

Punitive Pretrial Detention in Egypt

Briefing Paper – January 2019

Introduction

Since Abdel Fattah el-Sisi took power in June 2013, the Egyptian authorities have increasingly sought to punish journalists and others who dare to speak freely, criticize the government, and publish views that differ from the regime's narrative. In 2018 well over 100 people were arrested for exercising their right to freedom of expression.¹ They face unfounded accusations of "joining banned groups", "spreading false news", and "insulting the president" and often languish in prison for months or even years without being formally charged or given the chance to defend themselves at trial.

Pretrial detention is favored by the Egyptian authorities as a tool to eliminate perceived opposition, as it serves both to silence criticism and to intimidate other would-be dissidents into self-censorship. Rather than abiding by its obligations under international law² to employ pretrial detention only as strictly necessary and as a last resort – particularly in the absence of well-founded charges – Egypt uses pretrial detention as a form of punishment and retaliation.³ The indefinite nature of Egypt's pretrial detention in practice can amount to a form of psychological torture designed to leave detainees and their families without clarity about their situation or hope for the future.⁴

Egyptian journalists are at high risk of pretrial detention, with Egypt ranking as "one of the world's biggest prisons for journalists".⁵ Such detentions form part of a broader crackdown on free expression in Egypt. The government has blocked hundreds of websites, thereby preventing Egyptians from accessing information from independent news sources and rights organizations.⁶ Last year, the authorities claimed even greater powers to curb free expression by passing new legislation to tightly regulate media outlets,⁷ treat legitimate online expression as "cybercrime",⁸ and arbitrarily block social media profiles with more than 5,000 followers.⁹

¹ See *Egypt: Open Air Prison for Critics*, AMNESTY INTERNATIONAL, 7 May 2018, <https://www.amnesty.org/en/latest/campaigns/2018/09/egypt-freedom-of-expression/>.

² Under international law, detainees must be brought to trial within a reasonable time or released – a determination that is made by analyzing the justification for the detention, the diligence of the prosecuting or investigating authority, the complexity of the case, and the proportionality of the detention to the possible penalty. See *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_en_g.authcheckdam.pdf.

³ See *Extended Pre-trial Detention...Disguised Incarceration*, ARABIC NETWORK FOR HUMAN RIGHTS INFORMATION, <http://anhri.net/?p=145083&lang=en>.

⁴ *Egypt: The Use of Indefinite Solitary Confinement Against Prisoners Amounts to Torture*, AMNESTY INTERNATIONAL, 7 May 2018, <https://www.amnesty.org/en/latest/news/2018/05/egypt-the-use-of-indefinite-solitary-confinement-against-prisoners-amounts-to-torture/>.

⁵ *Egypt*, REPORTERS WITHOUT BORDERS, <https://rsf.org/en/egypt>.

⁶ *Decision from an Unknown Body: On Blocking Websites in Egypt*, FREEDOM OF THOUGHT & EXPRESSION LAW FIRM (AFTE), 1 Feb. 2018, <https://afteegypt.org/en/right-to-know-2/publicationsright-to-know-right-to-know-2/2017/06/04/13069-afteegypt.html>.

⁷ See Rana Mamdouh, *Egypt's New Media Laws: Rearranging Legislative Building Blocks to Maximize Control*, MADA MASR, 17 July 2018, <https://madasr.com/en/2018/07/17/feature/politics/egypts-new-media-laws-rearranging-legislative-building-blocks-to-maximize-control/>.

⁸ *How You Will Be Affected by the New Cybercrime Law: A Guide*, MADA MASR, 21 August 2018, <https://madasr.com/en/2018/08/21/feature/politics/how-you-will-be-affected-by-the-new-cybercrime-law-a-guide/>.

⁹ *Egypt: New Media Law Aims To Silence Independent Online Media, RSF Says*, REPORTERS WITHOUT BORDERS, 3 Nov. 2018, <https://rsf.org/en/news/egypt-new-media-law-aims-silence-independent-online-media-rsf-says>.

Two Years without Trial: The Case of Mahmoud Hussein Gomaa Ali

The case of renowned journalist Mahmoud Hussein Gomaa Ali is emblematic of Egypt's use of pretrial detention to punish speech and affiliations that run counter to the interests of President Sisi's regime. Having fallen victim to Egypt's regional dispute with the government of Qatar, Mahmoud has now endured more than two years of pretrial detention as punishment for his professional affiliation with Doha-based broadcaster Al Jazeera.

