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Presented by:

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An NGO in special consultative status with ECOSOC, United Nations

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UPR SUBMISSION LAWYERS FOR LAWYERS – EGYPT – MARCH 2019

A. Introduction

1. Lawyers for Lawyers (“L4L”) submits this report on the state of human rights in Egypt, especially in respect of the legal profession, with recommendations for the 34th session of the Universal Periodic Review (“UPR”) Working Group in the UN Human Rights Council in November 2019.
2. L4L is an independent and non-political foundation based in The Netherlands, which was established in 1986 and is funded by lawyers’ donations. L4L promotes the proper functioning of the rule of law through the free and independent exercise of the legal profession around the world. L4L has special consultative status with ECOSOC since 2013.

B. Executive Summary

3. This submission highlights key concerns regarding Egypt’s compliance with its international human rights obligations to guarantee the right to independent counsel as set out in the UN Basic Principles on the Role of Lawyersⁱ (“Basic Principles”) and other international human rights instruments, focusing on the lack of effective guarantees for the functioning of lawyers, including the lack of freedom of expression and association of lawyers.

C. Normative and institutional framework of the State

4. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are free to carry out their professional duties independently of the government and political pressure. This follows inter alia from the Charter of the United Nations, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights (“ICCPR”).
5. Furthermore, on 22 June 2017, the Human Rights Council (HRC) passed a resolution condemning in general “the increasingly frequent attacks on the independence of [lawyers], in particular threats, intimidation and interference in the discharge of their professional functions”. The HRC expressed its deep concern “about the significant number of attacks against lawyers and instances of arbitrary or unlawful interference with or restrictions to the free practice of their profession” and called upon States “to ensure that any attacks or interference of any sort against lawyers are promptly, thoroughly and impartially investigated and that perpetrators are held accountable”.ⁱⁱ
6. In its task of promoting and ensuring the proper role of lawyers, the Government of Egypt should respect the Basic Principles within the framework of its national legislation and practice. The Basic Principles provide a concise description of international standards relating to key aspects of the right to independent counsel. Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.ⁱⁱⁱ

7. During the UPR 2nd cycle in 2014, Egypt received^{iv} and accepted^v recommendations concerning the need to ensure that human rights defenders^{vi} work in a conducive environment^{vii}, the right to freedom of expression of human rights defenders^{viii}, and the protection of human rights defenders against threats and attacks.^{ix} Egypt noted^x recommendations on the release of imprisoned human rights defenders^{xi} and the stigmatization and criminalisation of the work of human rights defenders.^{xii} In its mid-term report for the assessment on the implementation of recommendations made during the UPR in 2014, Egypt stated that the report “reflects the speedy and steady steps taken by Egypt towards ensuring human rights to citizens. [...] Egypt strives to uphold the international obligations thereof in this regard despite economic challenges and terrorist activities that seek to undermine efforts exerted towards integrated development in all walks of life. Nonetheless, Egypt accepted 82.4% of the recommendations and is working on the implementation thereof seriously.^{xiii}
8. However, reports gathered by L4L, including information received from lawyers in Egypt, demonstrate that Egypt does not uphold the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. Consequently, lawyers encounter serious difficulties in carrying out their professional duties independently. This also undermines the proper functioning of the judicial system, including the right to fair trial and effective access to justice.

D. No Effective Guarantees for the Functioning of Lawyers^{xiv}

9. The human rights situation and the situation of lawyers in Egypt has been deteriorating since the last Universal Periodic Review of Egypt. A wider crackdown against human rights defenders and independent civil society took place in recent years, with the Egyptian government heavily shutting down civic space and systematically violating the rule of law on security and counter-terrorism grounds. Lawyers who work on sensitive cases frequently face reprisals either in relation to their own human rights advocacy or their legal representation of people seen as critical of the government.
10. Article 16 of the Basic Principles states that governments must “ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (...) and shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics”. However, lawyers in Egypt have been subjected to arrest, detention, prosecution, and enforced disappearance in connection to their professional activities or in relation to their human rights advocacy. Further, lawyers in Egypt are hampered in their access to their clients and case files, and on a regular basis travel bans and assets freezing are imposed to obstruct their legitimate work.^{xv}

