

The Problem of Punitive Pretrial Detention in Egypt

Briefing Paper – February 2016

Introduction

Since June 2013, Egyptian authorities have increasingly used pretrial detention as a punitive measure to silence activists, journalists, and peaceful political dissidents.¹ The number of pretrial detainees in Egypt has exponentially increased and the periods of pretrial detention have exceeded international legal standards and even domestic maximums.

The case of Mahmoud Mohamed Ahmed Hussein demonstrates the implications of Egypt's abuse of pretrial detention. Mahmoud was arrested days after his 18th birthday for wearing an anti-torture t-shirt. He was a young, civically-engaged student expressing a universal human right. For this, Mahmoud was detained and tortured; he has been held in pretrial detention without charge for over 2 years in Egypt's jails alongside convicted felons and radical extremists. Mahmoud's case is one of thousands that represents this pattern and the threat posed by punitive pretrial detention practices impacting an entire generation of Egyptians.

Pretrial Detention in the Law

Under the Egyptian Criminal Procedure Code, pretrial detention is an exceptional legal measure that is set forth only in cases in which (1) the offense is *in flagrante delicto*, (2) there is fear that the accused may flee, (3) there is fear that the legal process may be impeded or harmed, (4) the case implicates security and public order, or (5) if the crime is a felony or misdemeanor punished with a prison sentence and the accused does not have a known residence in Egypt.²

In cases that meet the aforementioned categories, an arrested individual can initially be detained without charge for three 15 day periods.³ If a judge determines that preliminary investigations are not yet complete at the 45-day mark, she or he may grant additional detention renewals; the Prosecutor-General can review and/or receive complaints regarding the detention renewal.⁴ The Criminal Procedure Code stipulates that pretrial detention cannot be extended for more than six months for misdemeanors, 18 months for felonies, and two years for crimes carrying death or life imprisonment.⁵

¹ See "Extended Pre-trial Detention...Disguised Incarceration," The Arabic Network for Human Rights Information, <http://anhri.net/?p=145083&lang=en>.

² *Criminal Procedure Code*, Law No. 150 of 1950, Amended Law No. 95 of 2003, Art. 134, <http://helmylawyers.blogspot.com/2010/07/001.html>.

³ *Criminal Procedure Code*, Law No. 150 of 1950, Amended Law No. 95 of 2003, Art. 142, <http://helmylawyers.blogspot.com/2010/07/001.html>.

⁴ *Criminal Procedure Code*, Law No. 150 of 1950, Amended Law No. 95 of 2003, Art. 143, <http://helmylawyers.blogspot.com/2010/07/001.html>.

⁵ *Criminal Procedure Code*, Law No. 150 of 1950, Amended Law No. 95 of 2003, Art. 143, <http://helmylawyers.blogspot.com/2010/07/001.html>.

While a 2013 amendment promulgated by interim President Adly Mansour gave the Courts the authority to extend pretrial detention in 45-day periods without a maximum time limit, this was limited to cases of retrials or appeals in which the detainee has already been sentenced to death or life imprisonment.⁶

Vague provisions of the Criminal Procedure Code employ terms like “security or public order,” granting overly broad discretion and subjective determinations to judges and the Prosecutor-General who are loyal to the ruling regime in Egypt, and who are unlikely to make determinations in favor of activists, journalists, or prisoners of conscience originally targeted for their perceived criticism of the government.

Egypt’s legal framework violates its international human rights obligation to use pretrial detention as a last resort and only if necessary, especially in the absence of well-founded charges. Under international law detainees are entitled to trial within a reasonable time, or else should be released – a determination that is made by analyzing the justification for the detention, the diligence of the prosecuting or investigating authority, the complexity of the case, and the proportionality of the detention to the possible penalty.⁷

Pretrial Detention in Practice

Since 2013, the number of pretrial detainees in Egypt has exponentially increased. As per the most recent official Egyptian Prison Authority count announced in December 2014, out of 12,800 persons detained since June 2013, 7,389 were still being held in pretrial detention; the United States Department of State reports that this number alone reflects a 360% increase over the prior year’s estimate of pretrial detainees.⁸ With Egyptian organizations estimating that the total number of political prisoners is closer to 40,000, the number of pretrial detainees is likely to be even higher today than the 2014 numbers.

Despite the two-year maximum set out in domestic law for cases of first review that carry possible death or life imprisonment, at least 700 pretrial detainees have been held in pretrial detention beyond the two year mark as of August 2015.⁹

In violation of Egypt’s international human rights obligations and its own domestic regulations, pretrial detainees are being held in the same detention facilities as convicted prisoners, including individuals with radical ideologies. Prison cells are often dirty, filled with cockroaches and ants, largely-overcrowded, and subject to extreme temperatures due to poor ventilation.¹⁰ Detainees endure beatings, insults, sexual assault, and torture.¹¹ At times, they are arbitrarily prevented from meeting with family members and face the confiscation of various personal belongings.¹² Medical neglect is increasingly common and many

⁶ *SIS*, (Sept. 26, 2013), <http://sis.gov.eg/Ar/Templates/Articles/tmpArticles.aspx?ArtID=74743#.VtdJ9H0rI2x>.