An Egyptian national, Mahmoud had been living and working as a journalist in Qatar since the Egyptian authorities raided and shut down Al Jazeera's Cairo office shortly after the Sisi regime took power in 2013. At the end of 2016, Mahmoud returned to Egypt on personal leave to visit his family. Soon after his arrival, he was arrested by the Egyptian authorities on December 22, 2016 and placed in detention pending investigations related to outlandish accusations of "disseminating false news to spread chaos and incite against state institutions".¹⁰ However, Mahmoud was not formally charged at that time, and he has yet to be charged to this day.¹¹

Mahmoud was illegally caged in solitary confinement for a 100-day period between December 28, 2016 and March 30, 2017.¹² According to Mahmoud's family, he has suffered from poor physical and psychological health while in detention.¹³ He even suffered a broken arm, for which he was refused proper medical treatment.¹⁴

Even though Egyptian courts have extended his detention by 45-day increments some 18 times,¹⁵ Mahmoud has not had any meaningful opportunity to challenge his detention and has received no indication of when he will be formally charged or brought to trial. In December 2018, the period of Mahmoud's detention exceeded two years, in blatant violation of international norms and even Egypt's own expansive laws providing for pretrial detention.

Egypt's pretrial detention of journalists and bloggers

Mahmoud's case is far from unique. As of the beginning of 2019, at least 28 professional journalists and editors were detained in Egypt, in addition to numerous bloggers, documentary filmmakers, and other citizen journalists.¹⁶ For example, Hisham Gaafar, the head of the Mada Foundation for Media Development, has been in pretrial detention for well over three years. Hisham was arrested when security forces raided the Foundation's office in October 2015.¹⁷ He has been subjected to solitary confinement and inhumane conditions, which have contributed to

¹⁰ *Habs az-Zameel Mahmoud Hussein 15 Youman bi-Misr wa Tandeed Dawli*, AL JAZEERA, 25 Dec. 2016 (Arabic)

<https://www.aljazeera.net/news/humanrights/2016/12/25/حسب-الزميل-محمود-حسين-15-نوما-بمصر-وتتديد-دولي>

¹¹ *Al Jazeera's Mahmoud Hussein Marks Two Years in Egyptian Prison*, AL JAZEERA, 23 Dec. 2018,

<https://www.aljazeera.com/news/2018/12/al-jazeera-mahmoud-hussein-marks-years-egyptian-prison-181223084527884.html>.

¹² *Crushing Humanity: The Abuse of Solitary Confinement in Egypt's Prisons*, AMNESTY INTERNATIONAL, 7 May 2018, p. 31,

<https://www.amnesty.org/en/documents/mde12/8257/2018/en/>.

¹³ See, e.g., *Al Jazeera's Mahmoud Hussein's detention renewed for 12th time*, AL JAZEERA, 12 March 2018,

<https://www.aljazeera.com/news/2018/03/al-jazeera-mahmoud-hussein-detention-renewed-12th-time-180312154606857.html>; see

also Al Jazeera English, *Al Jazeera speaks to Mahmoud Hussein's daughter about his arrest*, YOUTUBE, 23 Dec. 2018,

<https://www.youtube.com/watch?v=9d-czVdJG9k>.

¹⁴ Ali Younes, *Al Jazeera Slams Egypt's Treatment of Mahmoud Hussein*, AL JAZEERA, 24 Aug. 2017,

<https://www.aljazeera.com/news/2017/08/al-jazeera-slams-egypt-treatment-mahmoud-hussein-170824094004343.html>.

¹⁵ *Al Jazeera's Mahmoud Hussein Marks Two Years in Egyptian Prison*, AL JAZEERA, 23 Dec. 2018,

<https://www.aljazeera.com/news/2018/12/al-jazeera-mahmoud-hussein-marks-years-egyptian-prison-181223084527884.html>.

¹⁶ *Violations of Press Freedom Barometer*, REPORTERS WITHOUT BORDERS, https://rsf.org/en/barometer?year=2019&type_id=235#list-barometre.

¹⁷ See *Human Rights Behind Bars in Egypt*, EUROMED RIGHTS, <https://euromedrights.org/human-rights-behind-bars-in-egypt/>.

a serious deterioration in his health.¹⁸ Similarly, Adel Sabry served as the chief editor of the news website Misr al-Arabia until it was shut down by security forces in April 2018 following its criticism of political and human rights conditions in Egypt under President Sisi.¹⁹ Adel has now spent more than nine months in pretrial detention.

