

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Chairman/Rapporteur: Mr. Sètondji Roland Jean-Baptiste Adjovi (Benin)
Vice-Chairperson: Ms. Leigh Toomey (Australia)
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**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of
Aya Mohamed Nabeel Ahmed Hijazi
(also known as Aya Mohamed Nabeel Ahmed Hegazy),
Mohamed Hassanein Mostafa Fathallah,
Citizens of the Arab Republic of Egypt

v.

Government of the Arab Republic of Egypt

URGENT ACTION REQUESTED

And Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, 20/16,
24/7¹

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¹ Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to *UN General Assembly Resolution 60/251*, GA Res. 60/251, Mar. 15, 2006, at ¶ 6, later extended the mandate through Resolutions 6/4, 15/18, 20/16, and 24/7.

Basis for Urgent Action Request

As set forth in the attached Petition, the Government of the Arab Republic of Egypt is arbitrarily depriving Aya Mohamed Nabeel Ahmed Hijazi (also known as Aya Mohamed Nabeel Ahmed *Hegazy*) and Mohamed Hassanein Mostafa Fathallah (herein referred to as Mr. Hassanein) of their liberty and continues to arbitrarily detain them. Mrs. Hijazi is a dual citizen of Egypt and the United States of America, and Mr. Hassanein is a citizen of Egypt. Mrs. Hijazi and Mr. Hassanein have been detained for over two years in violation of Egypt's domestic laws prohibiting pretrial detention in excess of two years. They continue to be subject to grave prison conditions and possible abuse; urgent action is thus requested from the Working Group on their cases.

Mrs. Hijazi and her husband Mr. Hassanein are volunteers who founded and established Belady ("My Country") Foundation—a well-respected organization based in Cairo that works with street children to provide vital rehabilitation and sanitation and sexual harassment programming. The organization hosts activities for street children from drawing to recycling and music, and provides a safe haven for minors who have fled their homes and would otherwise be homeless and subject to exploitation and abuse in the streets.²

In May 2014, Mrs. Hijazi and Mr. Hassanein were arrested during a warrantless police raid conducted on the Belady Foundation offices, along with fellow Belady Foundation volunteers Shereef Talaat Mohamed Mohamed and Ameera Farag Mohamed Qassem. Belady Foundation volunteers Ibrahim Abdraboh Abdulmagd Al-Salhi, Kareem Magdy Mahmoud Fathy, and Mohamed Al-Sayed Mohamed Al-Sayed were arrested weeks later in what would ultimately become the same case.³

Seven false criminal charges were levelled against Mrs. Hijazi, Mr. Hassanein, and their co-defendants in September 2014, including establishing a criminal organization with the purpose of human trafficking and sexually exploiting minors. Despite the government's own forensic medical report on the minors that found no signs of sexual abuse or torture from their time at Belady Foundation, consistent statements of support from community members for the foundation, and serious, credible allegations of witness intimidation by the police, the false charges have been allowed to stand and the case has been referred to trial. The first court session took place on March 14, 2015. In the time since, there have been a number of procedural adjournments, most of which have occurred due to missteps by the prosecution; the next court date is scheduled for May 21, 2016.⁴

Today, Mrs. Hijazi and Mr. Hassanein have been held in pretrial detention for over two years. They have faced near-automatic detention renewals and their requests for bail and/or conditional release have not been granted proper due process consideration. Despite the fact that Egyptian domestic law sets forth an already-egregiously lengthy two year maximum for pretrial

² Mada Masr, *Mother defends daughter accused of exploiting street children*, MADA MASR, (May 6, 2014), <http://www.madamasr.com/news/mother-defends-daughter-accused-exploiting-street-children>.

³ EIPR, *25 Rights groups: The Belady Foundation case demonstrates that individual and community initiatives face only repression and fabricated charges*, EGYPTIAN INITIATIVE FOR PERSONAL RIGHTS, (Feb. 3, 2016), <http://eipr.org/en/pressrelease/2016/02/03/2527>.

⁴ *Id.*

detention in cases of first review, authorities have refused to release Mrs. Hijazi and Mr. Hassanein.

As conceived of by Egyptian domestic law and international legal standards, pretrial detention is an exceptional legal measure. The case of Mrs. Hijazi, Mr. Hassanein, and their co-defendants highlight how the practice has been abused by Egyptian authorities as a punitive measure to discourage and intimidate independent voices and youth leaders from exercising their fundamental rights. The continued detention of Mrs. Hijazi and Mr. Hassanein is unjustified under Egypt's international human rights obligations and even under Egyptian law.

Further, Mrs. Hijazi has been subject to coercive interrogation techniques and may be subject to further grave violations during her ongoing detention. When Mrs. Hijazi and Mr. Hassanein were arrested on May 1, 2014, they were kept incommunicado until their interrogation began on May 3, 2014, in a move likely intended to intimate them. During interrogation, Mrs. Hijazi was subject to physical and verbal abuse. A National Security officer hit her neck, bringing her to her knees, called her names, threatened to urinate into her vagina, and said that she should be sentenced to death or at minimum, life imprisonment. Another officer asked Mrs. Hijazi to confess to receipt of foreign funds and to having been deceived in order to secure her freedom.

Serious, credible allegations of witness intimidation by Egyptian authorities in the case have come to light, reflecting attempts of the authorities to falsely implicate Mrs. Hijazi, Mr. Hassanein, and their co-defendants. Witnesses in the case have reportedly been prevented by security forces from testifying in favor of Mrs. Hijazi, Mr. Hassanein, and their co-defendants. The witnesses that have provided testimony were beaten at the police station, coerced to give false testimony implicating Mrs. Hijazi, Mr. Hassanein, and their co-defendants, and told that they could "either confess to what [the police] wanted or face more torture."⁵

Mrs. Hijazi is currently being held at the Qanater Women's Prison. Mr. Hassanein is being held at Tora Prison, where he has had his recreational time constrained and has intermittently been denied access to pens, paper, books, and the library at various times throughout his detention. Reports of general prison conditions at the Qanater Women's Prison and Tora Prison indicate that the health of Mrs. Hijazi and Mr. Hassanein could at any point be placed at significant risk. Prison cells are often dirty, filled with cockroaches and ants, largely overcrowded, and subject to extreme temperatures due to poor ventilation.⁶ Detainees endure beatings, insults, sexual assault,⁷ and torture.⁸ At times, they are arbitrarily prevented from meeting with family members and face the confiscation of various personal belongings.⁹ The

⁵ Amira El-Fekki, *Trial of NGO founders postponed to October*, DAILY NEWS EGYPT, (May 16, 2015), <http://www.dailynewsegypt.com/2015/05/16/trial-of-ngo-founders-postponed-to-october/>.

⁶ 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/>.

⁷ Ayah Aman, *Female prisoners in Egypt suffer rampant abuse*, AL-MONITOR, (Jun. 30, 2014), <http://www.al-monitor.com/pulse/originals/2014/06/egypt-female-detainees-abuse-harassment-prison.html>.

⁸ 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>.

⁹ 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>.

provision of medical care is increasingly inadequate.¹⁰ When detainees are finally taken to the prison hospital, care is limited and resources are constrained.¹¹ In 2015, the El-Nadeem Center for Rehabilitation of Victims of Violence documented 137 deaths of persons in detention, at least 81 of which occurred due to inadequate medical care.¹² Very little oversight for Egypt's prisons is available. Under the recently-amended Prison Law, the National Council for Human Rights is only allowed to conduct prison visits after receiving prior approval from the Prosecutor-General.¹³ Further, when prosecutors have previously visited prisons, they have reportedly refused to listen to and record prisoner complaints.¹⁴ Finally, compensation for detainees who have been abused or mistreated is seldom issued. Investigations by authorities into deaths of detainees in custody or reports of negligence and abuse are even rarer.¹⁵

Mrs. Hijazi and Mr. Hassanein have been arbitrarily detained and continue to remain in pretrial detention that exceeds not only international law, but also Egyptian domestic law. Further, the continued detention of Mrs. Hijazi and Mr. Hassanein in the Qanater Women's Prison and Tora Prison, respectively, puts their health at possible risk and deterioration.

This case occurs within the current Egyptian government crackdown on youth coordination and civil society activity through measures like the torture and coercion of witnesses, the levelling of false accusations against innocent volunteers, and the abuse of procedural irregularities and pretrial detention for punitive purposes. As reiterated by 17 prominent Egyptian non-governmental organizations in a May 4, 2016 statement, "The suppression of this youth initiative for the rehabilitation of street children is yet another example of the systematic crackdown on volunteer action, the intimidation of young people, and the curtailment of the sphere of public action."¹⁶

Accordingly, we request that the Working Group consider this Petition pursuant to its Urgent Action Procedure. Additionally, it is requested that the attached Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights, as reiterated by Resolutions 2000/36, 2003/31, and Human Rights Council Resolutions 6/4, 15/18, 20/16, and 24/7.

¹⁰ Al-Jazeera, *Life in an Egyptian prison*, AL-JAZEERA, (Aug. 14, 2015), <http://www.aljazeera.com/news/2015/08/life-egyptian-prison-150812112621901.html>.

¹¹ 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>.

¹² El-Nadeem, *2015 in Numbers*, EL-NADEEM, <https://drive.google.com/file/d/0B2-QqOchi4gFcnhWTKZGZTlzV0U/view?pref=2&pli=1>.

¹³ Maram Mazen, *supra* note 6.

¹⁴ Human Rights Watch, *Egypt: Rash of Deaths in Custody*, HUMAN RIGHTS WATCH, (Jan. 21, 2015), <https://www.hrw.org/news/2015/01/21/egypt-rash-deaths-custody>.

¹⁵ *Id.*

¹⁶ CIHRS, *Rights groups renew request for release of defendants in the Belady Foundation case and urge compliance with legal standards for pretrial detention*, CAIRO INSTITUTE FOR HUMAN RIGHTS STUDIES, (May 4, 2016), <http://www.cihrs.org/?p=18575&lang=en>.

Questionnaire To Be Completed¹⁷

I. IDENTITY

1. **Family name:** Hijazi
2. **First name:** Aya Mohamed Nabeel Ahmed
3. **Sex:** Female
4. **Birth date or age (at the time of detention):**
5. **Nationality/Nationalities:** Egypt and the United States of America
6. (a) **Identity document (if any):**
(b) **Issued by:**
(c) **On (date):**
(d) **No.:**
7. **Profession and/or activity (if believed to be relevant to the arrest/detention):** Mrs. Hijazi is a co-founder of Belady Foundation. She is believed to have been arrested for her volunteer and social work with street children via Belady Foundation.
8. **Address of usual residence:** 14 Qubdan Street (Abdeen, Cairo)

II. ARREST

1. **Date of arrest:** May 1, 2014
2. **Place of arrest (as detailed as possible):** Belady Foundation (Mohamed Mahmoud Street)
3. **Forces who carried out the arrest or are believed to have carried it out:** Police (from Abdeen Police Station)
4. **Did they show a warrant or other decision by a public authority?** The raid and the arrests were conducted without a warrant.
5. **Authority who issued the warrant or decision:** Not applicable.
6. **Reasons for the arrest imputed by the authorities:** The raid occurred after Khaled Gouda Hammad Mohamed Bakr filed a complaint with the Abdeen Police Station alleging that his son Sayed Galal Bayoumy was being forcibly held at Belady Foundation.

