation**: The husband unilaterally ends the marrying contract; this form of divorce needs to be formalized in order for the wife to claim her legal rights.
3. Divorce in the **absence of the woman** by the man with the *ma'zoun*
4. The wife ending the marriage contract:
  - a. **Khul'** or **no-fault divorce carried out by the woman** (since 2000): the wife ends the marriage and loses all her marriage-related rights except for the rights related to the custody of her children, and the furniture list
  - b. **'Isma** (the word *'isma* means a husband's matrimonial authority over his wife/bond of marriage); divorce through the relinquishing of *'isma* can be defined as **a woman's right to an uncontested divorce**: the wife ends the marriage if it is stipulated in the marriage agreement that the man delegates his right of *talaq* to her. She also loses all her marriage-related rights, except the ones related to the custody of her children and the furniture list.
  - c. **Talaq li-l-darar** or **judicial dissolution due to harm/fault-based divorce**: Divorce requested by the woman under limited circumstances, which is complicated; the woman retains all her legal rights.

*Talaq* or verbal divorce by the man is immediate, but if the husband refuses to register the divorce, it can take about two to three years to be registered by the Family Court on the request of the wife. She needs the registration of the divorce to be recorded as divorced on her ID card, and to be able to file all kinds of claims related to the divorce (see below). Only *talaq al-ibra'* or divorce by agreement, and *'isma* are fast. *Khul'* or no-fault divorce carried out by the woman takes only a few months, while *talaq li-l-darar* or fault-based divorce may take many years.

## Christians

When Christians belonging to the same denomination want to divorce, the bylaw of their denomination is applicable. The Coptic Orthodox Church, by far the largest Christian denomination in Egypt, only allows divorce in a precisely defined set of circumstances. In cases where difficulties securing a divorce arise as a result of these bylaws, a practical solution is for one of the spouses to change his/her denomination, in which case the *shari'a*-based Personal Status Law for Egyptians in general becomes applicable, allowing the couple to divorce. Another option is for one of the spouses to convert to Islam. If the man converts to Islam, the Christian wife automatically loses the custody of her children and the right to inheritance.

## Talaq 'ala al-ibra' – divorce by agreement

### Problematics:

All negotiated and should be supported by a lawyer. This is the best option for both parties, as a *talaq* or unilateral verbal divorce by the man may turn out to be a costly affair for him (see below under *Talaq*). Many court proceedings and problems are avoided when the spouses agree to divorce. The agreement has to be registered in the Family Court: the agreement is simply signed and stamped at the Family Dispute Resolution Office in the Family Court.

As already mentioned, general rules of *shari'a* cannot be changed, and this also applies to the divorce agreement; for example, in a divorce, the man cannot have the custody of the children (see below under Custody).

## Talaq – verbal divorce by the man

*Talaq* is the unilateral verbal divorce by the man, who says "*Inti taliq*" ("I divorce you") three times out loud to his wife. At this point, for the man, the legal path stops, and the legal battle begins for his (ex)wife. After this verbal divorce, the wife has to request the confirmation of the divorce in the Family Court. She needs this to change her ID card and to marry again, and also to be able to file the following claims after *talaq*:

- a** compensation for moral damages for ending the contract: a minimum of two years of household expenses;
- b** expenses for between four months and one year: in order to claim this type of compensation, the wife needs to wait for three menstruations to ensure that she is not pregnant, or when she is pregnant, expenses can be claimed for a period up to one year;
- c** payment in full regarding the money recorded in the marriage contract that the man is required to pay the woman (dowry), which in most cases had not been paid in reality;
- d** payment in full regarding the furniture list;
- e** the monthly household expenses for the full year preceding the divorce;
- f** child support (see below under Child support);
- g** educational mandate (in law, the educational mandate lies with the man, while in law, custody over children lies with the woman (see below under Custody); and
- h** the house of the children (see below under Custody).

*Talaq* ends the marriage contract unilaterally, without the procedures related to the above claims needing to be filed. The risk then is that the wife files these procedures for compensation and expenses, which is very cumbersome and expensive for the husband. For this reason, a divorce in agreement is much better for the husband as well as the wife.

One of the most significant problems for the wife regarding *talaq* is the provision of proof that the declaration of *talaq* has in fact been made by the man; this is often very difficult to prove. It is important to know how to build the proof of *talaq*.

If the wife is not present, the husband may also file for **divorce in the absence of the woman** with the *ma'zoun*.

## Divorce by the woman

### 1. ***Khul'*** (no-fault divorce carried out by the woman, in law since 2000)

A woman can request a divorce in the Family Court without proof of any personal harm. As a consequence, under *khul'* law, she loses all her marriage-related rights except: 1) the execution of the payments to her by the man related to the furniture list, as in Egypt it is a criminal offence not to comply with financial obligations; and 2) the custody of her children and all rights related to custody (the house, household expenses, and child support).

*Khul'* is usual final within three to six months. Procedures involve a request with the Family Court, including two hearings, to check that the woman really wants to file for *khul'* to inform her that she loses all her rights except those included under *khul'* law; and to ascertain the gifts and money she should return to the man.

*Khul'* is usually granted, and no appeal is possible.

### 2. ***'Isma* (a woman's right to an uncontested divorce)**, whereby the wife divorces herself according to a clause written into the marriage contract. *'Isma* can only take place if there is a specific clause in the marriage contract to the effect that the man delegates his right of *talaq* to her. To file for *'isma*, the woman must present the marriage contract to the *ma'zoun*, and register the divorce. As a consequence, she loses all her rights related to marriage except those connected to the custody of her children and the furniture list, as in *khul'*.

In practice, men very rarely agree to put this clause in the marriage contract.

### 3. ***Talaq li-l-darar* (judicial dissolution due to harm/fault-based divorce)**

The woman can request a divorce and compensation in the Family Court in following cases:

- 1) if the man marries another woman (polygamy);
- 2) domestic violence (bad treatment): if the man is physically violent to his wife, and official evidence to that effect exists;
- 3) if the man does not provide any expenses for the household and his children for a period of one year;
- 4) if the husband is imprisoned;
- 5) in case of abandonment by the husband; and
- 6) if the man suffers from sexual dysfunction for a period of one year (must be medically proven).

If the necessary official proof re. the cases above can be secured through witnesses, written evidence etc., the woman can then claim all her marital rights. Gathering proof can take a great deal of time.

In case number 1: the man marries another woman, the divorce will be granted more quickly if there is a clause in the marriage contract that states that the man cannot marry a second wife, or if the woman can prove that the man did not inform her of his intentions before marrying a second wife. If the man informs his first wife of his second marriage, she has to prove within one year at the Family Court the moral damage caused to her by the second marriage.

### Problematics:

- A Muslim man can divorce his wife simply by telling her three times that they are divorced. The burden of all the legal procedures necessary to secure a formal divorce lie with the woman; without a formal divorce she cannot remarry or claim her marital rights.
- Public prosecutors are also often present in divorce cases, exercising considerable influence on these proceedings and the outcome of the case.
- When a Christian woman is married to a Muslim man, or Christian spouses belong to different denominations, Muslim Personal Status Law applies.
- Corruption
- An absence of provision of legal and assistance to women
- The burden of proof is the women's responsibility.

### AT-RISK GROUPS:

Women

Christian spouses belonging to the same denomination, for whom divorce is in principle only possible under a very limited set of circumstances

### SOURCES OF DISCRIMINATION:

Gender and religion

### LEGAL ASSISTANCE NEEDED:

Women need legal assistance, although a lawyer to represent them in court is not obligatory.