This is demonstrated by the following examples:

- (i) **Mohamed Ramadan**, a human rights lawyer, was arrested on 10 December 2018. His work includes legal representation of victims of torture and providing legal assistance to human rights defenders and political prisoners. According to our information, his arrest came after he posted a picture of himself on Facebook wearing a yellow vest.^{xvi} Mohamed Ramadan is facing several charges including “belonging to a banned group”, “spreading false news through social media” and “provoking social unrest”.^{xvii} According to our latest information, the detention conditions of Mohamed Ramadan have deteriorated, and he has been denied visits, including visits from his lawyers. A court session is scheduled on 7 April 2019.

Mohamed Ramadan has been previously subject to arrest and detention; in April 2017 he was convicted to ten years imprisonment, followed by five years under house arrest and a five-year ban on using the internet. He was found guilty of inciting terrorism by allegedly creating a Facebook page that featured publications and opinions with the potential to disrupt public order, harming national unity and social peace, and weakening the public’s trust in the ruling regime. According to Mohamed Ramadan and his lawyers, the case against him was fabricated as a direct response to his work representing victims of torture by the Egyptian police. Mohamed Ramadan was not present in court to examine the evidence against him or provide a proper defence. His lawyers had asked court to postpone the case on medical grounds, but the judge refused the request and sentenced him in absentia. His trial failed to meet the most basic requirement of fundamental justice and the rule of law.^{xviii}

- (ii) **Mahienour El-Massry** is a prominent human rights lawyer known for her work to promote judicial independence and prisoners’ rights. In 2014, she was awarded with the renowned Ludovic Trarieux Prize for her outstanding efforts to advance human rights.

Since 2014 Mahienour el-Massry has spent lengthy periods in Egyptian prison under difficult circumstances. In 2015, she was sentenced to one year and three months imprisonment on charges of, amongst others, “protesting without authorisation” and “assaulting security forces”. This was after she and other lawyers went to Raml police station in March 2013 to provide legal assistance to three activists who were arrested and sent to the police by supporters of the Muslim Brotherhood. The lawyers were attacked by the police in the police station, and Ms. El-Massry was detained briefly before the Prosecution decided to release her and the others. After serving her full sentence, she was finally released on 13 August 2016.^{xix}

More recently, on 18 November 2017, Mahienour El-Massry attended a session of the misdemeanour court in Alexandria in relation to her alleged participation in a protest against the government’s transfer of the Tiran and Sanafir islands to Saudi Arabia in June 2016. The case also concerned other lawyers. They were accused of “participating in an

unauthorized protest”, “insulting the President” and thuggery. On 30 December, she was sentenced to two years in prison^{xx}. She was acquitted on appeal on 13 January 2018 and released on 16 January 2018.

The repeated detention and prosecution of Ms. El-Massry are aimed at sanctioning her legitimate activities as a lawyer and curb her right to freedom of expression and association.

- (iii) **Malek Adly** is the director of the Egyptian Centre for Economic and Social Rights (ECESR) and the founder of the Front for Defending Egypt’s Protesters, a group of human rights organisations and lawyers documenting illegal practices carried out by the police against protesters, and providing assistance to protesters and prisoners.

After the protest of 25 April 2016 against the human rights abuses by the Egyptian regime and its decision to cede the sovereignty of two Red Sea islands to Saudi Arabia, there was a wave of arbitrary arrests and detentions, including of Egyptian human right lawyers. Malek Adly was arrested on 5 May 2016, following his call to participate in a demonstration. He was allegedly beaten, maltreated, and held in solitary confinement. The investigations were allegedly directed at several serious allegations, including inciting anti-government protest, spreading false news and plotting to overthrow the government.^{xxi} His lawyers argued that his right to a fair trial had been violated, including, among others, that they had not received a formal copy of the case file and that the court had refused to open an investigation in the alleged torture and ill treatment during Malek Adly’s detention.