¹⁷ *Model Questionnaire To Be Completed By Persons Alleging Arbitrary Arrest or Detention*, UN WORKING GROUP ON ARBITRARY DETENTION, <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

7. **Legal basis for the arrest including relevant legislation applied (if known):** The arrests were conducted without a warrant.

III. DETENTION

1. **Date of detention:** May 1, 2014
2. **Duration of detention (if not known, probable duration):** Over two years
3. **Forces holding the detainee under custody:** Egyptian Prison Authority
4. **Places of detention (indicate any transfer and present place of detention):** Qanater Women's Prison
5. **Authorities that ordered the detention:** Abdeen Police Station and Prosecution
6. **Reasons for the detention imputed by the authorities:** Mrs. Hijazi faces seven charges: establishing, organizing, and operating a criminal organization with the purpose of human trafficking; indecently assaulting minors to partake in lewd conduct and sexual acts; sexually exploiting minors; kidnapping minors and exploiting them; detaining minors without permission and in violation of the law in a private location to torture and assault them; facilitating lewd acts; and forming an entity that conducts activities normally conducted by an association without following the legally established procedure.
7. **Legal basis for the detention including relevant legislation applied (if known):** Mrs. Hijazi faces possible sentencing under Articles 1(1), 2, 3, 4, 5, 6(1, 2, 6, 7) and 7 of the Law to Combat Human Trafficking (Law No. 64 of 2010); Articles 268 (1, 2), 280, 282, 288, and 291(1, 2) of the Penal Code (Law No. 58 of 1937); Articles 2/1, 116bis, and 116bis(a) of the Child Law (Law No. 126 of 2008), and Article 76 (second provision(a)) of the NGO Law (Law No. 84 of 2002).

Questionnaire To Be Completed¹⁸

I. IDENTITY

1. **Family name:** Fathallah
2. **First name:** Mohamed Hassanein Mostafa
3. **Sex:** Male
4. **Birth date or age (at the time of detention):**
5. **Nationality/Nationalities:** Egypt
6. (a) **Identity document (if any):**
(b) **Issued by:**
(c) **On (date):**
(d) **No.:**
7. **Profession and/or activity (if believed to be relevant to the arrest/detention):** Mr. Hassanein is a co-founder of Belady Foundation. He is believed to have been arrested for his volunteer and social work with street children via Belady Foundation.
8. **Address of usual residence:** 14 Qubdan Street (Abdeen, Cairo)

II. ARREST

8. **Date of arrest:** May 1, 2014
9. **Place of arrest (as detailed as possible):** Belady Foundation (Mohamed Mahmoud Street)
10. **Forces who carried out the arrest or are believed to have carried it out:** Police (from Abdeen Police Station)
11. **Did they show a warrant or other decision by a public authority?** The raid and the arrests were conducted without a warrant.
12. **Authority who issued the warrant or decision:** Not applicable.
13. **Reasons for the arrest imputed by the authorities:** The raid occurred after Khaled Gouda Hammad Mohamed Bakr filed a complaint with the Abdeen Police Station alleging that his son Sayed Galal Bayoumy was being forcibly held at Belady Foundation.

¹⁸ *Model Questionnaire To Be Completed By Persons Alleging Arbitrary Arrest or Detention*, UN WORKING GROUP ON ARBITRARY DETENTION, <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

14. **Legal basis for the arrest including relevant legislation applied (if known):** The arrests were conducted without a warrant.

III. DETENTION

8. **Date of detention:** May 1, 2014
9. **Duration of detention (if not known, probable duration):** Over two years
10. **Forces holding the detainee under custody:** Egyptian Prison Authority
11. **Places of detention (indicate any transfer and present place of detention):** Tora Prison
12. **Authorities that ordered the detention:** Abdeen Police Station and Prosecution
13. **Reasons for the detention imputed by the authorities:** Mr. Hassanein faces seven charges: establishing, organizing, and operating a criminal organization with the purpose of human trafficking; indecently assaulting minors to partake in lewd conduct and sexual acts; sexually exploiting minors; kidnapping minors and exploiting them; detaining minors without permission and in violation of the law in a private location to torture and assault them; facilitating lewd acts; and forming an entity that conducts activities normally conducted by an association without following the legally established procedure.
14. **Legal basis for the detention including relevant legislation applied (if known):** Mr. Hassanein faces possible sentencing under Articles 1(1), 2, 3, 4, 5, 6(1, 2, 6, 7) and 7 of the Law to Combat Human Trafficking (Law No. 64 of 2010); Articles 268 (1, 2), 280, 282, 288, and 291(1, 2) of the Penal Code (Law No. 58 of 1937); Articles 2/1, 116bis, and 116bis(a) of the Child Law (Law No. 126 of 2008), and Article 76 (second provision(a)) of the NGO Law (Law No. 84 of 2002).

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND THE REASONS WHY YOU CONSIDER THE ARREST AND/OR DETENTION TO BE ARBITRARY

a. Statement of Facts

i. Political and Legal Context in Egypt

Around the time the government arrested Aya Mohamed Nabeel Ahmed Hijazi (also known as Aya Mohamed Nabeel Ahmed *Hegazy*) and Mohamed Hassanein Mostafa Fathallah (herein referred to as Mr. Hassanein) and continuing in the present day, a number of political and legal measures have been implemented by Egyptian authorities to severely constrain the freedoms and liberties of citizens and civil society, many of which have been furthered under the pretense of maintaining security and stability.

Particularly relevant have been the measures taken by Egyptian authorities to severely crackdown on civil society in the wake of the January 25 Revolution and until the present day. In December 2011, authorities raided the offices of 17 non-governmental organizations (NGOs) in Cairo, confiscating their funds, documents, and equipment, and detaining some of their employees, beginning what would infamously be referred to as the “foreign funding” case.¹⁹ In June 2013, 43 staff of international NGOs were sentenced to prison to between one to five years in the case on the charges of operating unlawfully in the country and receiving foreign funding without permission. On July 18, 2014, the Ministry of Social Solidarity posted a notice in leading state newspaper *Al-Ahram* giving all Egyptian and foreign NGOs an ultimatum to formally register by September 2. The notice was eventually extended until November 10 and never formally enforced.²⁰ However, according to Egyptian sources, the government is presently pursuing a second phase of the “foreign funding” case and is beginning to investigate dozens of domestic Egyptian NGOs. Members of the Cairo Institute for Human Rights Studies (CIHRS) and Nazra for Feminist Studies have been called in for questioning. Prominent human rights defenders Hossam Bahgat and Gamal Eid are undergoing court proceedings to determine if their assets will be frozen. NGO and torture rehabilitation center El-Nadeem has been threatened with closure.²¹

The crackdown upon civil society occurs, in part, under the guise of Egypt’s draconian NGO law (Law No. 84 of 2002) and subsequent Penal Code Amendment (Decree No. 128 of 2014) which broadly criminalize the receipt of foreign funding, set forth significant administrative barriers to registration—including the adoption of vague grounds allowing for the denial of registration—and allow authorities significant discretion to interfere in the internal affairs of civil society organizations.²² The United Nations Special Rapporteur on the rights to

¹⁹ Khalid Hassan, *Egypt’s glaring rights violations once again in global spotlight*, AL-MONITOR, (May 10, 2016), <http://www.al-monitor.com/pulse/originals/2016/05/egypt-human-rights-ngos-foreign-funding.html#ixzz48YZiW5u2>.

²⁰ OMCT, *Egypt: Dissolution Ultimatum for Independent Groups*, OMCT, (Aug. 30, 2014), <http://www.omct.org/human-rights-defenders/statements/egypt/2014/08/d22811/>.

²¹ Robert F. Kennedy Human Rights, *Robert F. Kennedy Human Rights Condemns Egyptian Government’s Crackdown on Civil Society*, ROBERT F. KENNEDY HUMAN RIGHTS, (Mar. 22, 2016), <http://rfkhumanrights.org/news/news/robert-f-kennedy-human-rights-condemns-egyptian-governments-crackdown-civil-society/>.

²² ICNL, *NGO Law Monitor: Egypt*, THE INTERNATIONAL CENTER FOR NOT-FOR-PROFIT LAW, (Mar. 23, 2016), <http://www.icnl.org/research/monitor/egypt.html>.

freedom of peaceful assembly and of association has expressed his concern that numerous provisions of Egypt's NGO law do not meet international human rights standards. He additionally states that, "the process to establish an association should be simple, easily accessible and non-discriminatory and that the State should permit any associations, including unregistered ones, to function freely, with their members operating in an enabling and safe environment... Law on Associations No. 84/2002 places additional burdens on associations that risk undermining legitimate human rights activities in Egypt, in contradiction with the State's obligation to establish and maintain a conducive environment for the free operations of associations."²³

In addition to the constraints placed upon non-governmental organizations and volunteers, the Egyptian government has taken extensive measures to silence other independent voices, including peaceful protesters, and even non-political persons like teenager Mahmoud Mohamed Ahmed Hussein—kept in punitive pretrial detention for over two years for wearing an anti-torture t-shirt²⁴—and novelist Ahmed Naji—sentenced to two years for harming public morality for explicit content in his novel.²⁵ The detention of persons like Hussein and Naji depicts the extent that the Egyptian authorities have gone to silence youth voices and persons of possible societal influence even outside of the political arena.

The legal arsenal available to Egyptian authorities to crackdown on such voices has only expanded. The Protest Law, passed in November 2013, has effectively banned any public gatherings of more than 10 people without government approval, set forth a requirement that protest organizers give notification to authorities three days prior, granted authorities broad discretion to prohibit demonstrations when they are deemed a threat to public order, and established punishment for unauthorized activity.²⁶ The Terrorist Entities Law²⁷ and the Terrorism Law were passed in December 2014 and August 2015, setting forth vague definitions for "terrorism" which have been increasingly used to try political dissidents as terrorists and to implement exceptional measures including the extension of pretrial detention, the monitoring of private phone calls, and the designation of certain criminal courts to hear terrorism cases.²⁸ Other laws have included measures enabling the removal and suspension of students and professors for political activity, the transfer of non-Egyptians to their countries for judicial extradition, and the trial of civilians accused of committing crimes against public facilities by the military judiciary.²⁹

²³ *Egypt Communications: May 1, 2011 To February 28, 2015*, UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION, <http://freeassembly.net/reports/egypt-communications/>.

