

31 May 2019

Mr. José Guevara Bermúdez
Chair-Rapporteur
Working Group on Arbitrary Detention
c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14, avenue de la Paix
1211 Geneva 10, Switzerland
By email: wgad@ohchr.org

RE: Follow-up to Opinion No. 83/2017 concerning Mahmoud Hussein Gommaa Ali (Egypt)

Dear Mr Guevara Bermúdez:

Per the request of this Working Group in its Opinion No. 83/2017 (*see* paras. 96-99) published on January 15, 2018, we write to inform you regarding the flagrant disregard by the Government of Egypt to implement the Working Group's recommendations in the case of Mahmoud Hussein Gommaa Ali. To date the Government of Egypt has failed to release Mr. Hussein. Most recently on May 21, 2019 a court ordered Mr. Hussein's release, however during a protracted release process over the ensuing days, authorities intervened again, thwarting his ultimate release. According to his Egyptian lawyer, Mr. Hussein is now under a new false investigation in relation to an 2018 incident in which it would have been impossible for Mr. Hussein to participate since he was still arbitrarily detained and in the custody of the Egyptian authorities at the time.

Mr. Hussein's next detention renewal hearing is scheduled to take place on June 8, 2019. In light of these worsening developments, the Egyptian authorities flagrant disregard for domestic and international law, and Mr. Hussein's continued denial of proper medical care, we humbly ask this Working Group to follow up with the State to help ensure Mr. Hussein's release order is restored and that the State begin to comply with this Working Group's recommendations.

(a) Whether Mr. Hussein has been released and, if so, on what date;

Mr. Hussein remains in arbitrary detention. Having spent more than 29 months in pretrial detention, the Government of Egypt has yet to afford him a meaningful opportunity to challenge his prolonged detention.

After years of no progress, on May 21, 2019, an Egyptian Court finally ordered Mr. Hussein's release and imposed "probationary measures" which would have freed him from arbitrary detention but nevertheless imposed burdensome non-custodial restrictions on his movements.¹ The decision was upheld by an appeals court on May 23 after the National Security Prosecution challenged the release. According to Egyptian law, Mr. Hussein should have been released 24 hours later.²

On May 25, Mr. Hussein was transferred from Cairo's Tora prison to a police station near Giza to await final clearance from the National Security Agency's Office. After standing for many hours in plain clothes awaiting his release, officials required Mr. Hussein to remain in custody overnight to complete the release process. The next day, Mr. Hussein was taken to the State Security Prosecution in the fifth assembly to ostensibly clear further administrative procedures for release. His family, who waited for him at the police station, were assured he would be released shortly thereafter. However, instead of returning to the station Mr. Hussein was instead transferred back to Tora prison.

Mr. Hussein's Egyptian lawyer has informed his family that he is now subject to a new investigation for alleged crimes committed in 2018 possibly involving "spreading false news," "participating in banned group activities" and "dealing with foreign websites." These new allegations are particularly confounding given that Mr. Hussein had already been detained by Egyptian authorities in 2018 when these crimes were allegedly committed. Mr. Hussein's lawyer has reported that the Egyptian authorities are unlawfully interrogating him without the presence of his legal team. His family has also been denied access to Mr. Hussein since he was transferred back to Tora prison.

As of May 30, 2019, Mr. Hussein has been held in arbitrary pretrial detention beyond all of the maximum periods for pretrial detention allowable under Egyptian domestic law. Article 142 of the Egyptian Criminal Procedure Code states that temporary detention can last only 15 days, with a possible extension of up to 45 days before an individual must be released or referred to trial. Article 143 permits a further extension of detention for consecutive periods that cannot exceed 45 days each. Pretrial detention for individuals who have not been charged cannot exceed 6-months in all cases.³ Mr. Hussein has been detained for well over two-years with repeated *pro forma* renewals and no formal charges brought against him. In the past year, renewal hearings took place on January 15, when his arbitrary detention was summarily renewed without meaningful due process. At the next hearing on February 19, Mr. Hussein received his first court order to be released from arbitrary detention, but the order was subsequently rejected on appeal and Mr. Hussein's arbitrary detention was again extended. On April 6, Mr. Hussein's detention

¹ Omar, Yasmin, and Mai El-Sadany. "Probation as Compounded Punishment in Egypt." *The Tahrir Institute for Middle East Policy*, 10 Apr. 2019, timep.org/commentary/analysis/probation-as-compounded-punishment-in-egypt/.