On 28 August 2016 Malek Adly was released from prison pending further investigations in his case.^{xxii} According to our latest information, the charges in this case have been dropped but a travel ban is still imposed upon him.^{xxiii} This in relation to foreign funding case nr. 173 /2011, in which Malek Adly is also facing very serious charges, including receiving money from abroad, for which life imprisonment can be imposed. He has been summoned by an investigative judge and subsequently temporarily released. Further, according to our information, questions about his activities are repeatedly posed to members of the opposition questioned by national security.

- (iv) **Negad El Borai** is an attorney-at-law and senior consultant at the Egyptian law firm United Group, which provides legal support to civil society organisations and victims of human rights violations. The firm also engages in monitoring and documentation of human rights violations pertaining to freedom of expression and opinion. In April 2015 United Group sent a letter to President Al Sisi with attached a complete draft bill on the prevention of torture and ill-treatment, calling for its promulgation. This draft anti-torture bill includes provisions criminalising and penalising acts of torture and illegal imprisonment, investigative regulations, rights of the victims (including a minimum amount of compensation), superior criminal responsibility for the heads of police

stations or detentions centres, and the creation of a permanent anti-torture board.^{xxiv}

Subsequently, criminal investigations were directed at United Group. Negad El-Borai has already attended five investigation sessions, and the case is still pending referral to court.^{xxv} He is accused of establishing the unlicensed entity 'United Group' aimed at inciting resistance against the authorities, implementing human rights activities without a license, receiving illegal funds and deliberately spreading false information with the purpose of attacking public order or public interest. Negad El-Borai explained to L4L that he is just fulfilling his duty as a lawyer, proposing legal solutions to the daily problems in his country.^{xxvi} According to our latest information, Negad El-Borai is still facing charges and is under a travel ban (based on criminal investigations in foreign funding case no. 173/2011).^{xxvii}

- (v) **Ezzat Ghoneim** is a prominent human rights lawyers and the executive director of the Egyptian Coordination for Rights and Freedoms (ECRF). Ezzat Ghoneim supported victims of alleged police torture and families of the (forcefully) disappeared.^{xxviii} Together with a colleague, Ghoneim was arrested in March 2018 following a BBC report on torture and accused of spreading false news and joining a banned group. The Giza criminal court ordered his release on 4 September 2018 (Supreme State Security case 441/2018), but according to our information, he forcibly disappeared from prison.^{xxix} It was reported that on 20 October 2018, arrest orders were issued for Maghoub and Ghoneim, after they failed to show up at the police station tasked with implementing the conditions of their release.

In February 2019 Ezzat Ghoneim surfaced again, appearing at a hearing of the Cairo Criminal Court. He declared that he had first been held at Haram Police Station and subsequently at an undisclosed site controlled by the Ministry of Interior.^{xxx} Ghoneim declared that he had not violated his probation terms, but that he was not able to fulfill them due to his detention. According to our information, a judge ordered the pre-trial detention of human rights defender and lawyer Ghoniem for 45 days pending investigation^{xxxi}.

11. These are just a few of the many examples of Egyptian human rights lawyers facing physical and verbal assaults, travel bans, arbitrary arrest, detention and prosecution, and enforced disappearance.^{xxxii}

E. Freedom of expression and assembly of lawyers and other human rights defenders

12. Lawyers, like any other individual, have the right to freedom of expression. In particular, they have the right to take part in public discussion of matters concerning the law, the administration of justice, and the promotion and protection of human rights.^{xxxiii} The freedom of expression that lawyers enjoy in connection to their professional functions should not only be guaranteed in light

of the rights of the lawyer, but also in protection of the rights of their clients. The lawyer should be enabled to effectively protect the rights and interests of his or her client.