²⁴ Robert F. Kennedy Human Rights, *Robert F. Kennedy Human Rights Submits Case to U.N. Working Group Seeking Release of Egyptian Teen Protestor Mahmoud Mohamed Ahmed Hussein*, ROBERT F. KENNEDY HUMAN RIGHTS, (Nov. 13, 2015), <http://rfkhumanrights.org/news/news/robert-f-kennedy-human-rights-submits-case-un-working-group-seeking-release-egyptian-teen-protestor-mahmoud-mohamed-ahmed-hussein/?edit>.

²⁵ *Egypt: Ahmed Naji sentenced to two years in prison*, PEN INTERNATIONAL, (Feb. 29, 2016), <https://www.englishpen.org/campaigns/egypt-ahmed-naji-sentenced-to-two-years-in-prison/>.

²⁶ David Kirkpatrick, *New Law in Egypt Effectively Bans Street Protests*, NEW YORK TIMES, (Nov. 25, 2013), http://www.nytimes.com/2013/11/26/world/middleeast/egypt-law-street-protests.html?_r=0.

²⁷ Ahmed Fouad, *Egypt passes new law on 'terrorist' entities*, AL-MONITOR, (Dec. 10, 2014), <http://www.al-monitor.com/pulse/originals/2014/12/egypt-law-terrorist-entities-muslim-brotherhood.html#>.

²⁸ Human Rights Watch, *Egypt: Counterterrorism Law Erodes Basic Rights*, HUMAN RIGHTS WATCH, (Aug. 19, 2015), <https://www.hrw.org/news/2015/08/19/egypt-counterterrorism-law-erodes-basic-rights>.

²⁹ Mai El-Sadany, *Tracking Egypt's Extraparliamentary Laws*, TAHRIR INSTITUTE FOR MIDDLE EAST POLICY, (Aug. 12, 2015), <http://timep.org/commentary/tracking-egypts-extraparliamentary-laws/>.

Reports of recent human rights violations against civil society actors in Egypt have included “excessive use of force by security forces, deficiencies in due process, and the suppression of civil liberties.”³⁰ Other human rights abuses have included impunity for alleged crimes committed by government officials and security forces, restrictions on press and academic freedom, increasing reports of forced disappearances, judicial action fueled by politicized motives, arbitrary arrests, punitive pretrial detention, and grave prison conditions.³¹

Reports of prison conditions throughout this time period have been extremely grave. Pretrial detainees are kept in the same conditions and often times, the same cells as convicted persons. Prison cells are dirty, filled with cockroaches and ants, largely overcrowded, and subject to extreme temperatures due to poor ventilation.³² Detainees endure beatings, insults, sexual assault,³³ and torture,³⁴ At times, they are arbitrarily prevented from meeting with family members and legal counsel and face the confiscation of various personal belongings³⁵. The provision of medical care is increasingly inadequate.³⁶ When detainees are taken to the prison hospital, care is limited and resources are constrained.³⁷ In 2015, the El-Nadeem Center for Rehabilitation of Victims of Violence documented 137 deaths of persons in detention, at least 81 of which occurred due to inadequate medical care.³⁸ Very little oversight for Egypt's prisons is available. Under the recently-amended Prison Law, the National Council for Human Rights is only allowed to conduct prison visits after receiving prior approval from the Prosecutor-General.³⁹ Further, when prosecutors have previously visited prisons, they have reportedly refused to listen to and record prisoner complaints.⁴⁰ Finally, compensation for detainees who have been abused or mistreated is seldom issued. Investigations by authorities into deaths of detainees in custody or reports of negligence and abuse are even rarer.⁴¹

ii. Pretrial Detention in Egypt

Under the Egyptian Criminal Procedure Code, pretrial detention—detention that occurs before sentencing—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.⁴²

In cases that meet at least one of the five guidelines to qualify for pretrial detention, an arrested individual can initially be detained without charge for 15 days. This detention can then

³⁰ *Egypt 2015 Human Rights Report*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/documents/organization/253133.pdf>.

³¹ *Id.*

³² Maram Mazen, *supra* note 6.

³³ Ayah Aman, *supra* note 7.

³⁴ Arwa Ibrahim, *supra* note 8.

³⁵ Leila Fadel, *supra* note 9.

³⁶ Al-Jazeera, *supra* note 10.

³⁷ Stephen Kalin, *supra* note 11.

³⁸ El-Nadeem, *supra* note 12.

³⁹ Maram Mazen, *supra* note 6.

⁴⁰ Human Rights Watch, *supra* note 14.

⁴¹ *Id.*

⁴² *Criminal Procedure Code*, Law No. 150 of 1950, Amended Law No. 83 of 2013, Art. 134, <http://helmylawyers.blogspot.com/2010/07/001.html>.

be extended for up to two additional 15-day periods, amounting to a total of 45 days.⁴³ If a judge determines that preliminary investigations are not yet complete at the 45-day mark, s/he may grant additional periods of detention renewal. The Prosecutor-General can review and/or receive complaints regarding the pretrial detention.⁴⁴ In total, the Egyptian 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.⁴⁵ In cases in which the detainee has already been sentenced to death or life imprisonment and he or she is appealing the detention or the court has granted a retrial, the referring court and the Court of Cassation can extend pretrial detention in 45-day periods without a maximum time limit, effectively creating a set of circumstances in which there can be indefinite pretrial detention.⁴⁶ In practice, it has been reported that courts regularly renew detention orders at the prosecution's request and without considering the merits of the case; renewal hearings have been short and often last only a few minutes.⁴⁷

Although the Egyptian Criminal Procedure Code sets forth a maximum of two years in pretrial detention for persons who have not been sentenced but face potential death or life imprisonment sentences, the Egyptian government consistently violates its own laws and continues to keep many pretrial detainees in detention even after the expiration of the two-year maximum. At least 1,464 detainees remain in pretrial detention beyond the maximum⁴⁸ including Shawkan Abou Zeid, a photojournalist who was arrested while covering the Rabaa sit-in dispersals and who has been diagnosed with Hepatitis C, facing severe health deteriorations while in detention.⁴⁹ Mahmoud Mohamed Ahmed Hussein, a politically-unaligned youth who had been arbitrarily detained at a checkpoint for wearing an anti-torture t-shirt, was also kept in pretrial detention for over two years and two months before he was finally released in March 2016.⁵⁰

Under the government of President Abdul Fattah El-Sisi, pretrial detention has been used as a punitive measure against political prisoners and prisoners of conscience.⁵¹ Although the Egyptian government has not provided figures on the total number of pretrial detainees, human rights groups and the National Council for Human Rights (NCHR) report excessive use of pretrial detention and large backlogs in criminal courts which further contribute to "protracted periods of pretrial detention."⁵² According to a May 31, 2015 report by the NCHR using numbers from the Ministry of Interior, at least 7,000 persons remained in pretrial detention on

⁴³ *Criminal Procedure Code*, Art. 142, *supra* note 42.

⁴⁴ *Criminal Procedure Code*, Art. 143, *supra* note 42.

⁴⁵ *Id.*

⁴⁶ *Criminal Procedure Code*, Arts. 142-143, *supra* note 42.

⁴⁷ Amnesty International, *Egypt: Generation Jail: Egypt's Youth Go From Protest to Prison*, AMNESTY INTERNATIONAL, (Jun. 29, 2015), <https://www.amnesty.org/en/documents/mde12/1853/2015/en/>.

⁴⁸ EIPR, *The New Emergency Law: Endless Pretrial Detention as Political Punishment At least 1,464 people in Four Governorates Held in Pretrial Detention Longer than the Two Year Legal Limit*, EGYPTIAN INITIATIVE FOR PERSONAL RIGHTS, (May 10, 2016), <http://eipr.org/en/pressrelease/2016/05/10/2600>.

⁴⁹ 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/>.

⁵⁰ Robert F. Kennedy Human Rights, *supra* note 24.

⁵¹ ANHRI, *Extended Pre-trial Detention.. Disguised Incarceration*, THE ARABIC NETWORK FOR HUMAN RIGHTS INFORMATION, (May 31, 2015), <http://anhri.net/?p=145083&lang=en>.

⁵² *Egypt 2015 Human Rights Report*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/documents/organization/253133.pdf>.

charges related to incidents occurring on or after June 2013.⁵³ With official numbers considered conservative by non-governmental rights groups and at least 1,464 detainees documented to be in pretrial detention for longer than two years,⁵⁴ the actual total number of pretrial detainees is likely to be significantly higher.

iii. The Detention of Mrs. Hijazi and Mr. Hassanein

In September 2013, Egyptian-American dual citizen Aya Mohamed Nabeel Ahmed Hijazi (also known as Aya Mohamed Nabeel Ahmed *Hegazy*) and her Egyptian husband Mohamed Hassanein Mostafa Fathallah founded Belady (“My Country”) Foundation, a well-regarded non-profit organization intended to work with street children in Egypt and to develop programs to provide rehabilitation and to address sanitation and sexual harassment. The organization hosted activities for street children ranging from drawing to recycling and music and provided a safe haven for minors who had fled their homes and would otherwise have been homeless and subject to exploitation and abuse in the streets. The organization had been inspired by Mrs. Hijazi’s desire to side-step the divisive political environment of the time and to instead bring people together around social work.⁵⁵ Mrs. Hijazi had moved to Egypt after completing her studies in conflict resolution at George Mason University. After Mrs. Hijazi met Mr. Hassanein in Egypt, the couple had decided to get married. Opting against a lavish wedding,⁵⁶ they instead collected their savings in order to found the Belady Foundation, and invited their friends and family to contribute in lieu of giving them wedding gifts.⁵⁷

Starting from December 2013, the founders of the Belady Foundation fulfilled all necessary steps to formally register the organization with the Ministry of Social Solidarity, including opening a bank account in the foundation’s name. However, bureaucratic government complications had prevented the foundation from obtaining a formal registration number. To date, the Ministry of Social Solidarity has not provided any reasons to explain the registration delays.⁵⁸ In light of the unexplained, but all too common bureaucratic delays, the founders of Belady Foundation had been advised to continue with their work while the paperwork proceeded as is common practice for volunteers and non-governmental organizations.⁵⁹

Speaking about the organization and the commitment of its founders, Mrs. Hijazi’s mother, Naglaa Hosni, has said: “The kids are being taught how to read and write, paint, learn self-defense. Aya and her husband sleep on the floor in the conference room so that they can supervise the kids 24/7... They treat the children with dignity and respect.”⁶⁰ In a different

⁵³ *Id.*

⁵⁴ EIPR, *supra* note 48.

⁵⁵ *Moassasa Belady Fe Birnamig Ez El-Shabab Ala Qanat Rotana El-Masriyya* (Belady Foundation on Youth Program of Rotana Egyptian Channel), YOUTUBE, (Feb. 9, 2014), https://www.youtube.com/watch?v=LzJJ_xM4VTc.

⁵⁶ Aya Nader, *Couple Spend Their Wedding Money on Street Children, End up in an Egyptian Prison*, EGYPTIAN STREETS, (Feb. 12, 2016), <http://egyptianstreets.com/2016/02/12/couple-spend-their-wedding-money-on-street-children-end-up-in-an-egyptian-prison/>.