### RECOMMENDATIONS TO SOLVE LEGALITIES:

*Talaq* should be only valid if declared before court or a *ma'zoun*, in order to increase legal security.

## Custody

Custody of children extends until a child is either 15 or finishes their education, but not later than 18. When a child turns 15, they may choose which parent they wish to live with.

Custody both during the marriage and after divorce lies with the mother in the first instance if she is Muslim. In the past, the father would only be granted custody in the 16<sup>th</sup> instance, but the new law of 2022 stipulates that that custody is granted as follows:

- in the second instance to the mother of the mother if the mother is not capable of caring for the child or if she has married again after the divorce;
- in the third instance to the mother of the father, for example if the mother is Christian; and
- in the fourth instance to the father.

The house of the children is connected to custody, and if there is no house then the wife can request a house after divorce. After divorce, she can also request a custody fee (this is like a salary in addition to child support). In practice however, after a divorce, in fulfilment of this law, a man will often give a different cheap house in an undesirable area to his wife and children, put the children in cheaper schools, and so on.

Christian women married to Muslim men are not granted custody of their own children, either during the marriage or after divorce.

## Educational mandate

Men have custody with regard to all issues connected with his children's school(s) (educational mandate). Women can only contact their child's school if an educational mandate has been provided to her by the court.

This is a significant problem in the case that the woman is separated but not yet divorced, or if her husband is abroad. She is not allowed any contact with the school, and is not permitted to change their child's school.

In practice, when a couple is married, the man has the educational mandate and the woman the custody. When they divorce, custody remains with the mother unless she marries someone else. After the divorce, a woman who has the custody of her children can request an educational mandate from the court; she can also ask for this before a divorce, but this is very complicated to arrange.

The Egyptian Personal Status Law contains several conditions that ensure that the mother and father are able to provide their child with proper care. The mother and father must: 1. be in good health in both mind and body; 2. be in sound mental health and have reached the age of legal responsibility (i.e. adult, or 18 years of age); 3. have good manners (i.e. in accordance with religious teachings); and 4. Must not be married to anyone who is unmarriageable, i.e. anyone who is in a degree of consanguinity precluding marriage (*mahram*); in practice this means when a mother remarries after a divorce.

### AT-RISK GROUPS:

- Women lose their right to custody if they marry again.
- Christian women never have custody of their own children if they are married to a Muslim.
- Men do not have the right to custody, either during marriage or after a divorce.
- Men are required to pay large sums of money related to custody, and they can only file one lawsuit: a lawsuit to gain access to their children one or two days a week.

### SOURCES OF DISCRIMINATION:

Gender and Religion; Christian women cannot file for custody of her children if her ex-husband is Muslim (many Christian men convert to Islam to be able to divorce and to deprive their ex-wife of custody).

### LEGAL ASSISTANCE NEEDED:

- There is a high demand by women for the educational mandate when they are not divorced (if the man is unable to deal with educational affairs due to him living abroad, for example), but this is hard to obtain, and you really need a lawyer to apply for it.
- Men often want to file lawsuits to remove custody from the ex-wife when she begins seeing someone else, as in practice she loses custody when she marries again.

### PRACTICAL SOLUTION:

The parents can of course always agree to make different arrangements that better suit them regarding custody than those provided by the law. But the problem is that these arrangements are only valid as long as all parties agree, and they cannot be legally enforced.

### RECOMMENDATIONS TO SOLVE LEGALITIES:

Modification of the Personal Status Law to make women and men equal in law in regard to their right to custody and the educational mandate.

## Child Support

This is an important field for which many court cases are filed in the Family Court. Claims related to child support (as part of *nafqa* or financial support by the husband for his wife during and after marriage), include claims related to the house, food, school fees, medical costs, and many other costs related to children.

Financial child support is calculated based on the father's net income. However, a large part of the population works in the informal economy. Problems appear when ex-husbands fabricate their income statements, claiming that their monthly income is less than the amount they actually receive. Child support can be organized through agreement, or parents refer to the courts to settle this issue (the majority of parents do the latter). Corruption and costly and lengthy procedures are also problems faced by parents. Women have to file a large number of cases after a divorce in order to secure child support; a separate case is required for each type of support, such as expenses for food, school fees, hospital fees, furniture, clothing expenses, expenses for children's haircuts, and so on.

As a divorce without agreement takes between one and three years to be finalized, child support procedures are often finalized a lot faster than the divorce itself.

### AT-RISK GROUPS:

The  
rural  
poor

Women

Children

Groups whose  
religion is not  
recogni ed y  
the state

### SOURCES OF DISCRIMINATION:

Gender and religion; groups whose religion is not recognized by the state cannot file a case. Only women can ask for financial support for their children, as the father is the person legally responsible for their financial support.

### LEGAL ASSISTANCE NEEDED:

Legal assistance is  
needed to file for  
child support.

### PRACTICAL SOLUTIONS:

Witness statements  
on men's income  
should be required  
in law.

### RECOMMENDATIONS TO SOLVE LEGALITIES:

People should be encouraged to file all claims in one case to avoid overloading the Family Court, as to do otherwise is both inefficient and results in high lawyers' fees for women.

# Inheritance



Inheritance is a critical issue in Egypt. Applicable laws: Personal Status Law: *shari'a* and the law of the Christian churches.

## Drafting of a Will

### Problematics:

According to the law, a will can be verbal or in written form. In accordance with *shari'a* inheritance division rules, only 30% of an inheritance can be given away freely in a will to people who are not the person's heirs. A will has to be registered in person at *al-shahr al-'aqari* (public notary office). However, many people do not register their wills and/or do not write their will in accordance with the rules of *shari'a*, which leads to conflicts after their death. Drafting a will is easy as long as it is not done so contrary to *shari'a* and the public order.

### In practice:

People do not make a will. Only some members of the wealthy social classes do so. What in other countries is usually put in a will, is distributed in Egypt through gifts given during a person's lifetime (see below). A will is very useful for a Muslim man married to a Christian, as through a will he can ensure that his wife will be included in his inheritance, but of course this is limited to one third of the inheritance in accordance with *shari'a*.

## Inheritance procedures

### Shari'a inheritance division rules:

In inheritance in Egypt, it is not legally possible to deviate from the rules for the division of inheritance laid down in *shari'a*. According to these rules, daughters receive half of the amount sons receive in inheritance, and if there is no son, the father's brother(s) receive(s) what the son(s) would have received. Also, as stated above, only 30% of an inheritance can be given away freely in a will to people who are not the person's heirs. A Christian woman married to a Muslim man is excluded from their husband's inheritance, except in regard to this 30%, which the man can freely dispose of in a will; gifts given during one's lifetime, meanwhile, are completely free of rules (see below).

For Christians, the inheritance division norms between brothers and sisters are equal for men and women in the majority of the denominations. However, in practice, courts have the tendency to also apply the *shari'a* division norms to Christians. Recent jurisprudence has sought to change this situation with Article 3 of the Constitution of 2014, which states that "the principles of the laws of the Egyptians, Christians and Jews, are the main source of legislation regulating their personal status". This jurisprudence allows Christians to choose the applicable law and to divide the inheritance equally between siblings. However, at present, due to the conservative religious culture of judges, and some inheritance articles in civil law that state that *shari'a* prevails, in most cases judges do not ask the heirs about their agreement or desire to apply Christian law. In addition, the Christian male heirs in many cases demand the application of Islamic law because they benefit from it.