13. However, the Egyptian government is heavily shutting down civic space and systematically violating the rule of law on security and counter-terrorism grounds. Criminal charges based on the Egyptian protest law – imposing a requirement for the Ministry’s prior authorisation - seem to be a common pattern of harassment increasingly used by the Egyptian authorities against lawyers. Protesters convicted of breaking the law could face up to five years in prison and fines of EGP 100,000 (USD 5,700). The same can be said for criminal charges based on the Egyptian counter-terrorism law. The vague and overly broad definition of terrorism allows the law to be used to arbitrarily criminalise internationally-protected activities such as freedom of expression, peaceful assembly, and freedom of association.
14. Many of the above-discussed Egyptian lawyers are attacked upon exercising their right to freedom of expression and assembly, or engaging in public discussions about human rights and the rule of law.

F. Recommendations to the Government of Egypt:

- **Take immediate measures to ensure that sufficient safeguards are in place, both in law and in practice, to guarantee the full independence and safety of lawyers and their effective protection against any form of retaliation in connection with their professional activity.**
- **Immediately take effective measures necessary to ensure that crimes, harassment, and other violations against lawyers are effectively investigated and publicly condemned at all levels, and that the perpetrators of such acts are prosecuted.**
- **Refrain from any actions that may constitute harassment, persecution, or undue interference in the work of lawyers, including their criminal prosecution on improper grounds such as the expression of critical views or the nature of the cases that the lawyer is involved in.**
- **Take immediate measures to guarantee the effective protection of the right of freedom of expression of lawyers as set out in article 23 of the Basic Principles on the Role of Lawyers, in particular their right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action,**
- **Immediately and unconditionally release Mohamed Ramadan and Ezzat Ghoneim and drop the charges against them and drop the charges against Malek Adly and Negal al-Borai and lift their travel bans.**

ⁱ The UN Basic Principles on the Role of Lawyers provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on September 7 1990. Subsequently, the UN General Assembly “welcomed” the Basic Principles in their ‘Human rights in the administration of justice’ resolution, which was adopted without a vote on December 18 1990 in both the session of the Third Committee and the plenary session of the General Assembly.

ⁱⁱ UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/35/12, 22 June 2017, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.20.

ⁱⁱⁱ During its 29th session (from 15 June – 3 July 2015), the Human Rights Council adopted without a vote a resolution on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers. While recalling the Basic Principles on the Role of Lawyers and condemning the increasingly frequent attacks on the independence of lawyers, in particular threats, intimidation and interference in the discharge of their professional functions, the Human Rights Council reminded all States of their duty “to uphold the integrity of [lawyers] and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring the perpetrators to justice”. See UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/29/6, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.11.

^{iv} Report of the Working Group on the Universal Periodic Review of Egypt, A/HRC/28/16, 24 December 2014, p. 21-24.

^v Report of the Working Group on the Universal Periodic Review of Egypt, Addendum 1: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/28/16/Add.1, 2 March 2015.

^{vi} Article 9.3 of the UN Declaration on Human Rights Defenders reads: ‘[...] everyone has the right, individually and in association with others, inter alia: (c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms’. We therefore understand human rights defenders to include lawyers. The recommendations on human rights defenders are also applicable to lawyers.

^{vii} Recommendation 166.212 Guarantee an environment conducive to the work of journalists, human rights defenders and civil society organizations (Tunisia).

^{viii} Recommendation 166.245 Fully implement its international obligations to ensure the protection of human rights defenders and other civil society actors while exercising their human rights, including the freedoms of expression, association and assembly (Finland).

^{ix} Recommendation 166.218 Take all the necessary measures to protect journalists and human rights defenders from threats and attacks, and ensure that the perpetrators of such violence are brought to justice (Luxembourg).

^x Report of the Working Group on the Universal Periodic Review of Egypt, Addendum 1: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/28/16/Add.1, 2 March 2015.

^{xi} Recommendation 166.217 Immediately release all imprisoned journalists, prisoners of conscience and human rights defenders (Norway).

^{xii} Recommendation 166.249 Refrain from stigmatizing and criminalizing the work of NGOs, human rights defenders and journalists (Norway).

^{xiii} Egypt National Standing Committee for Reporting and Follow Up Mid Term Report, available on: <https://lib.ohchr.org/HRBodies/UPR/Documents/Session20/EG/EgyptMidtermReport.pdf>.