⁵⁷ Heba Habib, *How Egypt’s most famous jailed couple celebrated Valentine’s Day*, WASHINGTON POST, (Feb. 14, 2016), <https://www.washingtonpost.com/news/worldviews/wp/2016/02/14/how-egypts-most-famous-jailed-couple-celebrated-valentines-day/>.

⁵⁸ Frontline Defenders, *Ongoing trial and detention of human rights defenders Aya Hegazy and Mohammed Hassanein*, FRONTLINE DEFENDERS, (Feb. 18, 2016), <https://www.frontlinedefenders.org/en/case/case-history-aya-hegazy>.

⁵⁹ Mada Masr, *supra* note 2.

⁶⁰ *Id.*

interview, Mrs. Hosni also stated of her daughter: “She was very strict about no slapping, no beating, no cursing, no cussing of these kids. And she did not allow any of the volunteers to call them *Owlad Shawaraa* - street kids. And she told them they are *Owlad Beladi* - the children of my country.”⁶¹

In an interview in March 2014, Mrs. Hijazi and three children from Belady Foundation spoke to prominent Egyptian television channel ONTV about the organization and how they had come to meet. The children had all left their homes and lived in the streets, hailing from abusive environments and drug addiction. Mrs. Hijazi explained that she and her volunteers would go to places where street children were known to gather and would share information about the foundation, giving the children full freedom to join them or not and later, full freedom to stay or to leave. She explained that while the foundation initially only organized rehabilitation programs for sexual abuse and drug addiction, it also eventually provided a safe and respectful home for the children. At the time of the interview, the foundation housed ten male children. Mrs. Hijazi clarified that volunteers were present at all times and that children were never left unmonitored. After rehabilitation was complete, the foundation intended to offer the children an opportunity to help repair relations with their family members or to stay and become volunteers.⁶²

On May 1, 2014, a man named Khaled Gouda Hammad Mohamed Bakr came to the Belady Foundation offices with a large group of thugs in search of his missing son Sayed Galal Bayoumy whom he claimed to be in the foundation’s offices. After failing to find his son, the thugs assaulted Belady Foundation volunteers present at the office, and Mr. Bakr threatened to return. An hour after the incident, Mr. Bakr returned with police from the Abdeen Police Station. Police searched the offices without a warrant and unlawfully arrested Mrs. Hijazi and Mr. Hassanein alongside volunteers Shereef Talaat Mohamed Mohamed and Ameera Farag Mohamed Qassem. They also unlawfully detained 17 children present at the offices, and illegally confiscated several computers and documents. Days later, police raided the home of Mrs. Hijazi and Mr. Hassanein, confiscated various personal identification documents, and sealed the house. Ibrahim Abdraboh Abdulmagd Al-Salhi, Kareem Magdy Mahmoud Fathy, and Mohamed Al-Sayed Mohamed Al-Sayed, all of whom also volunteer with Belady Foundation, were arrested and detained weeks later.

Although detained on May 1, 2014, Mrs. Hijazi and Mr. Hassanein were kept incommunicado in a room later identified to be inside the Azbakeya Police Station until their interrogation which occurred on May 3, 2014 and continued until mid-day May 4, 2014.⁶³ During her interrogation, Mrs. Hijazi was subjected to verbal and physical abuse. A National Security officer hit her over the neck, causing her to fall to her knees. He called her names, threatened to urinate into her vagina, and said that she should be sentenced to death or at minimum, life in prison.⁶⁴ Another officer asked her to confess that she had received foreign funds, and that she had been deceived by funders in order to secure her freedom.⁶⁵ The officers

⁶¹ Leila Fadel, *U.S. Couple Held In Egyptian Prison For 1 Year Over Unfounded Child Abuse*, NPR, (Jul. 30, 2015), <http://www.npr.org/2015/07/30/427839996/u-s-couple-held-in-egyptian-prison-for-1-year-over-unfounded-child-abuse>.

⁶² *Sitt El-Hosn* (Beautiful Lady), ONTV, (Mar. 24, 2014), <https://youtu.be/LxkX30iiSU8>

⁶³ Mada Masr, *Local group accused of inciting street children to protest*, MADA MASR, (May 4, 2014), <http://www.madamasr.com/news/local-group-accused-inciting-street-children-protest>.

⁶⁴ Mada Masr, *supra* note 2.

⁶⁵ *Id.*

in the case continuously brought up Mrs. Hijazi's American citizenship,⁶⁶ raising concerns that she was being targeted in light of her status as a dual citizen in addition to her role in civil society.

After the arrests were made, the Ministry of Interior issued a statement which claimed that the children taken by police from the premises had testified that they had been paid by the defendants to participate in protests and instructed to sexually assault each other.⁶⁷ Some of the reported confessions as filmed by the police were uploaded onto the internet, but in edited form. These videos featured children reporting alleged forced sexual contact between each other, the viewing of pornographic films, the receipt of payment to protest, and the forced removal of their clothing as a punitive measure.⁶⁸ According to the prosecution's records, witness statements by a number of children confirmed similar allegations. Biased reports by state-controlled media continued to emphasize Mrs. Hijazi's American citizenship,⁶⁹ referring to her as an American foreign agent who had been sexually abusing vulnerable children and sending them to pro-Islamist protests.⁷⁰

Mrs. Hijazi, Mr. Hassanein, and their co-defendants unequivocally denied the accusations, asserting that the children had been coerced to testify against them by the police. According to an account published by the Freedom to the Brave grassroots campaign, the children were severely beaten by police on the day of the arrests and interrogations and "[the police] told the children to either confess to what [the police] wanted or face more torture."⁷¹ The account further added that the government prevented parents and children who wanted to testify in favor of Mrs. Hijazi, Mr. Hassanein, and their co-defendants from providing their testimony.⁷² Another account of a child whose testimony did not incriminate the defendants explained: "When I was outside [the prosecutor's office], they told me to lie so that they'd let me go. But I said no, I will tell the truth."⁷³ Maha Maamoun, a member of the Popular Campaign for Child Protection, has explained that the Egyptian government has previously used and intimidated street children to force them to make false statements that activists paid them to take part in the protests.⁷⁴

Witness statements from volunteers and visitors to the Foundation, certified by the notary public office, have reiterated that the children at Belady Foundation were treated humanely and honorably.⁷⁵ One mother of a child who lived at Belady Foundation told the media, "My son wasn't kidnapped or abused... They taught him to read and write."⁷⁶

⁶⁶ Omar Hazeq (Translated by Amira Elmasry), *The curious case against Aya Hegazy and the Belady Foundation*, MADA MASR, (Mar. 24, 2016), <http://www.madamasr.com/opinion/politics/curious-case-against-aya-hegazy-and-belady-foundation>.

⁶⁷ Mada Masr, *supra* note 63.

⁶⁸ *Bil Fidio: Tifl Dahiyya Gamiyya Belady El-Wahmiyya* (Video: Child Victim of Belady Foundation Front), YOUM7, (May 7, 2014), <https://www.youtube.com/watch?v=aebtkLCPuio>; *Bil Fidio: Tifl Dahiyya El-Gamiyya El-Mashbooha* (Video: Child Victim of Suspicious Organization), YOUM7, (May 7, 2014), https://youtu.be/aTvvH_8uuE8

⁶⁹ Zeinobia, *Don't Forget Aya Hegazy and her team in prison*, EGYPTIAN CHRONICLES, (Dec. 22, 2015), <http://egyptianchronicles.blogspot.com/2015/12/dont-forget-aya-hegazy-and-her-team-in.html?m=1>.

⁷⁰ Heba Habib, *supra* note 57.

⁷¹ Amira El-Fekki, *supra* note 5.

⁷² *Id.*

⁷³ Omar Hazeq, *supra* note 66.

⁷⁴ Mada Masr, *supra* note 2.

⁷⁵ EIPR, *supra* note 3.

⁷⁶ Leila Fadel, *supra* note 61.

In addition to television and media interviews and witness statements documenting the positive impact that Belady Foundation has had on the lives of street children, the Facebook page of the foundation features a number of photographs depicting the children happily participating in activities.⁷⁷ A detailed, independent investigative report looking into the Belady Foundation case highlights an extensive list of inconsistencies in the testimonies and anecdotes of the case put forth by the government and the bizarre language used by the children in their alleged “confessions,” ultimately concluding: “How on earth is it possible for the defendants to spend almost two years in pretrial detention given such weak evidence: unreliable juvenile confessions and investigations?”⁷⁸

Prominent, respected human rights lawyer and activist Yara Sallam has written about the case: “It was obvious at the time that their case was fabricated... Aya had returned from the United States hoping to bring about a positive change for children living on the streets... The few moments in which I was able to see Aya while I was imprisoned led me to feel that she had not changed at all. Although I am an optimistic person who has always been hopeful, I was always amazed by Aya’s persistent hope.”⁷⁹ Frontline Defenders has also referred to the charges as “fabricated.”⁸⁰ A *New York Times* piece on Mrs. Hijazi and Mr. Hassanein’s case ultimately found that, “the arrest appears to be related to a wider government crackdown on nongovernmental groups that are regarded with suspicion in Egypt and accused of being front organizations for various foreign conspiracies.”⁸¹

After interrogation, Mrs. Hijazi was sent to the Qanater Women’s Prison and Mr. Hassanein was sent to the Tora Prison. They both remain in their respective prisons today. While in detention, Mr. Hassanein has had his recreational time constrained and has been denied access to pens, papers, books, and the library at various times. Mrs. Hijazi and Mr. Hassanein were kept in pretrial detention without being formally charged with a single crime for four months. Despite the fact that the prosecution was unable to point to any reasons for which to keep the defendants detained during this period, Mrs. Hijazi and Mr. Hassanein’s pretrial detention was renewed in near-automatic detention sessions. Requests for bail and conditional release were not given proper or due consideration.⁸²

In September 2014, the prosecution levelled seven charges against eight defendants (Zeinab Ramadan Abdelmoty, the eighth defendant, was charged in absentia and has not been arrested to date). The charges are:

⁷⁷ *Photo Stream*, BELADY FOUNDATION, (2014), https://www.facebook.com/beladyeg.found/photos_stream?ref=page_internal.

⁷⁸ Omar Hazeq, *supra* note 66.

⁷⁹ Yara Sallam (Translated by Assmaa Naguib), *Blog: 'Did you see Aya in Qanater Prison?'*, MADA MASR, (Feb. 12, 2016), <http://www.madamasr.com/opinion/politics/blog-did-you-see-aya-qanater-prison>.

⁸⁰ Frontline Defenders, *supra* note 58.

⁸¹ Kareem Fahim, *Families of Americans Held by Allies Say U.S. Is Keeping Its Gloves On*, NEW YORK TIMES, (Apr. 16, 2016), http://www.nytimes.com/2016/04/17/world/middleeast/families-of-americans-held-by-allies-say-us-is-keeping-its-gloves-on.html?_r=0.