**Alternative to avoid *shari'a* inheritance division rules: Gifts given during one's lifetime:**

As shown above under Drafting a will, a will does not provide a solution to *shari'a* division rules as it only concerns maximum 30% of the gifts to persons who are not the inheritors. Giving gifts during one's lifetime is a practical solution to avoid these division rules, and to be completely free with regard to who you give your inheritance to. This solution is used by parents who want to give the majority of their inheritance to the oldest son(s), particularly in regard to land in rural areas; by parents who only have daughters and want to avoid the brother(s) having access to the inheritance; or when parents want all their children to share their inheritance equally. The safest legal way to give gifts during one's lifetime is to make revocable gift agreements with usufruct (the right to enjoy the use and advantages of someone else's property without destroying or wasting it) to the parents, to make sure they have some income to live from, and thus avoid them becoming dependent on their children when they have given most of their inheritance away.

Actually, *shari'a* encourages gift-giving by saying that it is better to do this to avoid conflict/hostility.

Tax implications: The *tarika* is the total amount of the inheritance that will be divided; the *tarika* is taxed at 5%, but this is usually not implemented. Gifts are tax free in practice.

**Procedures:**

After a death, the family members go to the Family Court with the death certificate and two witnesses confirming who passed away and who can be named in the inheritance. Just one session with the family members (as stipulated in *shari'a*) and witnesses is necessary. The judge issues an inheritance paper stating the names of the inheritors and the percentage of the inheritance each one should receive, but does not get involved in the details of who inherits what. If the judge has a reason to doubt any aspect of the inheritance, (s)he will request more official papers. If the property is registered, all the family members have to go to the Property Agency with the inheritance paper, to request the transfer of property to their names.

**PROBLEMATICS:**

- There is often conflict between inheritors.
- In practice, courts often apply Islamic law regardless of whether Christian inheritors agree to this.
- The bias of the state and judges against women and religious minorities
- There is no civil law that people can resort to.
- Not all court decisions are implemented, and procedures can take more than a year.
- Social traditions are generally stronger than the law, especially in regard to land in Upper Egypt, which usually goes to the eldest son(s) to avoid the land passing into the hands of other families. This is often done through a sales contract during the owner's lifetime, in which no payment is in fact made.

**PRACTICAL SOLUTIONS:**

- Gift-giving during one's lifetime
- Making a will giving 30% of the freely allocated amount to the Christian wife

**AT-RISK GROUPS:****Women****Religious minorities****Christian women:**

A Christian woman married to a Muslim has no right to his inheritance

**The Christian children of a Muslim father:**

Christian children of a Muslim father have no legal right to their father's inheritance.

**SOURCES OF DISCRIMINATION:**

Gender and religion

**LEGAL ASSISTANCE NEEDED:**

People usually need legal assistance

# Property related documentation



Property registration and transactions are governed by civil law, namely Deed Law 114 of 1946, the Public Notary Law for New Cities 27 of 2018, and Title Law 142 of 1964.

The two main agencies involved are:

1. the Property Agency within the Ministry of Justice with its *shahr al-'aqari* (public notary) offices all over the country, and
2. the Survey Agency in the Ministry of Irrigation and Water Resources.

## Summary of the history and problematics of the property registration system

A good description of the history and complexity of the property registration system can be found in a report by David Sims.

Today, the official land and property registration regime in Egypt is difficult for citizens, procedurally complicated, and costly for most property transactions. Such was admitted even by the Prime Minister, who was quoted as saying in February 2021 that “About 95 percent of our real estate in Egypt is unregistered.”<sup>6</sup> The story of how this situation came to pass is long and convoluted, but it is worth making an effort to summarize the situation.

At the start of the 20<sup>th</sup> Century the British colonial administration began surveying all agricultural lands in Egypt (mainly for taxation purposes) and by 1925 most of these lands had been entered into a cadastre and formally recorded by the Egypt Survey Authority (ESA), with cultivated land divisions (the smallest of which was the *hod* or basin) and individual fields demarcated. Cadastre and mapping work was also begun in urban areas, and most of Cairo and some other cities had been surveyed by 1935.

Two laws were issued in 1946 and 1964 that set out the legislative framework for the current property registration systems in Egypt. The first, Deed Law No. 114/1946 (*al-sigil al-shukhsi*) set up the notary deed system (based on and organized by individual ownership, a paper-based Personal Folio). The second, Title Law No. 142/1964 (*al-sigil al-'aini*), a paper-based Real Folio, allowed the registration of property that was based on and classified by the property itself and the cadastre for the locale. Both of these laws confirmed that it is the Ministry of Justice that manages property registration through its *shahr al-'aqari* offices located throughout Egypt, and it is the Egypt Survey Authority (ESA) that carries out property surveying and inspection for property verification and maintains an up-date cadastral mapping systems.

All properties (land and buildings) in Egypt are required to be registered under this legislative and institutional framework in order to be considered legally transferred. The bureaucratic and clerical requirements of this property registration system are

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<sup>6</sup> Al Ahram Weekly, “Egypt’s government to amend Real Estate Registration Law; postpone enforcement till January,” 28 February, 2021.

and complicated, if not labyrinthine. In order for a property transaction to be registered under either the Deed or Title systems, a clear chain of title from the last time the property was entered into the registry, usually when it had been part of a larger agricultural land parcel, is required. For many lands and properties in both urban and rural areas, establishing this chain, which usually goes back for decades, extremely difficult, mainly because, at some point in the chain, there was a deceased owner whose inheritors were never officially declared.

Property maps and registries for individual *ahwad* (basins) in the Old Lands are kept at the local REPD offices, and transfers and mutations are recorded when an individual parcel is formally registered. But since few buyers/sellers go through the hassles and expenses associated with such registration (even if the required documentation exists), in any particular hod [sing. of ahwad] only a small percentage of the land area will transactions be recorded, meaning that for most parcels information is out of date.

The considerable expenses associated with such a property registration regime have made it considerably unattractive. Even though there have been various moves to reduce fees, there is still a 2.5 percent transfer tax of the declared value and numerous fixed fees. In addition, navigating through the system and preparing necessary documentation requires lawyers, whose fees can be considerable, especially in complicated situations.

The situation has not been helped by the difficulties facing the ESA in performing its role in the existing property registration regime. By the law the ESA is responsible for maintaining and updating cadastre records and maps as well as field surveying, but it has, as an independent economic authority, found the resources to fulfil such a crucial role. Also, by law the ESA is an essential part of the individual property mutation process, especially for the Title registration system, by inspecting and verifying property details in conjunction with the relevant REPD office. Poor coordination between the ESA and REPD offices, as well as cumbersome paperwork requirements and the significant fees attached, have added to the unattractiveness for citizens seeking to have their lands or properties properly registered.

How then are freehold properties in Egypt transferred and how is ownership documented? The answer is that a number of quasi-legal procedures have evolved over the years that conveniently sidestep the official registration system and allow for relatively straightforward, quick and inexpensive means to conclude most property transfers. These mainly use *'urfi* contracts, which are simple two-party preliminary sales contracts that should be witnessed by at least two persons. For many, these simple paper contracts are sufficient, but for more security it is possible to have these contracts endorsed in the courts under the *saha towqia* or the more stringent and lengthy *da'wa saha wa-nafaz* procedure. Alternatively, the seller of a property can issue a power of attorney (*tawkil*) to the buyer, giving him all ownership rights over the property, including transfer to a third party, and then this *tawkil* can be endorsed, just as in the case of the sale of a car, at a *shahr al-'aqari* office (since 2019 this endorsement is said to have been declared unacceptable, but it is sometimes still used). Again, it helps for a lawyer to represent either the buyer or seller or both. Such semi-formal systems of transfer are used not only by individual buyer and sellers who dominate land and property markets in both rural and urban areas of Egypt, but also even by private companies that are selling new housing units or plots in subdivisions. They are not perfect and fraud is a remote possibility (such as selling the same property more than once).