² Associated Press, "Egypt Frees Aljazeera Journalist Detained since 2016" *The New York Times*, 23 May 2019, <https://www.nytimes.com/aponline/2019/05/23/world/middleeast/ap-ml-egypt.html>

³ Egyptian Criminal Procedure Code. Unofficial translation available at: https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf; See also *The Egypt Justice Project* <https://egyptjustice.com/criminal-law>

was renewed once again. At his most recent detention renewal hearing on May 21, Mr. Hussein was granted a second release order by the court. As described above, though the order survived the appeals process, the Egyptian authorities have failed to comply and Mr. Hussein remains in arbitrary detention. His next renewal hearing is scheduled to be held on June 8, 2019.

(b) Whether compensation or other reparations have been made to Mr. Hussein;

As of May 31, 2019, the Government of Egypt has not taken any action or initiated any steps to make compensation or other reparations to Mr. Hussein for the cruel, inhuman, and degrading treatment and possibly torture that authorities subject him to, nor to his family for all the pain and suffering they have endured as a result of his prolonged arbitrary detention.

After raising hopes of his release, the Government of Egypt continues to investigate and detain him without any formal charges, causing further trauma and suffering to Mr. Hussein and his family.

(c) Whether an investigation has been conducted into the violations of Mr. Hussein's rights and, if so, the outcome of the investigation;

The Government of Egypt has not initiated or otherwise conducted an investigation into the violation of Mr. Hussein's rights. To the best of our knowledge, those responsible for Mr. Hussein's arbitrary detention – as well as his time spent in solitary confinement and denial of proper medical care while in prison – continue to serve in their capacities in the Egyptian government with impunity.

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Egypt with its international obligations in line with the present opinion;

No efforts have been made by the Government of Egypt to amend its legislation – particularly Article 134 of the Criminal Procedure Code – or to change its practices in order to bring them into conformity with Article 9(1) of the International Covenant on Civil and Political Rights, as is its international obligation.

(e) Whether any other action has been taken to implement the present opinion.

While the vast majority of the court hearings held roughly every 45 days over the past two and a half years to renew Mr. Hussein's detention were summary, *pro forma* hearings with no meaningful ability of Mr. Hussein or his lawyer to challenge his detention, in the last three months the court has twice ordered Mr. Hussein to be released.

The first release order was issued on February 19, but the order was subsequently rejected on appeal by the government.

On May 21, 2019, an Egyptian Court ordered Mr. Hussein's release from prison in accordance with the UN Working Group's recommendation for the second time. This order imposed "probationary measures" which would have released Mr. Hussein from his arbitrary detention but severely restricted his movement. The National Security Prosecution appealed the lower court's order, but Mr. Hussein's release was upheld by the appellate court on May 23, 2019. The following Saturday, May 25 2019, Mr. Hussein's release process was initiated and he was transferred from Tora prison to the Giza police station. The subsequent events described above ended with Mr. Hussein being taken back to Tora prison on Sunday, May 26, 2019, his ultimate release having been thwarted by Egyptian authorities, who are now absurdly investigating Mr. Hussein in connection to a separate case in which the State knows it would be impossible for Mr. Hussein to have participated, as Mr. Hussein was arbitrarily detained in State custody at the time. Neither Mr. Hussein's family nor his representatives are aware of any official action to subsequently secure Mr. Hussein's release in lieu of the May 23 Egyptian Court order and the UN Working Group's recommendation.

The Government of Egypt continues to accuse journalists, especially those working for Al-Jazeera like Mr. Hussein, for inciting sedition and spreading false news. The Committee to Protect Journalists continues to rank Egypt as one of the top jailers of journalists worldwide in 2019, with approximately 23 journalists in jail. Rather than acting in good faith to implement the recommendations of this Working Group, including by releasing Mr. Hussein and remedying the violations perpetrated against him, the Government of Egypt continues to hold Mr. Hussein in arbitrary pretrial detention. Mr. Hussein has now spent more than 890 days – nearly two and a half years – in prison without being formally charged or brought to trial.

Thank you for your continued attention to this matter. Should you have any questions or seek any additional clarification to follow up on Mr. Hussein's case, please do not hesitate to contact us directly.

Sincerely,



Wade McMullen
Managing Attorney
Robert F. Kennedy Human Rights