⁸² Bar Human Rights Committee and EuroMed Rights, *Serious Concerns about Fairness of Belady Foundation Trial*, BAR HUMAN RIGHTS, (Mar. 22, 2016), http://barhumanrights.org.uk/sites/default/files/documents/biblio/bhrc_emhrn_statement-of-concern-aya-hegazy.pdf.

- Establishing, organizing, and operating a criminal organization with the purpose of human trafficking for sexual exploitation, participation in protests, and the collection of donations;
- Indecently assaulting minors to partake in lewd conduct and sexual acts;
- Sexually exploiting minors;
- Kidnapping minors and exploiting them;
- Detaining minors without permission and in violation of the law in a private location to torture and assault them;
- Facilitating lewd acts; and
- Forming an entity that conducts activities normally conducted by an association without following the legally-established procedure.

Two other additional charges were made against four of the other defendants. Despite the government's forensic medical report that found no signs of sexual abuse and torture on any of the minors during their presence at Belady Foundation, the allegations of severe witness intimidation by police, and the questionable nature of the evidence presented, the charges have been allowed to stand and the case has been referred to trial.

After being formally charged alongside the remaining defendants, Mrs. Hijazi and Mr. Hassanein continued to be kept in pretrial detention for a period of about six months until their case was heard by a criminal court for the first time on March 14, 2015. During this time, their pretrial detention was again extended in near-automatic detention hearings and proper consideration for bail and/or conditional release was not granted.

On March 14, 2015, Mrs. Hijazi, Mr. Hassanein, and their co-defendants were brought to trial before the Cairo Criminal Court. Since that date, the trial has been adjourned six times. The first hearing was adjourned for a period of nearly six months due to an absence of witnesses.⁸³ The second hearing was adjourned for another six months due to the failure of the prison authorities to bring the defendants to court.⁸⁴ Another hearing was adjourned due to the inability of a court-appointed technician to turn on a laptop that had been entered into evidence.⁸⁵ Finally, the most recent hearing was adjourned after a technical committee summoned by the Criminal Court explained that they were not qualified to conduct a technical examination of the aforementioned laptop.⁸⁶ More than two years since the arrest of the defendants, the court has yet to hear any witnesses and the prosecution has yet to present any evidence.⁸⁷ Throughout this time, arguments for conditional release of the detainees on bail have been rejected.

On May 1, 2016, Mrs. Hijazi and Mr. Hassanein completed two years in pretrial detention, exceeding the maximum allowed under Egyptian domestic law for defendants facing possible life imprisonment or death sentences in cases of first review. Despite this, they have

⁸³ Mada Masr, *Aya Hegazy trial postponed for 5th time after court unable to turn on laptop*, MADA MASR, (Feb. 17, 2016), <http://www.madamasr.com/news/aya-hegazy-trial-postponed-5th-time-after-court-unable-turn-laptop>.

⁸⁴ Mada Masr, *Court adjourns Aya Hegazy's case after defendants are transferred to court late*, MADA MASR, (Nov. 16, 2015), <http://www.madamasr.com/news/court-adjourns-aya-hegazys-case-after-defendants-are-transferred-court-late>.

⁸⁵ Mada Masr, *supra* note 83.

⁸⁶ Mada Masr, *After nearly 2 years in detention, Aya Hegazy's trial postponed till May*, MADA MASR, (Mar. 23, 2016), <http://www.madamasr.com/news/after-nearly-2-years-in-detention-aya-hegazys-trial-postponed-till-may>.

⁸⁷ Mada Masr, *supra* note 83.

remained in detention and authorities have refused to release them. The next court session for Mrs. Hijazi, Mr. Hassanein, and their co-defendants will occur on May 21, 2016.

In a widely disseminated opinion piece for *Mada Masr*, Taher El-Motaz Billah unequivocally dismissed claims that the Egyptian government could possibly be looking out for the interests of street children by prosecuting the Belady Foundation case, pointing to a consistent record of government policies that have only harmed street children.⁸⁸ Instead, he explained that Mrs. Hijazi, as a non-political youth and social worker with American citizenship and a demonstrated passion for conflict resolution, had caught the attention of Egyptian intelligence and had not been detained by accident.⁸⁹ He added, “People like Aya are a blessing on society and a curse on the [authoritarian] system. Her detention is a message that if a person would like to live safely in Egypt, he should not just avoid politics, but rather, any initiative that seeks to reform and change.”⁹⁰ Referring to the time that Mr. Hassanein gave flowers to Mrs. Hijazi at their court hearing occurring around the occasion of Valentine’s Day, the author concludes: “There is no place for someone like Aya...those who exchange flowers behind bars are able to spread the seeds of hope outside.”⁹¹

A statement by 25 of the most prominent rights NGOs in Egypt further highlighted the egregious unlawful detention of Mrs. Hijazi, Mr. Hassanein and their colleagues:

The Belady case demonstrates how youth continue to be punished and face fabricated charges. It is an illustration of the policy of suppressing freedom of association and civic and volunteer action. The undersigned organizations thus reiterate their appeal for the release of all defendants in the case and the dropping of all charges. We also urge the state and competent bodies to enable the young people of the Belady Foundation to pursue their goal of eliminating a serious phenomenon that the state has long argued it is unable to combat alone, requiring dedicated youth energies to assist it. We caution that such repressive policies, especially when wielded against youth, constitute a clear threat to the future of this country.⁹²

Months later, 17 prominent NGOs reiterated a similar sentiment: “The suppression of this youth initiative for the rehabilitation of street children is yet another example of the systematic crackdown on volunteer action, the intimidation of young people, and the curtailment of the sphere of public action.”⁹³

b. Legal Analysis

i. Category I: No Basis for Detention

⁸⁸ Taher El-Motaz Billah, *Lihatha Soginat Aya Hegazy* (For This Reason, Aya Hegazy Was Arrested), MADA MASR, (Mar. 23, 2016), <http://www.madamasr.com/ar/opinion/%D9%84%D9%87%D8%B0%D8%A7-%D8%B3%D9%8F%D8%AC%D9%90%D9%86%D9%8E%D8%AA-%D8%A2%D9%8A%D8%A9-%D8%AD%D8%AC%D8%A7%D8%B2%D9%8A>.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² EIPR, *supra* note 3.

⁹³ CIHRS, *supra* note 16.

The detention of Mrs. Hijazi and Mr. Hassanein is arbitrary under Category I.

1. The Continued Detention of Mrs. Hijazi and Mr. Hassanein Violates Domestic Regulations on Pretrial Detention

A detention is arbitrary under Category I when it is “clearly impossible to invoke any legal basis justifying the deprivation of liberty.”⁹⁴

There is currently no legal basis in Egyptian law for Mrs. Hijazi and Mr. Hassanein’s continued pretrial detention. Under the Egyptian Criminal Procedure Code, pretrial detention—detention prior to sentencing—is an exceptional legal measure available 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.⁹⁵ In cases that meet at least one of the five guidelines to qualify for pretrial detention, an arrested individual can initially be detained without charge for 15 days. This detention can then be extended for up to two additional 15-day periods, amounting to a total of 45 days.⁹⁶ If a judge determines that preliminary investigations are not yet complete at the 45-day mark, he may grant additional periods of detention renewal. The Prosecutor-General can review and/or receive complaints regarding the pretrial detention.⁹⁷ In total, the Egyptian 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.⁹⁸

The facts involving Mrs. Hijazi and Mr. Hassanein do not satisfy any of the five categories above. Mrs. Hijazi and Mr. Hassanein were not caught in the act of committing a serious crime. Mrs. Hijazi and Mr. Hassanein had done everything in their power to adhere to legal process and to conduct their work publicly. They had submitted their paperwork months in advance to achieve a registration number, had maintained a bank account, had conducted public media interviews and outreach and were not trying to hide any of their activities, and had been advised to proceed with their work as has been common practice for all NGOs in Egypt. Further, international best practices state that individuals involved in unregistered associations should be free to carry out any activities and should not be subject to criminal sanctions. The Special Rapporteur on the rights to freedom of peaceful assembly and of association iterates: “This is particularly important when the procedure to establish an association is burdensome and subject to administrative discretion, as such criminalization could then be used as a means to quell dissenting views or beliefs.”⁹⁹

⁹⁴ *Report of the Working Group on Arbitrary Detention*, A/HRC/30/69, Aug. 4, 2015, ¶8(a) [hereinafter *Revised Methods of Work*].

⁹⁵ *Criminal Procedure Code*, Art. 134, *supra* note 42.

⁹⁶ *Criminal Procedure Code*, , Art. 142, *supra* note 42.

⁹⁷ *Criminal Procedure Code*, Art. 143, *supra* note 42.

⁹⁸ *Id.*

⁹⁹ Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai* , A/HRC/20/27, (May 21, 2012), http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf.

Further, Mrs. Hijazi and Mr. Hassanein have significant ties to Egypt and have repeatedly, even since their detention, reaffirmed their desire to return to their organization to serve Egypt's street children; thus, they are not flight risks. Their release would not impede the legal process as they have a demonstrated record of positive citizenship and there is no reason to fear that they would fail to appear for court hearings, thus causing undue delay. Rather than implicating security or public order, their case revolves around their work for a non-profit organization and thus relates to their right to freedom of association. Finally, Mrs. Hijazi and Mr. Hassanein have a known residential address and a known work address in Egypt. Thus, keeping Mrs. Hijazi and Mr. Hassanein in pretrial detention is improper. Additionally, the failure of the judge to grant adequate consideration to the issuing of bail and/or conditional release of Mrs. Hijazi and Mr. Hassanein occurs in clear violation of the law.

Even if the court were able to establish one of the five aforementioned categories, the absolute maximum period for pretrial detention under Egyptian law in cases of the first instance is two years. Mrs. Hijazi and Mr. Hassanein completed two years in pretrial detention on May 1, 2016.

2. The Practice of Pretrial Detention in Egypt Violates Domestic and International Human Rights Obligations

The provisions of Egypt's Criminal Procedure Code on pretrial detention used to uphold the continued detention of Mrs. Hijazi and Mr. Hassanein violate human rights protections enshrined in both domestic and international law and cannot serve as a basis by which Egypt authorities can continue to keep the defendants in detention.

Under Article 54 of the Egyptian Constitution¹⁰⁰, Article 6 of the African Charter on Human and Peoples' Rights¹⁰¹, and Articles 9, 10, and 11 of the ICCPR¹⁰², Egypt has a duty to safeguard the personal freedoms, liberties, and due process rights of its citizens, while protecting them from arbitrary detention. Egypt must further ensure that its pretrial detention laws and practices do not violate Article 9(3) of the ICCPR which states that authorities must guarantee that "anyone arrested or detained on a criminal charge... be brought promptly before a judge or other officer authorized by law to exercise judicial power" and that detainees be entitled to "trial within a reasonable time or... release."¹⁰³ In considering what is reasonable, the judicial officer must ask whether the justification put forward for detaining the accused can justify the time the accused has spent in detention prior to the adjudication. The diligence of the prosecuting or investigating authority in bringing the case to trial, the complexity of the case, the conduct of the accused, and the proportionality of the detention period to the penalty that may be imposed for the offense should all be considered.¹⁰⁴

¹⁰⁰ *Constitution of the Arab Republic of Egypt*, (2014), Art. 54, <http://www.sis.gov.eg/Newvr/Dustor-en001.pdf>.