# First registration of property: building and urban land

## PROBLEM NUMBER



Less than **5%** of the property in Egypt is registered.

Formal registration with the Property Agency has always been very complicated as described above, and an amendment to the property law was passed earlier in 2022 in order to make it easier, but to date, no cases have been implemented with this new law.

### **Prior to the above 2022 amendment, requirements for registration used to be:**

1. Map from the Survey Authority
2. Document from the Tax Agency that the tax obligations have been fulfilled (2.5% of the value of the property payable as tax for the transfer of the property, if there are no exemptions)
3. List of all the previous owners of the property
4. Title for receiving the property (sales contract or inheritance paper)
5. Document showing the legality of the building
6. Document showing the legality of the land under the building.

Under the amendment to the law of 2022, you do not have to present the list detailing the sequence of former owners, and a property can even be registered if you can prove that you have used the property (i.e., you have used it in terms of having lawful possession of the property for living purposes, and have paid bills connected to the property and so on) in the past five years. You also no longer have to show that you paid all due taxes, but it is likely that you will be required to pay all taxes that you as the buyer are required to pay on the property at the end of the registration process.

Until the amendment to the law of 2022, the process of registration was very long, and involved many steps within the Property Agency: Firstly, a legal officer at the Agency would review and present the buyer with a list of missing documents that still need to be presented; Secondly, a more senior legal officer would review the process; thirdly, a legal officer would accept the process; and fourthly, the head of the Registration Agency would also accept the process. This procedure has now been reduced to just one step that reduces the time it takes for a decision to be made to within 30 days; within a 30-day period, the Property Register should ask the buyer to supply any missing documents, and the buyer should then present these within seven days of this request.

It appears that the above amendment to the law has been made in anticipation of the registration of buildings in the new cities currently under construction in the country.

## PROBLEMATICS CONCERNING THE PRESENT PROCEDURE:

- No one knows how the new law will be implemented.
- It is still difficult to generate the necessary documents.
- It is unlikely that the legal officers within the Property Agency will have the capacity to complete all the necessary procedures within 30 days.

## PROBLEMATICS:

There are no maps for many buildings; Not all maps are accessible to the public, especially those owned by the Egyptian Army.

Many of the old documents of ownership are missing.

In the past, there was a lot of corruption, and the process was long and complicated.

There is a lack of knowledge regarding the procedures.

## AT-RISK GROUPS:

95% of the Egyptian population; in particular, groups whose religion is not recognized by the state, and people without official personal documentation

## SOURCES OF DISCRIMINATION: Religion

## RECOMMENDATIONS TO SOLVE LEGALITIES:

People really need to try to register under the new law to protect their property and avoid of the many problems that informality in property ownership causes. The law should be seen as an opportunity; if a lot of registrations are made, implementation practices will develop.

## LEGAL ASSISTANCE NEEDED

People need legal assistance

## Legalization of construction

In the past, most of the buildings in many areas of the country were built illegally, i.e. without a building permit issued by the government. As of 2019, new laws and decrees are being issued to legalize illegally built old buildings. In itself, this legalization process is a quite an easy procedure, in which the main step is to pay the required fee. These fees are very high in the new cities currently under construction, but regular, lower fees are charged elsewhere in the country. The problem now is that millions of requests have been made, and it seems that only a few thousand legalization decisions have been issued so far.

Today, building illegally is not allowed; any building built illegally runs a significant risk of being destroyed.

New buildings are controlled by the central government, which first wants to legalize all illegally built new buildings; there are currently many legally and illegally built new buildings in the country. New building permits are mostly given in the new cities.



### Problematics:

- There are no maps for many buildings
- Not all maps are accessible to the public, especially those owned by the Egyptian Army
- Many of the old documents of ownership are missing
- Corruption
- The legalization process is long and complicated
- The implementation of the process is not standardized, and there is a widespread lack of knowledge regarding the procedures in this branch of law. The costs of conducting this legalization process are high, and there are few registration offices, most of them located far away from many urban and rural areas of the country.

### AT-RISK GROUPS:

- All people who own a building that has not been legalized
- Groups whose religion is not recognized by the state, and people without official personal documentation

### SOURCES OF DISCRIMINATION: Religion

### RECOMMENDATIONS TO SOLVE LEGALITIES:

- Applying a registration of property system in new cities (such as New Cairo)
- establishing a mapping system
- developing a project to set up a unified geolocation system through national maps.

### LEGAL ASSISTANCE NEEDED:

People need  
legal assistance

# Transfer of property

**Problematics:** If a building is **formally registered** with the Property Register, the transfer of the property involves the same procedures as those required for an initial registration of a building, whereby all the documentation needs to be presented. However, the difference between a transfer of ownership and an initial registration is that with the latter it is much easier to gather together all the required documentation.

If the building is **not formally registered**, the process is as follows:

1. A customary sale/purchase contract is drafted by a lawyer.
2. The court registers only the signatures, not the contract itself. This step, which is optional, is in order to ensure that one of the parties is unable to deny that they signed the contract of sale.
3. The name of the person on the electricity bill for the property is changed to the name of the buyer (and as a consequence, all other utility bills are also changed to the buyer's name). The power of attorney of the previous owner is needed to request this change. This may be complex if the electricity bill is not in his/her name, and for this reason, this change is very problematic in most cases.

A common source of confusion is the fact that *al-shahr al-'aqari* (public notary) offices are part of the Property Agency within the Ministry of Justice, and are in charge of: a) property registration, transfer of property, and registration of mortgages; b) the registration of rental agreements; c) the registration of wills; and d) the registration of power of attorney. Thus, many people confuse the power of attorney with the property documentation.

In order to make the contract effective and suitable for registration, the previous owner should be registered. Since, less than 5% of the property is registered, this becomes a long and complicated procedure, affected by corruption. People lack knowledge of procedures. This procedure increases the legal insecurity of not having the papers in order due to conducting transfer of the property without having registered ownership.

## AT-RISK GROUPS:

95% of the Egyptian population

People without official personal documentation (Groups whose religion is not recognized by the state, and migrants who are not registered)

**SOURCES OF DISCRIMINATION:** Religion

## LEGAL ASSISTANCE NEEDED:

People need legal assistance

## PRACTICAL SOLUTION:

- a) The name of the person on the electricity bill for the property should be changed to the buyer's name, as having this bill in the buyer's name is a strong indicator for proof of ownership of the property;
- b) have the contract of sale formalized by the court.

## RECOMMENDATIONS TO SOLVE LEGALITIES:

If the transfer concerns a registered property: simplify! All the documentation is already with the Property Agency: only the contract of sale and the tax papers would suffice with regard to additional documentation required.

There is now a new registration system related to the new cities currently under construction on the country, and this should be followed on the national level.

# Agricultural Land

The legislation applicable to agricultural is the same as that applicable to urban land/housing. However, the implementation of the process is different.

## First registration

In the early twentieth century, much of the agricultural land in the country was registered, but these records were not subsequently updated, and are often now ignored.

The desert land where the new cities are currently being constructed is state-owned land that still needs to be registered. This usually needs to be done by the project developers once they have paid the last instalment of the price of the land. The new property law is applicable for these first registrations (see above, First registration of property: buildings and urban land).

## Informal registration

Most registrations have not been updated, and smallholder farmers tend to only have a contract of sale and a registration document from the Agricultural Bank.