⁷ American Bar Association, *Handbook of International Standards of Pretrial Detention Procedure*, ABA RULE OF LAW INITIATIVE, https://www.ilsa.org/jessup/jessup16/Batch%201/handbook_of_international_standards_on_pretrial_detention_procedure_2010_eng_authcheckdam.pdf.

⁸ “Egypt 2014 Human Rights Report,” United States Department of State, <http://www.state.gov/documents/organization/236808.pdf>.

⁹ Amnesty International, *Egypt: Photojournalist ‘Shawkan’ among 700 held for more than two years in pre-trial detention*, AMNESTY INTERNATIONAL, (Aug. 18, 2015), <https://www.amnesty.org/en/latest/news/2015/08/egypt-photojournalist-shawkan-among-700-held-for-more-than-two-years-in-pre-trial-detention/>.

¹⁰ Maram Mazen, *Egypt rights lawyers say new prison law legalizes abuses*, ASSOCIATED PRESS, (Oct. 26, 2015), <http://www.sandiegouniontribune.com/news/2015/oct/26/egypt-rights-lawyers-say-new-prison-law-legalizes/>.

¹¹ Arwa Ibrahim, *Prisoners allege systematic torture of opposition*, MIDDLE EAST EYE, (Apr. 25, 2014), <http://www.middleeasteye.net/news/prisoners-allege-systematic-torture-opposition-942566493>.

¹² Leila Fadel, *In A Viral Video, A Misleading Taste Of What It's Like In Egyptian Prison*, NPR, (Sept. 20, 2015), <http://www.npr.org/2015/09/20/441912079/egyptians-say-report-paints-false-picture-of-prison-conditions>.

detainees do not receive the treatment they require, and when detainees are finally taken to the prison hospital, care is limited and resources are constrained.¹³

Pretrial detainees arrested on bogus grounds, subjected to torture and cruel and inhuman conditions, and held in the same prison cells as convicted prisoners are at serious risk of radicalization. As of at least January 2015, prisoners of all alignments—including Muslim Brotherhood members and jihadists—were held in the same wards as pretrial detainees. Although State Security has become increasingly involved in the management of prisons since then and prisoners are now largely separated by ideology, prison wardens continue to—at times—place prisoners at risk of radicalization near extremists in an attempt to radicalize them and thus, build up a case against them. Speaking of his own experience, former political prisoner Mohamed Soltan has confirmed that pretrial detainees, charged prisoners pending trial, prisoners sentenced to life, and prisoners sentenced to death were all detained together in his ward.

The Case of Mahmoud: Punitive Pretrial Detention Personified

Mahmoud Mohamed Ahmed Hussein, a 20 year old student, was arbitrarily detained on January 25, 2014 at a checkpoint in El-Marg, Cairo for wearing a January 25 protest scarf and a t-shirt with the slogan “a nation without torture.” He had been returning home from a peaceful demonstration to commemorate the third anniversary of the January 25 Revolution and was stopped by police. Upon asking why he was being detained, Mahmoud was beaten and dragged off by plainclothes officers. Thereafter, he was subjected to at least 4 hours of beatings, received electric shocks to the back, hands, and testicles, and was forced to falsely confess under the duress of torture to possessing Molotov cocktails and hand grenades, belonging to a “terrorist” group, protesting without authorization, and receiving money to protest.

Mahmoud, declared a prisoner of conscience by Amnesty International,¹⁴ has faced near-automatic detention renewals by the Cairo Criminal Court—at least 22 of which were decided in his absence due to the failure of the prison authorities to transport him to the courtroom. Despite repeated requests, his lawyers have not been granted access to any documentation regarding the potential charges he faces. On January 25, 2016, he completed two years in pretrial detention. Yet authorities refuse to release him in defiance of Egyptian law, and he has remained in detention at the Tora Investigations Prison.

As a young, peaceful protester unaligned with any political party in Egypt, Mahmoud represents the thousands of pretrial detainees in Egypt’s jails who have been subjected to the practice as a punitive measure for their exercise of freedoms of expression and assembly. Rather than honored and respected for their bravery and willingness to dream of a better Egypt, Mahmoud and those like him continue to spend their best years subjected to torture and harrowing detention conditions, among convicted felons and radical extremists, and in egregious violation of their most basic human rights.

For more information contact:

Wade McMullen, Managing Attorney, Robert F. Kennedy Human Rights
mcmullen@rfkhumanrights.org | www.rfkhumanrights.org

¹³ Stephen Kalin, *Special Report: In Egypt, Jailed Islamists 'Dying of Neglect'*, REUTERS, (Sept. 3, 2015), <http://www.reuters.com/article/2015/09/03/us-egypt-brotherhood-prisons-specialrepo-idUSKCN0R30Y420150903#qTto7jOb21AY8EOY.97>.

¹⁴ Amnesty International, Egypt: Student Detained and Tortured After Protest: Mahmoud Hussein, AMNESTY INTERNATIONAL, (Nov.14, 2014), <https://www.amnesty.org/en/documents/mde12/062/2014/en/>.