¹⁰¹ *African Charter on Human and Peoples' Rights ("Banjul Charter")*, ORGANIZATION OF AFRICAN UNITY, Jun. 27, 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Art. 6.

¹⁰² *International Covenant on Civil and Political Rights*, GA Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, Art. 9-11 [hereinafter ICCPR].

¹⁰³ ICCPR, Art. 9, *supra* note 102.

¹⁰⁴ 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.

General Comment No. 8 (1982)¹⁰⁵ of the United Nations Human Rights Committee explains the notion of “promptly” by referring to a period of a few days, implying that a detainee must be informed of the charges against him within a period as short as possible.¹⁰⁶ Further, the General Comment states that pretrial detention must not be arbitrary, it must be based on grounds and procedures established by law, it must be backed by information of the reasons for such detention, court control of the detention must be available, and compensation in the case of a breach must be provided. The African Commission on Human and Peoples' Rights has stated that the need for continued pretrial detention should be based on an assessment of whether there are sufficient legal reasons, whether investigating authorities are exercising due diligence, whether detention pending trial is necessary and proportionate, and what measures can be taken to safeguard the well-being of the detainee.¹⁰⁷ The African Commission has also held that the failure or negligence of security agents to “scrupulously” adhere to the requirement that they submit reasons for the arrest of a detainee and inform him promptly of any charges against him is a violation of the right to a fair trial.¹⁰⁸ The 2011 Report of the UN Working Group on Arbitrary Detention concludes that “any detention must be exceptional and of short duration.”¹⁰⁹

The provisions of the Egyptian Criminal Procedure Code on pretrial detention are vague and subject to excessive discretion, facilitate detention for an egregiously lengthy period of up to two years, and leave little to no recourse for detainees wishing to challenge their continued detention – all of which violate Egypt’s international and regional human rights obligations. The categories allowing pretrial detention employ terms like “security or public order,” allotting overly broad discretion and subjective determinations to the prosecution and judges—both of whom are aligned with the government and are unlikely to make determinations in favor of human rights defenders and prisoners of conscience. Further, the fact that pretrial detainees facing possible charges for crimes that carry death or life imprisonment sentences can be kept in detention for up to two years is egregiously lengthy and clearly exceeds what international law conceives to be a period of a few days. Finally, the fact that proper due process consideration has not been granted for requests for bail and/or conditional release in the case of Mrs. Hijazi and Mr. Hassanein ensures that they are left without effective recourse and constitutes yet another violation.

3. The Charges against Mrs. Hijazi and Mr. Hassanein are without Merit and Cannot be Used as a Basis by which to Justify their Continued Detention

¹⁰⁵ *General Comment No. 8: Article 9 (Right to Liberty and Security of Persons)*, UN HUMAN RIGHTS COMMITTEE, Jun. 30, 1982, ¶2.

¹⁰⁶ The Human Rights Committee has previously found that a period of 7 or 9 days is not acceptable under Article 9(2) of the ICCPR. *See Grant v. Jamaica*, Communication No. 597/1994, para. 8.1; *see also Morrison v. Jamaica*, Communication No. 663/1995, para. 8.2; *see also Kurbanov v. Tajikistan*, Communication No. 1096/2002, para. 7.2; *see also A. Berry v. Jamaica*, Communication No. 330/1988, para. 5.6.

¹⁰⁷ *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*, AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS,

http://www.achpr.org/files/instruments/guidelines_arrest_detention/guidelines_on_arrest_police_custody_detention.pdf.

¹⁰⁸ ACHPR, *Huri-Laws (on behalf of the Civil Liberties Organisation) v. Nigeria*, Communication No. 225/98, decision adopted during the 28th Ordinary Session, 23 October – 6 November 2000, paras. 43-44.

¹⁰⁹ *Report of the Working Group on Arbitrary Detention*, UNITED NATIONS HUMAN RIGHTS COUNCIL, A/HRC/16/47, Jan. 19, 2011.

The seven charges brought against Mrs. Hijazi and Mr. Hassanein are without merit and should not be a basis by which to keep the defendants in pretrial detention.

The first six charges facing Mrs. Hijazi and Mr. Hassanein are entirely based on confessions that have been derived via coercive techniques and that have been directly contradicted by forensic medical reports. Media analyses, independent investigative reports, and impartial observers looking into the case have repeatedly found the charges to be without any merit.¹¹⁰

The seventh and final charge facing Mrs. Hijazi and Mr. Hassanein is for forming an unlicensed association. Mrs. Hijazi and Mr. Hassanein had done everything in their power to adhere to legal process and to conduct their work publicly. They had submitted their paperwork months in advance to achieve a registration number, had maintained a bank account, had conducted public media interviews and outreach and were not trying to hide any of their activities, and had been advised to proceed with their work as has been common practice for all NGOs in Egypt. Thus, under no circumstance would the facts at hand allow for a situation in which a prolonged pretrial detention of over two years would be proper.

Further, this charge is brought under the NGO Law which requires a burdensome registration process inconsistent with Article 75 of the Egyptian Constitution. In keeping with international best practices, under the constitutional provision, associations are established merely upon notification of the relevant authorities.¹¹¹ Discussing the burdensome requirement of registration under Egypt's NGO law, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association and the United Nations Special Rapporteur on the situation of human rights defenders have stated that:

“Compulsory registration of all organizations under this Law may contravene international human rights standards related to freedom of association, including the ability for civil society organizations to freely choose the legal form that best suits the nature of their activities. Serious concern is further expressed that the enforcement of this Law including compulsory registration may jeopardize the existence of several organizations that carry out human rights activities and provide essential humanitarian, cultural and social services.”¹¹²

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association further states: “The Special Rapporteur is of the opinion that a “notification procedure”, rather than a “prior authorization procedure” that requests the approval of the authorities to establish an association as a legal entity, complies better with international human rights law and should be implemented by States. Under this notification procedure, associations

¹¹⁰ Omar Hazeq, *supra* note 66; Taher El-Motaz Billah, *supra* note 88; Yara Sallam, *supra* note 79.

¹¹¹ EIPR, *Background on Case No. 173 - the “foreign funding case” Imminent Risk of Prosecution and Closure*, EGYPTIAN INITIATIVE FOR PERSONAL RIGHTS, (Mar. 21, 2016), <http://eipr.org/en/pressrelease/2016/03/21/2569>.

¹¹² *Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders*, (Aug. 29, 2014), [https://spdb.ohchr.org/hrdb/28th/public - AL_Egypt_29.08.14_\(11.2014\).pdf](https://spdb.ohchr.org/hrdb/28th/public - AL_Egypt_29.08.14_(11.2014).pdf).

are automatically granted legal personality as soon as the authorities are notified by the founders that an organization was created.”¹¹³

In light of Article 75 of the Constitution,¹¹⁴ the submission of the paperwork for Belady Foundation since December 2013, a bank account existing in the organization’s name, and numerous indicators that the founders of Belady Foundation were not attempting to hide any of their activities, there is no doubt that the Egyptian authorities had notice of the existence of Belady Foundation, and that the Belady Foundation was operating under the reasonable presumption that they were free to exercise their fundamental right to freedom of association accordingly.

i. Category II: Substantive Fundamental Rights

The detention of Mrs. Hijazi and Mr. Hassanein is arbitrary under Category II.

A detention is arbitrary under Category II when the detention results from the exercise of fundamental rights protected by international law. More specifically, the arbitrary detention results “[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20, and 21 of the Universal Declaration of Human Rights and, and insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26, and 27 of the International Covenant on Civil and Political Rights.”¹¹⁵ In light of this, the detention of Mrs. Hijazi and Mr. Hassanein is arbitrary because the detention resulted from the exercise of their fundamental right to freedom of association.¹¹⁶

Freedom of association is guaranteed by Article 20(1) of the UDHR¹¹⁷ and Article 22(1) of the ICCPR.¹¹⁸ Under Article 75 of the Constitution, Egypt is mandated to respect the rights of its citizens to form non-governmental associations and foundations that acquire legal personality upon notification.¹¹⁹ These associations and foundations are guaranteed the right to practice their activities freely and are protected from administrative interference or dissolution.¹²⁰ The United Nations Declaration on Human Rights Defenders further affirms this right for “individuals contributing to ... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals.”¹²¹

As established by the initial accusations of the Ministry of Interior and National Security Agency, Mrs. Hijazi and Mr. Hassanein were detained because they are the founders and directors of Belady Foundation. As the interrogation and investigation process continued, the prosecution levelled a number of false charges against Mrs. Hijazi and Mr. Hassanein, all of

¹¹³ Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, A/HRC/20/27, (May 21, 2012).

¹¹⁴ *Constitution of the Arab Republic of Egypt*, Art. 75, *supra* note 100.

¹¹⁵ *Revised Methods of Work*, ¶7(e), *supra* note 94.

¹¹⁶ ICCPR, Art. 22, *supra* note 102.

¹¹⁷ *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810, (1948), Art. 20 [hereinafter *Universal Declaration*].

¹¹⁸ ICCPR, Art. 22, *supra* note 102.

¹¹⁹ *Constitution of the Arab Republic of Egypt*, Art. 75, *supra* note 100.

¹²⁰ *Id.*

¹²¹ *Who is a defender?*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>.

which relate to or stem from their work for Belady Foundation. Although Belady Foundation was not formally registered with the Ministry of Social Solidarity as required by Law No. 84 of 2002—a provision inconsistent with the Constitution—clear steps had been taken to register the foundation since December 2013. A bank account had been established in the foundation’s name, all the required paperwork had been filed months prior with the Ministry of Social Solidarity, and the foundation had been functioning publicly.

As established by forensic evidence, notarized witness statements, extensive media reports, social media accounts, and independent human rights organizations, Belady Foundation was a well-regarded non-governmental organization that worked to provide a safe home and rehabilitation center for street children fleeing from abusive environments.¹²² Any accusations by the government attempting to defame the name of Belady Foundation and its volunteers and attribute the organization with human trafficking, sexual abuse, and payment to protest have been based on contradicting confessions, clear accounts of witness intimidation by police, and egregious due process violations.