All land registrations are recorded by the Agricultural Bank with support documents that have been provided by the Survey Agency. This procedure is implemented through farmers' membership of the (state) cooperative: as membership of the cooperative is a precondition for receiving subsidized fertilizer, most farmers are members, and thus have their land registered by the Agricultural Bank.

## Transfer of agricultural land

This is carried out the basis of a contract of sale or inheritance, and the procedures are the same as for the transfer of property of building.

It is customary register agricultural land in the name of the husband, and in the case of inheritance, the land normally passes exclusively to the sons, and very often the eldest son. These practices are based on custom, and not on the law.

# Rental agreements

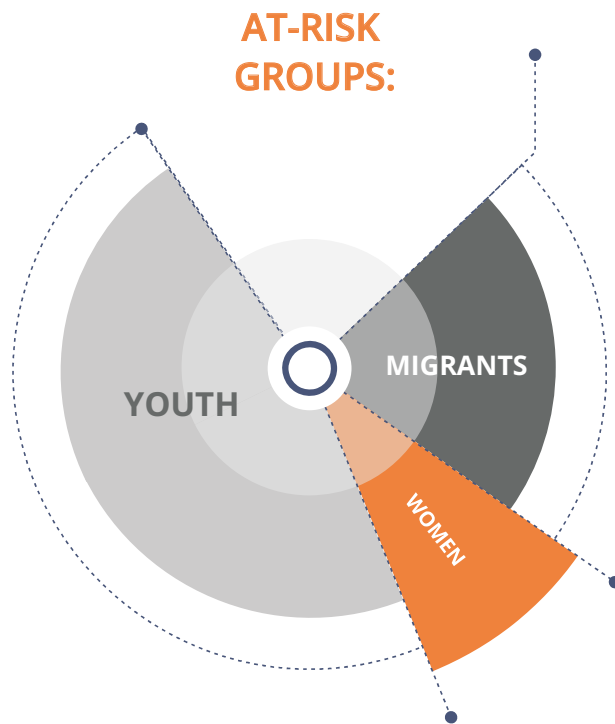
## Rental agreements from the Nasser era

In 1996, all the socialist-inspired laws that were passed in the Nasser era (1954–1970) were withdrawn, with the exception of the rental law. Very low rents, less than €0.5 per month in many cases, are still being paid all over the country, including in the wealthier older areas in Cairo like Zamalek, Heliopolis, Maadi, and Downtown. The old rents are very much protected, and can be passed on to one succeeding generation of family members. Rental contracts cannot be terminated by the owner of the property in as far as they concern first generation family members. Regarding anyone else who has no legal right to these rental contracts, court cases need to be filed against these persons in order to terminate the contract. Many court cases have been filed in connection with such situations.

## 1996: civil law applicable to the rental relationship

As of 1996, rental contracts can only be drawn up for specific limited duration. A significant problem in regard to these contracts arises when tenants do not leave the flat/house when the contracts ends. Many court cases filed to remove tenants take one to two years to win. However, in 2006, a new regulation on rental contracts was passed. The property owner can register the rental contract within the Property Agency (this takes up to three days, and requires the owner and tenant to sign the registration document at the Property Agency). With this registration in place, it is a relatively easy and short process to request the enforcement of the rental contract, and to end the rent accordingly. Property owners often do not know about this process, and do not register the rental contract.

Although no law requires registration of rental contracts with the police, the property owner should inform the local police station of the concluded agreement, and a copy of the ID card/passport of the tenant(s) should be submitted. This is for security reasons, so that the police know who is living in the neighbourhood. Property owners who do not do this risk having problems with the police.



**SOURCES OF DISCRIMINATION:**

Religion and gender

**LEGAL ASSISTANCE NEEDED:**

People often need legal assistance in cases where the property owner did not register the contract with the Property Agency at the start of the tenancy, and problems subsequently arise with the tenant.

# Labour



Under administrative law, civil servants are employed on the basis of unilateral administrative decisions rather than contracts; for enforcement these decisions fall under the competence of the Administrative Court and ultimately the State Council. In 2022, there were 3,210,000 civil servants in Egypt. In 2018, there were 5.2 million. The law governing this relationship is clear and a lawyer is easily accessible. Microjustice focusses in this report on employment contracts in the private sector, and the absence of them.

The Labour Law of 2002 has been amended on the advice of the International Labour Organization (ILO).

## Problematics:

Formally, employment contracts are required to be in writing, in Arabic, and in triplicate, with the employer, employee, and the Labour Office each keeping a copy of the employment contract. Fixed-term contracts are allowed for up to five years. Employees who continue to work after five years are considered to be permanently employed.

In reality, over 50% of the workforce in the country has a no written contract; the only agreement they have is a verbal agreement. Most of those who do have a written contract do not have a copy of their contract; employers tend to just to keep one copy for themselves. It is also fairly common practice when signing a work contract to have the new employee sign his/her resignation letter. The law actually protects all employees whether or not they have a written contract; this aspect of the law is something neither the majority of employers nor employees are aware of. According to the law:

- Only the court can terminate a contract; the employer can only end a contract without court intervention if the employee has not come to work for over two weeks.
- To terminate a work contract, the employer has to pay damages amounting to one year's salary, and in addition pay one month's salary for every year of work completed.
- Not providing social security is a crime under Egyptian law.
- Additional salary should be paid for overtime.
- The probation period can only last for between three and six months.
- If the contract is for a specific period and the employer has not sent a notice of the termination of the contract one month before the end of the contract, the employee becomes permanently employed, and the employee may ask for compensation for the notice period not being respected.

These provisions are also applicable to verbal employment agreements. The burden of proof that someone has not been working for the employer lies with the employer. Thus if an employer attempts to make an employee without a written work contract redundant, the employee may file a complaint with the police or social security agency that the employer has not provided them with social security.

A real problem regarding labour disputes is the short deadlines provided in law to file a case. According Article 70 of Labour Law 12 of 2003, a request for the settlement at the Labour Office regarding any conflict between employee and employer should be made within 10 days after its occurrence. If no settlement is reached, a demand for settlement with the labour court should be filed within 45 days. Thus, if one does not take legal action regarding a conflict at work within these deadlines, one loses one's right to claim. In practice, there are ways around this, but many lawyers do not know about these. One of them is that the labour courts apply in labour cases the deadlines **in accordance with** the provision in the civil law, which is one year for claims arising from an employment contract. Also, in many cases one can file a court case directly, without previously conducting the settlement procedure at the labour office. In practice this is often happening when it comes to vacation balance disputes.

If an employer is forced to sign their own resignation letter, they can file a *mahar* or affidavit (record of proof) of what has happened at a police station.

The 2008 amendment to the Labour Law provides for a fast procedure of 2 months for procedures related to labour law issues to be concluded swiftly – in a period of no more than two months. But in reality, this does not happen, and labour cases, including requests to terminate contracts and requests for compensation, can take years to be concluded.

In this situation, it is best to file a case in court and then to negotiate.



### AT-RISK GROUPS:

All employers  
and employees  
who do not  
know their  
obligations  
and rights

Migrant

### SOURCES OF DISCRIMINATION:

Citizenship/gender (migrants  
and women receive lower  
wages and less insurance)

### LEGAL ASSISTANCE NEEDED:

Legal assistance is highly recommended

### RECOMMENDATIONS TO SOLVE LEGALITIES:

- extend deadlines for filing labour dispute cases

# B.

## EFFECTIVE WAYS TO ENFORCE ONE'S LEGAL RIGHTS

# Courts



There is a court in every municipality in the country, but all court buildings are located far away from rural areas, and most of them are located in one complex. The Judiciary system of Egypt consists of administrative and non-administrative courts, a Supreme Constitutional Court, penal courts, civil and commercial courts, Personal Status and Family Courts, national security courts, labour courts, military courts, and other specialized courts. Not all of the courts have applied digitalization, but some of the services are digitalized. Only in the economic courts is the entire system is digitalized.