^{xiv} Basic Principles on the Role of Lawyers, principles 16, 17, 18, 22.

^{xv} <https://lawyersforlawyers.org/en/egypt-travel-ban-and-asset-freeze-against-human-rights-lawyers/>.

^{xvi} <https://www.amnesty.org/en/latest/news/2019/02/egypt-release-human-rights-lawyer-detained-for-wearing-yellow-vest>.

^{xvii} On 2 January 2019 L4L called upon the Egyptian authorities to immediately release Mohamed Ramadan and drop all charges against him, as there are reasonable grounds to believe that his arrest is connected to and serves to curb his legitimate activities as a lawyer and his right to express his views, see <https://lawyersforlawyers.org/en/arrest-of-lawyer-mohamed-ramadan/>.

^{xviii} <https://lawyersforlawyers.org/en/egypt-letter-about-situation-of-lawyers/>, see also: <https://www.frontlinedefenders.org/en/case/mohamed-ramadan-sentenced-under-counter-terrorism-law>; and <http://www.lwrc.org/egypt-remedy-unlawful-arrest-detention-and-conviction-of-lawyer-mohamed-ramadan-letter/>

^{xix} <https://lawyersforlawyers.org/en/egypt-mahienour-el-massry-released/>

^{xx} <https://lawyersforlawyers.org/en/egypt-human-rights-lawyer-mahienour-el-massry-arrested/> and <https://lawyersforlawyers.org/en/egypt-mahienour-el-massry-sentenced-to-two-years-in-prison/>.

^{xxi} <https://lawyersforlawyers.org/en/egypt-unlawful-detention-of-lawyer-malek-adly>.

^{xxii} <https://lawyersforlawyers.org/en/egypt-malek-adly-released/>; <https://lawyersforlawyers.org/en/egypt-joint-open-letter-to-president-sisi/>.

^{xxiii} See also: <https://lawyersforlawyers.org/en/egypt-travel-ban-and-asset-freeze-against-human-rights-lawyers/>.

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- ^{xxiv} <https://lawyersforlawyers.org/wp-content/uploads/Draft-Law-for-the-Prevention-of-Torture.pdf>.
- ^{xxv} <https://lawyersforlawyers.org/wp-content/uploads/20160606-Press-release-Negad-El-Borai-investigation-session-.pdf>.
- ^{xxvi} <https://lawyersforlawyers.org/en/egypt-criminal-investigation-against-lawyer-who-drafted-anti-torture-bill/>.
- ^{xxvii} <https://www.fidh.org/en/issues/human-rights-defenders/egypt-travel-ban-issued-against-mr-negad-el-borai>.
- ^{xxviii} <https://defendlawyers.wordpress.com/2018/10/21/egypt-egyptian-ex-lawmaker-goes-missing-may-have-been-detained/>.
- ^{xxix} <https://madamasr.com/en/2018/10/21/news/u/arrest-orders-issued-for-missing-lawyers-ezzat-ghoneim-azouz-maghoub/>
- ^{xxx} <https://madamasr.com/en/2019/02/13/news/u/missing-lawyer-ezzat-ghoneim-appears-in-court-ordered-to-be-detained-for-45-days/>.
- ^{xxxi} <https://lawyersforlawyers.org/concerns-over-arrests-lawyers/>
- ^{xxxii} L4L has recently campaigned for the following Egyptian lawyers: **(2017)**
<https://lawyersforlawyers.org/en/egypt-letter-about-situation-of-lawyers/>;
<https://lawyersforlawyers.org/en/egypt-tarek-hussein-released-trial-of-khaled-ali-postponed/>;
<https://lawyersforlawyers.org/en/egypt-arrest-of-lawyer-ibrahim-metwally/>;
<https://lawyersforlawyers.org/en/egypt-arrest-and-harassment-of-lawyer-mohamed-azmy/>; **(2018)**
<https://lawyersforlawyers.org/en/haytham-mohamadeen-arrested/>.
- ^{xxxiii} This follows from Article 23 of the Basic Principles.
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