Although the right to freedom of association is not absolute under international law, Mrs. Hijazi and Mr. Hassanein’s exercise of this right does not fall under the acceptable limitations set forth by the ICCPR. Under the ICCPR, the right to freedom of association can only be restricted as prescribed by the law and as necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.¹²³ Restricting the work of Mrs. Hijazi and Mr. Hassanein occurs in violation of the law and is certainly not necessary in a democratic society for any of the aforementioned purposes. Rather, the work of Mrs. Hijazi and Mr. Hassanein has helped provide a safe haven for youth escaping from abusive environments, has established necessary rehabilitation programming for sexual abuse and drug addiction among street children, and has provided education for marginalized persons. Rather than harm national security, public safety, public order, public health, public morals, or the rights and freedoms of others, the work conducted by Belady Foundation has safeguarded and preserved these values. This exercise of freedom of association, coupled with Mrs. Hijazi and Mr. Hassanein’s status as human rights defenders who are working to uphold the social and economic rights of Egypt’s street children, is protected under international law.

Further, the provisions of the Egyptian NGO law, under which Mrs. Hijazi and Mr. Hassanein are being charged, are inconsistent with the Constitution, restricting freedom of association in a manner that disregards the country’s duty under the ICCPR. The NGO Law broadly criminalizes the receipt of foreign funding, sets forth significant legal barriers to registration, and allows authorities significant discretion to interfere in the internal affairs of organizations.¹²⁴ The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated “Law on Associations No. 84/2002 places additional burdens on associations that risk undermining legitimate human rights activities in Egypt, in

¹²² Omar Hazeq, *supra* note 66; Taher El-Motaz Billah, *supra* note 88; Yara Sallam, *supra* note 79.

¹²³ ICCPR, Art. 22, *supra* note 102.

¹²⁴ *NGO Law Monitor: Egypt*, THE INTERNATIONAL CENTER FOR NOT-FOR-PROFIT LAW, (Mar. 23, 2016), <http://www.icnl.org/research/monitor/egypt.html>.

contradiction with the State's obligation to establish and maintain a conducive environment for the free operations of associations.¹²⁵

ii. Category III: Due Process Rights

The detention of Mrs. Hijazi and Mr. Hassanein is arbitrary under Category III.

A detention is considered arbitrary under Category III “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”¹²⁶ Additionally, the Working Group looks to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles).¹²⁷

1. Egyptian Authorities Violated Mrs. Hijazi and Mr. Hassanein's Rights by Detaining them Without a Judicial Order

The Egyptian authorities have violated Mrs. Hijazi and Mr. Hassanein's right to be detained by virtue of a judicial order. Article 9(1) of the ICCPR¹²⁸ and Principle 2 of the Body of Principles¹²⁹ prohibit arbitrary arrest and detention and state that no one shall be deprived of liberty except on such grounds and in accordance with the procedure established by the law. Similarly, under Article 54 of the Egyptian Constitution,¹³⁰ unless a detainee is caught *in flagrante delicto*, it is not permissible to arrest or detain him except by virtue of a judicial order which is also in line with Principle 4 of the Body of Principles.¹³¹

When raiding Belady Foundation, confiscating computers and personal documents, and arresting Mrs. Hijazi and Mr. Hassanein alongside two of their co-defendants on May 1, 2014, security forces did so in the absence of a warrant. Mrs. Hijazi and Mr. Hassanein were merely detained for being present at Belady Foundation and they were not caught while committing a serious crime; thus, their arrest was conducted without a proper judicial order, in the absence of circumstances mediating the lack of judicial order, and thus, in violation of both domestic and international law.

2. Egyptian Authorities Violated Mrs. Hijazi and Mr. Hassanein's Rights by Failing to Inform them of Charges Against Them

The Egyptian authorities have violated Mrs. Hijazi and Mr. Hassanein's right to be informed of the reasons for their arrest. Under Articles 9(2) and 14(3)(a) of the ICCPR¹³² and

¹²⁵ *Egypt Communications: May 1, 2011 To February 28, 2015*, UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION, <http://freeassembly.net/reports/egypt-communications/>.

¹²⁶ *Revised Methods of Work*, ¶8(c), *supra* note 94.

¹²⁷ *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, GA Res. 47/173, 43 U.N. GAOR Supp. (No. 49) 298, A/43/49, Dec. 9, 1998 [hereinafter *Body of Principles*].

¹²⁸ ICCPR, Art. 9, *supra* note 102.

¹²⁹ *Body of Principles*, Principle 2, *supra* note 127.

¹³⁰ *Constitution of the Arab Republic of Egypt*, Art. 54, *supra* note 100.

¹³¹ *Body of Principles*, Principle 4, *supra* note 127.

¹³² ICCPR, Arts. 9, 14, *supra* note 102.

Article 54 of the Constitution,¹³³ Egypt is obligated to guarantee that those arrested are informed of the reasons for their arrest and promptly informed of the charges brought against them. Principles 10 and 13 of the Body of Principles reiterate the same.¹³⁴

When Mrs. Hijazi and Mr. Hassanein were arrested without a warrant on May 1, 2014, they were held incommunicado until their May 3, 2014 interrogation. Even as their questioning proceeded and information about the case began to be leaked to the media, Mrs. Hijazi and Mr. Hassanein were not formally charged, nor were they even informally told of the precise reasons for their arrest. Initially, Ministry of Interior and National Security sources suggested that the defendants had been accused of establishing an unlicensed organization and paying street children to protest. Mrs. Hijazi and Mr. Hassanein remained in pretrial detention without formal charge for four months. It was only in September that the defendants were finally informed of the official seven charges being brought against them, which were much more extensive than the initial set of informal accusations.

Arresting the defendants without a warrant, denying them information regarding the basis for their arrest and detention, informally referring to imprecise charges, and taking over four months to bring official charges against the defendants all violate Mrs. Hijazi and Mr. Hassanein's right to be promptly informed of the charges against them.

3. Egyptian Authorities Violated Mrs. Hijazi and Mr. Hassanein's Rights by Failing to Promptly Bring Them Before a Judge and Failing to Try Them Without Undue Delay

Egyptian authorities have violated Mrs. Hijazi and Mr. Hassanein's right to be promptly brought before a judge and tried without undue delay. Article 9(3) of the ICCPR, which affirms this right, also adds: "It shall not be the general rule that persons awaiting trial shall be detained in custody."¹³⁵ Principle 11(1) of the Body of Principles¹³⁶ and Article 14(3)(c) of the ICCPR¹³⁷ additionally reiterate the right of the accused to be tried without undue delay.

Upon being arrested on May 1, 2014, Mrs. Hijazi and Mr. Hassanein were held incommunicado until their interrogation on May 3, 2014. During this period, they were not brought before a judge and thus, were held in a manner that clearly violates both Egyptian and international law. After interrogation and the initial pretrial detention order against them, Mrs. Hijazi and Mr. Hassanein were brought before a judge for near-automatic detention renewal hearings during which the judge failed to give proper due process consideration for grants of bail and/or conditional release. It took authorities over four months to finally charge Mrs. Hijazi and Mr. Hassanein. Even thereafter, it took six months for the defendants to be brought before a judge for their trial.

¹³³ *Constitution of the Arab Republic of Egypt*, Art. 54, *supra* note 100.

¹³⁴ *Body of Principles*, Principles 10, 13, *supra* note 127.

¹³⁵ *ICCPR*, Art. 9, *supra* note 102.

¹³⁶ *Body of Principles*, Principle 11, *supra* note 127.

¹³⁷ *ICCPR*, Art. 14, *supra* note 102.

4. Egyptian Authorities Violated Mrs. Hijazi and Mr. Hassanein's Rights by Failing to Grant Them an Opportunity to Appeal the Lawfulness of their Detention

Egyptian authorities have violated Mrs. Hijazi and Mr. Hassanein's right to be granted an opportunity to appeal the lawfulness of their ongoing detention. Under Article 9(4) of the ICCPR,¹³⁸ Egypt is mandated to bring Mrs. Hijazi and Mr. Hassanein before a court in order for the court to determine the lawfulness of detention without delay. Further, Article 54 of the Egyptian Constitution¹³⁹ notes that every person whose freedom is restricted shall have the opportunity to file grievance before the court. Principle 11(3) of the Body of Principles affirms that "a judicial or other authority shall be empowered to review as appropriate the continuance of detention."¹⁴⁰

Although Mrs. Hijazi and Mr. Hassanein were brought before a court for regular pretrial detention renewal sessions, they and their legal representatives were not granted a proper opportunity to be heard and to make a case for conditional release and/or bail. The near automatic nature of the detention renewals and the fact that the judge was willing to grant pretrial detention and continue extending it despite the fact that none of the five guidelines set forth by Egyptian law for pretrial detention were established is indicative of the fact that the defendants did not have an actual and realistic opportunity to appeal the lawfulness of their detention.

5. Egyptian Authorities Violated Mrs. Hijazi and Mr. Hassanein's Right to Have Adequate Time and Facilities for the Preparation of their Defense

Egyptian authorities have violated Mrs. Hijazi and Mr. Hassanein's right to prepare an adequate defense. Article 14(3)(b) of the ICCPR guarantees the right to have adequate time and facilities for the preparation of a detainee's defense.¹⁴¹ Adequate time depends on the circumstances of the particular case. The United Nations Human Rights Committee has noted that facilities must include access to documents and other evidence that the accused requires to prepare his case.¹⁴²

The Ministry of Interior and the National Security Agency initially only informally referred to alleged charges against Mrs. Hijazi and Mr. Hassanein which were imprecise and misrepresented the seven charges ultimately brought in the case. The extent of difference between the two sets of informal information and formal charges raises significant questions on whether the legal representatives of Mrs. Hijazi and Mr. Hassanein were given proper documents and evidence to prepare the most comprehensive and proper defense possible.

Further, during the detention renewal hearings, the fact that pretrial detention was renewed in a near automatic nature, the fact that very little time and information was made

¹³⁸ ICCPR, Art. 9, *supra* note 102.

¹³⁹ Constitution of the Arab Republic of Egypt, Art. 54, *supra* note 100.

¹⁴⁰ Body of Principles, Principle 11, *supra* note 127.

¹⁴¹ ICCPR, Art. 14, *supra* note 102.

¹⁴² General Comment No. 13: Equality Before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law (Art. 14), UN HUMAN RIGHTS COMMITTEE, HRI/GEN/1/Rev.1, Apr. 13, 1984, ¶11.

available to legal representatives during the early months of the trial, and the fact that little, if any, due process consideration was given, collectively raise significant concerns that Mrs. Hijazi and Mr. Hassanein's right to prepare an adequate defense was severely violated.