## Court case duration:

The average duration of court processes depends on the type of case and the status of each case. Besides the long and complex process involved due to a lack of human resources, many cases can last more than 10 years. Corruption and bribes are parts of the system.

Very simple cases that do not involve a lot of paperwork, and in which all the necessary papers are in order, are usually finished in several months. Regular procedures normally take between two and four years. The more complex the case, the longer it will take, especially if experts (medical doctors, veterinary surgeons, agricultural experts, and so on) are involved.



## Court procedures move fast:

- In family law
- In labour law: procedures move fast according to the law, but not in practice
- In civil law: by law, it is possible to request that procedures move quickly for temporary measures if quick action is needed. The court normally refuses this in practice.
- Regarding rental contract cases where the rental period has ended: in these cases, fast-moving procedures can be requested by law, but the court usually refuses this. The solution for this is to register the rental contract with the Property Agency. If the contract has expired, the owner can just request a decision by the Property Agency, which will be provided in a few days.
- to lay an attachment on property, in order to enforce a court decision.

## Court representation

- In most court cases, court representation by a lawyer is required.
- **No representation by an attorney** is required in:
  - most family and inheritance procedures in the **Family Court**
  - Labour-related procedures in the **labour court**

## Court fees

Court fees in family and labour law courts are very low, to make court services in connection with these laws accessible for all.

**Court fees for all other courts end up being high, and are a matter of significant risk in case one loses the case.** There are a large number of fees to be paid in courts other than the labour and family courts, many of which depend on various factors:

the value  
of the case

the size  
of the file

whether  
correct  
documentation  
is filed

How many  
parties  
are involved

How many  
sessions  
take place

Thus, there are many types of court costs and fees:

- ◆ Court fee per category, dependent on the value of the case
- ◆ Cost per each paper used for the verdict and additional reports: EGP11 (40 Euro cent) per page
- ◆ Tax on income
- ◆ VAT
- ◆ Stamps of martyrs: EGP5
- ◆ Lawyer's stamp: EGP5–100 depending on the value of the case.

These costs and fees are all paid in advance.

**There is one important fee to be paid at the end of a case at a court of higher instance:** the fee paid by the party who loses the case: EGP43 in every EGP1,000 of the value of the case. Thus, at the end of the case, **the losing party has to pay 4.3% of the value of the case.**

The court rarely accepts requests for exemption from courts fees if the client is poor.

Lawyers need to be strategic in how they present a case to avoid a case taking a long time to conclude and incurring high court fees. It is advisable to always present a case as a very simple, quick-action case. It may then only incur a minimum of EGP10,000 in court fees, and be concluded within a few months.

This fee is not applicable in the family and labour courts.

# Possibilities for alternative dispute resolutions (ADR)

Alternative dispute resolution (ADR) exists but is generally not used, and is only in fact used in very limited aspects of commercial law.

In Family Courts, Dispute Settlement Offices were set up in a cooperation with the Ministry of Justice and the UNDP in 2004. Almost all claims in the Family Court need to pass through this office before being taken to court.

## Customary law (*'urf*): customary justice systems

Formal customary justice systems which apply customary law (*'urf*) are rarely used; they are only used in specific regions of the country among the Bedouin tribes in Sinai, Matrouh Governorate, and villages in Upper Egypt.

Village elders and tribal leaders and politicians apply these procedures either individually or through committees or councils. This system applies to many areas of law, but most of the cases in which *'urf* is applied are related to criminal law, defamation trials, real estate disputes, and so on. The decisions have to be registered in the courts or property agency.

In rural areas, and especially in Upper Egypt, *'urf* is applied by customary courts, which are made up of committees of volunteers: tribal/village elders and/or sheikhs. These courts do not necessarily apply Egyptian law, but rather *'urf*, which is often not in agreement with Egyptian law. Customary justice systems are not recognized by the state.

# III

## AFFORDABILITY, ACCESSIBILITY AND QUALITY OF LEGAL ASSISTANCE

# Commercial legal assistance

**Organization of the legal profession:** The Legal profession is organized by Law of Lawyers 17 of 1983. Membership fees are: an initial EGP3,500, and then EGP200 per year. The latest available data regarding the number of registered lawyers dates from 2022; this data counts around 700,000 registered lawyers, but only 150,000 of these are actually practicing law.

Lawyers face a number of restrictions regarding incompatibility: a lawyer cannot: (1) be a chairperson of a People's Assembly or the Shura Council; (2) hold a position in a government ministry; (3) hold a public-sector job, for example in government, public bodies, local administration, and so on; (4) Engaged in trade; (5) Occupy the position of: chairman of a board of directors, managing director, branch member of the board of directors in joint stock companies, or manager in: companies with limited liability; partnerships; or limited partnerships; (6) hold a position of religious authority; or (7) register themselves with any other syndicate. There is inequality between men and women in the profession and Membership Bar council. A woman has never been the President of the Bar executive board.

## **Official tariffs:**

There is no official lawyers' tariff, only price guidance. In reality, prices depend on the lawyer's age, reputation, and the legal area they work in. Lawyers often lack training, yet receive high salaries. The Bar Association recommends prices for cases, but these are continuously being changed. Given the average income in the country, the availability of lawyers' services is very uneven and generally unaffordable. However, legal advice is mostly provided free of charge, and fees for legal advice could be decreased if the client is a personal contact from a lawyer's social or family network.

## **Quality check on the legal profession:**

Although lawyers need to be registered with the Bar Association, there is in fact no effective system of quality control, and no checks are carried out unless a complaint is filed against a lawyer for violating the provisions of the law. If a complaint is filed, there is also no guarantee that lawyer would be subjected to disciplinary action. Lawyers do not have legal insurance, and together with their clients suffer from the insufficiencies of the court system. There is therefore a pressing need for a quality control system within the legal profession.

## **Reaching the clients:**

Lawyers can reach clients through advertising, intermediaries, social circles, and other customary ways of reaching people in their surroundings. The market is very liberalized in the sense of free competition. Most lawyers operate in national institutions and courts. Young lawyers usually build their client base through the offices they work for during their legal training period, which lasts for one year and is not, however, compulsory.

## Other legal service providers

- ✓ Only registered lawyers can carry out court representation.
- ✓ Employees at law firms who are not registered lawyers partially deal with the justice system.
- ✓ Facilitators, who are not professional lawyers, work in other state-run institutions, providing services and helping with administrative procedures for a fee.
- ✓ In many legal services, internet applications guide people regarding specific procedures and provide them with maps of courts and names of lawyers. These applications are developed by both individuals and government ministries.

# Free Legal Aid

## Governmental legal aid

### Organization of the free legal aid system:

There is no system in place by law, but some specialized courts help people identify avenues of legal aid within the court system itself. The Sustainable Development Strategy (SDS): Egypt Vision 2030 launched by the Egyptian Government in 2016 aims to safeguard free and equal access to justice and the judicial system for all.

### **Type of cases that free legal aid covers:**

- In criminal cases, the prosecution/court is obliged to appoint a legal representative for anyone who does not have their own legal representation.
- In the Family Court, two avenues have been established to provide free legal assistance to women, namely a) meditation services and b) the provision of information/advice during the process. However, in reality, this free legal aid is limited to the provision of templates for initiating a legal process. The Legal Aid Offices (LAOs) providing these services is very crowded, and the advice given is not necessarily tailored to the specific individual case. These offices were established in 2004 as a collaborative effort between the Ministry of Justice and the United Nations Development Program (UNDP), and are funded by international donors.
- The Minister of Justice has issued a decision to introduce legal aid offices in labour courts, but these are yet to be established.

**Functioning and control of the system:**

The Ministry of Justice is responsible for the supervision of governmental legal aid, but does not publish any evaluation reports in this regard.

**The annual state budget for free legal aid:**

In the annual budget, there is no explicit division of budget sections. Funding is based on projects by influential international agencies such as the UNDP, which cooperate with the Egyptian Government to provide free legal aid. Cooperation and project implementation details are published in the Official Gazette.

## Non-Governmental Legal Aid

**ORGANIZATION**

The Civil Society sector, as one of the most important providers of legal aid in the country, is made up of non-profit organizations, and human rights and women's rights organizations. The sustainability of this sector is based on project funding, targeting a specific beneficiary or group at risk. Non-governmental organizations (NGOs) have to register with the Ministry of Social Solidarity in order to operate. Many NGOs in Egypt have recently been closed by the government, and thus the sustainability of legal aid from these sources is limited.

**LEGAL MATTERS OF OPERATION:**

NGOs mainly provide legal aid: in criminal, family, and labour cases for those who are deprived of fundamental rights; in cases of violation of rights and freedoms; for workers and women who suffer violence; for victims of torture, arbitrary arrest, and both political and criminal prisoners in general; for refugees; and in environmental cases. They provide legal advice, representation in court, and conduct arbitration procedures.

# Barometer conclusions



Comparing the results of the three indicator categories (people, state organization, and legal aid), the indicator conclusions are as follows:

## 1. The population at risk of not having access to legal rights protection

- Low-income segments of society (lower-middle classes and low-income groups), especially in the informal sector; around 80% of Egyptians have low incomes.
- Women
- Religious minorities
- Migrants and asylum seekers
- Rural population

Among these, the following groups are especially at risk:

### a) Women

Women face discrimination in all family- and inheritance-related issues. This gender-based discrimination obliges women to settle their rights through lengthy court cases, during which they are unable to enjoy legal rights protection. Women are in a vulnerable position in issues related to marriage, divorce, child custody, and alimony. When a husband divorces his wife through unilateral verbal divorce or *talaq*, the wife then needs to initiate legal proceedings to gain her legal rights in divorce. Divorce on paper is needed for:

- the woman to alter her personal documentation, and also to remarry; and
- the woman to secure the custody of her children and claim alimony
- to claim all type of damages and expenses

### b) Religious minorities

- Christians (between 10% and 15% of the population according to unofficial statistics): Christians face legal rights issues related to:

- having one's religion recorded on all civil documents such as your birth certificate, ID card, driving licence, marriage certificate, inheritance documents, and university applications;
  - marriage: among other issues, a Christian man cannot marry a Muslim woman, and a Christian woman married to a Muslim cannot have the custody of her children either during the marriage or after divorce;
  - inheritance: A Christian wife cannot inherit from her Muslim husband; and
  - divorce and inheritance: in the case of a Christian married couple who have children, if the husband converts to Islam, Muslim Personal Status Law applies to the marriage, which would enable the husband to divorce his wife quickly through unilateral verbal divorce or *talaq*. Following the husband's conversion to Islam, in law the wife would also:
    1. lose the custody of her children in a divorce (and would do so even if the couple do not divorce, as a Christian woman married to a Muslim cannot have the custody of her children either during a marriage or after a divorce) and
    2. lose the right to the husband's inheritance, as in law a Christian wife cannot inherit from a Muslim husband. In law, the children of a Christian man who converts to Islam remain Christian. The Christian children of a father who converts to Islam also have no legal right to their father's inheritance.
  - In spheres of law other than private (civil) and administrative law: religious minorities face legal rights issues related to: 1. positions they can hold in the Egyptian Army and the justice system; and 2. conversion: it is impossible for a Muslim to convert to Christianity.
- *Baha'i* – this only concerns between 4,000 and 6,000 people. A person's religion is recorded on their ID card, and the Egyptian Government recognizes only what it refers to as the three "heavenly" (*samawiya*) or "recognized" religions – Islam, Christianity, and Judaism. The *Baha'i* are an "unrecognized" religious group, i.e. a religious group that not recognized by the Egyptian Government, and have (-) on their ID cards instead of the name of their religion. In law, anyone whose ID card is marked in this way cannot renew their ID card, and also has no right to have any other legal administrative document issued, unless they convert to Islam.

### c) Migrants and refugees:

Migrants and refugees face many difficulties in getting registered with legal status, and if they are not registered with legal status (with a residence permit or as a refugee) they do not exist in the eyes of the law (be it private, administrative, or business law).

## 2) Effectiveness of state organisation and procedures for legal rights protection

All groups at risk of being legally unprotected lack the resources to obtain legal rights protection due to the following factors:

- the informality of their lives, which includes a lack of the necessary personal legal documentation
- informal economic activity
- high costs of legal procedures
- the lengthy procedures involved
- the lack of documentation related to specific legal procedures
- the experience of discrimination in specific legal procedures
- Lack of clarity and transparency regarding legal procedures
- the lack of the standardized implementation of legal procedures, especially in family and inheritance law
- corruption and the practice of bribes
- the lack of adequate digitalization

Legal assistance to people is particularly needed in regard to:

### a. Civil documents

The most significant problem regarding civil documents is related to the registration of children, and the fact that women can register their children according to the law (Article 20 of Personal Status Law 143 of 1993), but not in practice. The result is that children of people who are not formally married often do not exist on paper. People need to be informed of their legal rights and receive legal assistance concerning:

- *'urfi* or customary or unofficial marriage: informal marriage with two witnesses (preventive assistance)
- Ways to create proof of a couple's relationship and informal marriage (corrective assistance)

Also in accordance with the law (Article 20 of Personal Status Law 143 of 1993), in which the mother is also responsible for registering a newborn, we recommend that steps are taken to allow women to register their newborn children in practice.

Mistakes in the data in civil documents often occur – for example, spelling mistakes on and inconsistencies between various formal legal documents. Correction procedures are complex, and legal assistance is needed for these.

## b. Family law

Legal security is essential in marriage, as the marriage contract contains many legal consequences that concern the fundamental legal status and rights of both women and men. For the legal rights of both men and women who enter into marriage and/or divorce to be protected, a thorough knowledge of the legal implications for and position of both parties in marriage is of the utmost importance. People need to be well informed about and advised at all stages of the organization and termination of marriage, as follows:

- the legal consequences of marriage
- the marriage contract: all the specific clauses that can be included in it
- The furniture list and its fulfilment
- civil proceedings leading to criminal charges in case of non-fulfilment of the furniture list by the man
- Claims related to *nafaqa* (financial support by the husband for his wife during and after marriage)
- The importance of *talaq 'ala al-ibra'* (divorce by agreement) for both parties
- *talaq* (unilateral verbal divorce by the man) and the legal risks involved for men who use this form of divorce
- The legal path women have to follow after *talaq* (unilateral verbal divorce by the man)
- *Khul'* (unilateral divorce by the woman), which enables a woman to terminate a marriage quickly
- the different types of divorce women can file for
- the custody of children and the educational mandate.

## c. Inheritance

It is very important for both women and women's parents to be well informed regarding the *shari'a* inheritance division rules, and the practical solutions that *shari'a* offers to enable women to be treated equally in inheritance, and to avoid the situation arising whereby their father's brother(s) take the inheritance that could in fact go to them: namely, gift giving during the father's lifetime.