6. Egyptian Authorities Violated Mrs. Hijazi and Mr. Hassanein's Rights to be Presumed Innocent Until Proven Guilty

Egyptian authorities have violated the right of Mrs. Hijazi and Mr. Hassanein to be presumed innocent until proven guilty. Under Article 14(2) of the ICCPR,¹⁴³ Article 11(1) of the UDHR,¹⁴⁴ Article 96 of the Egyptian Constitution,¹⁴⁵ and Principle 36 of the Body of Principles,¹⁴⁶ every citizen has the right to be presumed innocent. The Human Rights Committee has stated that:

“the burden of proof of the charge is on the prosecution and the accused has the benefit of the doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.”¹⁴⁷

Article 10(2)(a) of the ICCPR states that “accused persons shall, save for exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.”¹⁴⁸ Principle 8 of the Body of Principles reiterates that unconvicted persons should be kept separately from convicted persons and should be treated accordingly.¹⁴⁹

Throughout the arrest, interrogation, and trial process, Mrs. Hijazi and Mr. Hassanein have continuously been treated as if they were guilty. Their arrest, which was conducted without a warrant and in violation of the law, occurred on the basis of an informal citizen complaint and was not implemented in a manner proper under legal procedure. During the interrogation and throughout state media coverage of the case, Mrs. Hijazi was continuously pressured to confess and her identity as a dual citizen was used against her, as if it were a crime. During pretrial detention hearings, the decision of the judge to renew detention despite the absence of any proper cause for such detention, alongside his failure to grant proper due process consideration for arguments of conditional release and/or bail, indicate an assumption by Egyptian authorities that the defendants are guilty.

Further, authorities detained Mrs. Hijazi and Mr. Hassanein in the Qanater Women's Prison and Tora Prison alongside convicted criminals, treating them as if they were also already guilty and subjecting them as pretrial detainees to treatment that is inappropriate with their status as unconvicted persons and individuals considered innocent under the law.

¹⁴³ ICCPR, Art. 14, *supra* note 102.

¹⁴⁴ *Universal Declaration*, Art. 11, *supra* note 117.

¹⁴⁵ *Constitution of the Arab Republic of Egypt*, Art. 96, *supra* note 100.

¹⁴⁶ *Body of Principles*, Principle 36, *supra* note 127.

¹⁴⁷ *General Comment No. 13*, ¶7, *supra* note 142.

¹⁴⁸ ICCPR, Art. 10, *supra* note 102.

¹⁴⁹ *Body of Principles*, Principle 8, *supra* note 127.

7. Egyptian Authorities Violated Mrs. Hijazi and Mr. Hassanein's Rights to be Equal Before the Courts

Egyptian authorities have violated the right of Mrs. Hijazi and Mr. Hassanein to be equal before the courts and tribunals under Article 14(1) of the ICCPR.¹⁵⁰ According to the United Nations Human Rights Committee, this “ensures that the parties to the proceedings in question are treated without any discrimination” and the principle of the “equality of arms.”¹⁵¹

By depriving Mrs. Hijazi and Mr. Hassanein of their full due process rights and violating their rights to freedom of association, Egyptian authorities have abused pretrial detention in this case to keep the defendants detained despite the absence of any legal basis for pretrial detention. Everyday criminal detainees who face possible murder, rape, or theft charges undergo a regularized legal process under Egyptian domestic law that would enable their possible release pending trial. For prisoners of conscience however, release pending trial has become nearly impossible.

Egyptian authorities' tendency to treat prisoners of conscience and independent voices like Mrs. Hijazi and Mr. Hassanein in an especially egregious manner, under the presumption of guilt before innocence, and in deprivation of their full due process rights because of their status as human rights defenders creates an inequity in the legal system.

8. Egyptian Authorities Violated Mrs. Hijazi and Mr. Hassanein's Rights to be Free from Cruel, Inhuman, or Degrading Treatment

Egyptian authorities have violated the right of Mrs. Hijazi and Mr. Hassanein to be free from cruel, inhuman or degrading treatment or punishment. Article 7 of the ICCPR,¹⁵² Article 5 of the UDHR,¹⁵³ Articles 52 and 55 of the Egyptian Constitution,¹⁵⁴ and Principle 6 of the Body of Principles¹⁵⁵ collectively establish this prohibition. The Body of Principles states that this prohibition “should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.”¹⁵⁶ Further, Articles 1-2 and 4-7 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁵⁷, to which Egypt is a state party, also collectively prohibit the infliction of physical or mental pain or suffering by a public official with the intention to intimidate or coerce.

¹⁵⁰ ICCPR, Art. 14, *supra* note 102.

¹⁵¹ *General Comment No. 32 (2007) on Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*, UN HUMAN RIGHTS COMMITTEE, CCPR/C/GC/32, Aug. 23, 2011, ¶ 8.

¹⁵² ICCPR, Art. 27, *supra* note 102.

¹⁵³ *Universal Declaration*, Art. 5, *supra* note 117.

¹⁵⁴ *Constitution of the Arab Republic of Egypt*, Arts. 52, 55, *supra* note 100.

¹⁵⁵ *Body of Principles*, Principle 6, *supra* note 127.

¹⁵⁶ *Id.*

¹⁵⁷ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, June 26, 1987, 1465 U.N.T.S. 85, Arts. 1-2, 4-7.

More broadly, Article 10(1) of the ICCPR¹⁵⁸ and Principle 1 of the Body of Principles¹⁵⁹ state that persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Article 51 of the Egyptian Constitution¹⁶⁰ states that dignity is a right of every human being, that it may not be violated, and that the State must respect and protect it.

When Mrs. Hijazi and Mr. Hassanein were arrested on May 1, 2014, they were held incommunicado until their interrogation which occurred on May 3, 2014. Keeping the defendants in such a location constituted a form of mental abuse and contributed to a sense of fear. By failing to adhere to the standards set forth by law and using intimidation tactics to make Mrs. Hijazi and Mr. Hassanein feel vulnerable and beyond the protections of the law, security officials deprived Mrs. Hijazi and Mr. Hassanein of their dignity and inflicted clear mental pain for the purpose of weakening the defendants before their formal interrogation.

Additionally, Mrs. Hijazi was subjected to mental, verbal, and physical abuse during the interrogation process. The officers constantly reminded Mrs. Hijazi of her American citizenship and used it to coercively attempt to influence her statements. Further, one officer attempted to influence Mrs. Hijazi to confess to false charges of receiving improper foreign funds and being deceived in order to allegedly guarantee her freedom. Finally, another officer hit her on the neck in a manner so strong that it brought her to her knees. He additionally called her names, threatened to urinate into her vagina, and also iterated that she deserved the death penalty, or at minimum, life imprisonment for her alleged crime. Together, the behavior of these officers constituted egregious violations to Mrs. Hijazi's right to be free from cruel, inhuman or degrading treatment, her constitutional and internationally-recognized right to dignity, and the clear prohibition for public officials to use physical and mental pain to intimidate and coerce.

iii. Category V: Discrimination Based on a Protected Class

The detention of Mrs. Hijazi due to her national, ethnic, or social origin is arbitrary under Category V.

A detention is arbitrary under Category V when, in violation of international law, the detention is discriminatory "based on national, ethnic or social origin...that aims towards or can result in ignoring the equality of human beings."¹⁶¹ Article 7 of the UDHR¹⁶² and Article 26 of the ICCPR¹⁶³ further prohibit discrimination before the law on a number of grounds, including national origin. Similarly, Article 53 of the Egyptian Constitution guarantees equality before the law on the basis of origin or geographic affiliation.¹⁶⁴

The facts at hand indicate that Mrs. Hijazi was targeted in light of her status as a dual citizen, in particular, her American citizenship. Independent media has reported that Mrs. Hijazi

¹⁵⁸ ICCPR, Art. 10, *supra* note 102.

¹⁵⁹ *Body of Principles*, Principle 1, *supra* note 127.

¹⁶⁰ *Constitution of the Arab Republic of Egypt*, Art. 51, *supra* note 100.

¹⁶¹ *Revised Methods of Work*, ¶7(e), *supra* note 94.

¹⁶² *Universal Declaration*, Art. 7, *supra* note 117.

¹⁶³ ICCPR, Art. 26, *supra* note 102.

¹⁶⁴ *Constitution of the Arab Republic of Egypt*, Art. 53, *supra* note 100.

had been under the eye of Egyptian intelligence for a lengthy period of time because of her American citizenship.¹⁶⁵ Upon arrest and during interrogation, officers informally accused her of bringing in foreign funds to pay for her social work and repeatedly mentioned her American citizenship, further indicating an awareness of her background. Thereafter, state-controlled media continued to repeatedly refer to Mrs. Hijazi's American citizenship,¹⁶⁶ labeling her an American foreign agent who had been forcing vulnerable children to participate in anti-government protests.¹⁶⁷

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.

Mrs. Hijazi and Mr. Hassanein do not have any effective or legal remedies available.

All attempts to challenge the pretrial detention of Mrs. Hijazi and Mr. Hassanein and all attempts to secure bail for the defendants have been outright ignored by the judiciary or otherwise unsuccessful. Requests for bail and conditional release have not been given proper or due consideration.¹⁶⁸ Mrs. Hijazi and Mr. Hassanein's pretrial detentions have been extended in near-automatic detention renewal hearings and now that they are in trial, requests for conditional release have not been granted.

Despite the fact that Mrs. Hijazi and Mr. Hassanein are being kept in excess of the two year pretrial detention maximum, the court has refused to order their release.

In the current political climate and in light of the trend for Egyptian authorities to use pretrial detention as a punitive measure against prisoners of conscience and human rights defenders, it is unlikely that Mrs. Hijazi and Mr. Hassanein will be able to pursue any effective, legal remedy to secure their release or compensate them for their improper, arbitrary detention.

VI. CONCLUSION

The arrest and continued detention of Mrs. Hijazi and Mr. Hassanein is an egregious violation of their fundamental rights. The Government of the Arab Republic of Egypt has violated the following rights under various provisions of the Egyptian Constitution, Egyptian laws, and international law in extending the detention of Mrs. Hijazi and Mr. Hassanein and subjecting them to mistreatment:

- The right to be free from arbitrary detention;
- The right to freedom of association;

¹⁶⁵ Taher El-Motaz Billah, *supra* note 88.

¹⁶⁶ Zeinobia, *supra* note 69.

¹⁶⁷ Heba Habib, *supra* note 57.

¹⁶⁸ Bar Human Rights Committee and EuroMed Rights, *supra* note 82.

- The right to due process, including the right to be detained only with a judicial order, the right to be informed of the reasons for arrest, the right to be promptly brought before a judge, the right to appeal the lawfulness of detention, the right to prepare an adequate defense, the right to be presumed innocent before guilty, and the right to be equal before the courts; and
- The right to dignity and the right to be free from cruel, inhuman or degrading treatment or punishment.

We hereby request that the United Nations Working Group on Arbitrary Detention:

1. Issue an opinion finding Mrs. Hijazi and Mr. Hassanein's ongoing pretrial detention to be in violation of Egypt's obligations under international law;
2. Call for Mrs. Hijazi and Mr. Hassanein's immediate release;
3. Request that the Government of Egypt investigate and hold accountable all persons responsible for the unlawful arrest, continued detention, and mistreatment of Mrs. Hijazi and Mr. Hassanein; and
4. Request the Government of Egypt to award Mrs. Hijazi and Mr. Hassanein compensation for the violations they have endured as a result of their unlawful arrest, arbitrary detention, and mistreatment while in state custody.

VII. FULL NAME AND ADDRESSES OF THE PERSON(S) SUBMITTING THE INFORMATION



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