- Legal assistance is needed to draft gift agreements, possibly with usufruct for the parents
- Women also need to know how to claim their legal rights when all of their father's inheritance is given to or taken by their brothers or uncles.

## d. Real property

Legal assistance is needed in procedures related to:

- registration and transfer of property
- legalization of buildings that have been constructed illegally
- securing proof of property rights in informal property transfer procedures

Under 5% of the real estate property in Egypt is legally registered.

In rural areas, land registration could combat land fragmentation and encourage cooperating legal modalities, which would decrease the use of water on agricultural land and lead to more environmentally responsible agricultural practices.

## e. Employment

Both employers and employees need to know their legal position, rights, and obligations related to the labour contract. Awareness-raising among both parties on the fact that a **verbal employment agreement** involves the same rights and obligations as a written work should be encouraged and implemented. Verbal employment agreements are commonly used by smaller entrepreneurs such as restaurant and shop owners, but these employers are often unaware of the risks involved in non-compliance with the Labour Law, and their workers often do not know about the great many claims they can make in cases of employer non-compliance with the Labour Law concerning their rights related to:

- social insurance
- unfulfilled payments
- work-related injuries
- damages
- legal consequences of the informality of the employment agreement

## f. Business-related issues

The most important issues here are the significant and multiple ways in which informality in business increases poverty among the population, and the fact informal business practices create substantial risks for all involved. Legal information and assistance are needed for:

- registration of micro, small, and medium enterprises (MSMEs)
- day-to-day legal needs related to tax liability, liability towards any third party (contracts, damages, debt-related issues, and so on), and workers
- social insurance
- contractual obligations
- entering into cooperation through partnerships or consortia on a small scale in order to secure sustainability
- various types of permits

### 3. Accessibility and affordability of quality legal assistance

The entire population needs legal aid on all of the above issues, and the majority of the population have very limited financial resources and no access to affordable legal aid.

#### Commercial legal aid:

- There are many lawyers in Egypt. The problem is that they are not well guided, and that they really have to find their way through the system. As a result of the lack of transparency and standardized implementation of legal procedures, there is a lack of quality in legal representation, coupled with relatively high fees, as lawyers need to spend a lot of time to get clarity on the procedures required in each specific case they take on.
- There is no official tariff and standardized pricing system for lawyers' fees; this unregulated situation makes the fee structure insecure.
- Many of the country's lawyers operate in national institutions and courts located in urban centres, including the new cities; this leaves rural areas uncovered by legal representation services, and means that legal services in these areas are provided through the personal networks of lawyers.

#### Free legal aid:

- There is no state-organized, free legal aid system in civil and administrative law.
- In Family Courts, free legal aid offices (LAOs) were set up in 2004 in cooperation with the Ministry of Justice and the UNDP, and are funded by international donors. However, these focus on offering general advice and providing templates for initiating a legal process, rather than case-specific advice.
- A number of NGOs provide legal aid in the country, especially to women. However, their outreach and the sustainability of the legal aid they provide is limited.

# Needed follow-up action identified by the barometer research

## 1. Digital Legal Aid Platform set up to foresee in the need for affordable, quality legal aid

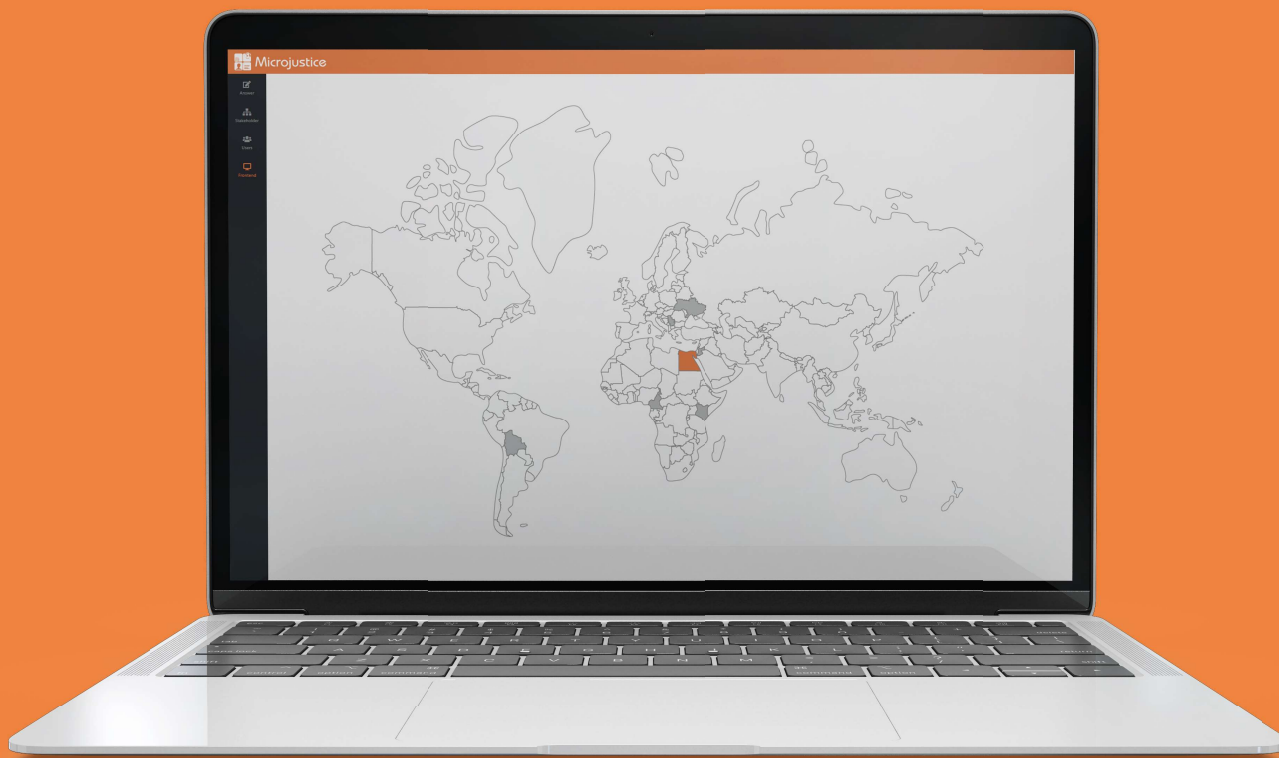
The digital Legal Aid Platform that Microjustice is preparing provides a complementary tool for affordable, quality legal aid in order to enhance universal access to legal aid. The Legal Aid Platform focuses on the provision of clear, efficient, and effective information on legal procedures and enforcement mechanisms. In addition, through the Platform the public may access to affordable legal aid by a lawyer, with a focus on:

- Women's legal rights in family law and inheritance
- Property registration and property-related legal procedures
- Legal issues related to the personal status of migrants and asylum seekers and related documentation
- Informality in relation to labour rights and obligations

Video Tutorial: <https://www.youtube.com/watch?v=Yfr6nNy6zJQ>

## 2. To enhance judicial reform

- The Personal Status Law is currently being revised. This report highlights the current situation with regard to family law in Egypt. It is hoped that it will be of use for all parties involved in the process of revising the Personal Status Law, and for the public in general, and contribute to raising awareness on the modifications that need to be made to the Personal Status Law.
- Continuous Barometer legal research aims to contribute to achieving the Sustainable Development Strategy (SDS): Egypt Vision 2030 of the Egyptian Government by helping to identify further obstacles to progress that may be encountered during the development of the standardization of legal services in the country.



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Ministry of Foreign Affairs