Additional cases include those of journalist Moataz Wadnan, who was arrested after conducting an interview with a former anti-corruption official; journalist Mustafa al-Aasar, who was arrested after working on a documentary about Egypt's transitional period; and film editor Ahmed Tarek, who was arrested after working on a documentary about President Sisi.²⁰ All three were initially arrested in February 2018 and remain in pretrial detention. Similarly, bloggers Mohamed "Oxygen" Ibrahim Radwan,²¹ who published interviews with public figures and human rights activists online, and Shady Abu Zeid,²² whose satirical writings and videos had targeted Egyptian police forces, both remain in pretrial detention after having been arrested in April and May 2018, respectively.²³

To justify such detentions, the Egyptian authorities routinely accuse these and other media professionals of belonging to banned groups, disseminating false news harmful to Egypt's national security, or illegally accepting foreign funding. Despite the prevalence of such accusations, many journalists have spent months or even years in prison without ever being formally charged.²⁴

Egyptian law: Paving the way for punitive pretrial detention

Under the Egyptian Criminal Procedure Code, pretrial detention is an exceptional legal measure that is set forth only in cases in which (1) the offense is *in flagrante delicto*, (2) there is fear that the accused may flee, (3) there is fear that the legal process may be impeded or harmed, (4) the case implicates security and public order, or (5) if the crime is a felony or misdemeanor punishable with a prison sentence and the accused does not have a known residence in Egypt.²⁵

¹⁸ See *Rights Organizations and Public Figures: The Case Lays the Groundwork for the Confiscation of the Right of Academic Research and Freedom of Information and Infringes Freedom of Association and Freedom of Opinion and Expression*, CAIRO INSTITUTE FOR HUMAN RIGHTS STUDIES, 30 Jan. 2016, <https://cihrs.org/rights-organizations-and-public-figures-the-case-lays-the-groundwork-for-the-confiscation-of-the-right-of-academic-research-and-freedom-of-information-and-infringes-freedom-of-association-and-freedom/?lang=en>; see also *Egypt: End Two Year Arbitrary Detention of Human Rights Defender Hisham Gaafar*, AMNESTY INTERNATIONAL, 19 Oct. 2017, <https://www.amnesty.org/en/latest/news/2017/10/egypt-end-two-year-arbitrary-detention-of-human-rights-defender-hisham-gaafar/>.

¹⁹ See *Egypt: Open Air Prison for Critics*, AMNESTY INTERNATIONAL, <https://www.amnesty.org/en/latest/campaigns/2018/09/egypt-freedom-of-expression/>.

²⁰ *Id.*

²¹ See *Mohamed Ibrahim (Mohamed Oxygen)*, COMMITTEE TO PROTECT JOURNALISTS, 6 Apr. 2018, <https://cptj.org/data/people/mohamed-ibrahim-oxygen/index.php>.

²² See *Putting Satire Behind Bars: The Case of Shady Abu Zeid*, MADA MASR, 11 Nov. 2018, <https://madamasr.com/en/2018/11/11/feature/politics/putting-satire-behind-bars-the-case-of-shady-abu-zeid/>.

²³ See *Human Rights Behind Bars in Egypt*, EUROMED RIGHTS, <https://euromedrights.org/human-rights-behind-bars-in-egypt/>.

²⁴ Among the many journalists who previously endured extended periods of punitive pretrial detention are: Wael Abbas, a journalist and world-renowned blogger known for his coverage of abuses committed by the Egyptian security forces, who was arrested in May 2018 and remained in pretrial detention until he was conditionally released in December 2018; Mahmoud "Shawkan" Abou Zeid, an award-winning photojournalist who was arrested while covering the violent dispersal of the sit-in in Cairo's Raba'a al-Adaweya Square in August 2013, held in pretrial detention for 5 years before being convicted on trumped-up charges following a mass trial, and sentenced to five years in prison in September 2018 (he remains detained); and Ismail al-Iskandarani, an award-winning journalist who wrote extensively about the impact of the military's counter-insurgency operations on Sinai's civilian population, was arrested in November 2015, held in pretrial detention for nearly 2 ½ years, and sentenced in May 2018 to ten years in prison.

²⁵ *Criminal Procedure Code of the Arab Republic of Egypt*, Law No. 150 of 1950 as amended, Art. 134, available at: <http://helmylawyers.blogspot.com/2010/07/001.html> (Arabic).

In cases falling under these categories, an individual can initially be detained without charge for a period of 15 days, renewable twice.²⁶ If preliminary investigations are not yet complete at the 45-day mark, a court may grant additional renewals to extend the preventive detention of the accused by periods of up to 45 days at a time.²⁷ The Criminal Procedure Code stipulates that pretrial detention cannot be extended for more than six months for misdemeanors, 18 months for felonies, and two years for crimes punishable by death or life imprisonment.²⁸

The U.N. Working Group on Arbitrary Detention (WGAD) has criticized Egypt's Criminal Procedure Code for providing overly vague grounds for pretrial detention, such as the catch-all "harming national security or the public order."²⁹ Such vague provisions grant overly broad discretion to judges and the Prosecutor-General to make subjective determinations based on loyalty to the ruling regime rather than fairness towards journalists, activists, and other prisoners of conscience who express criticism of the government.

U.N. denounces Mahmoud Hussein's arbitrary detention

In January 2018, the U.N. Working Group on Arbitrary Detention (WGAD) issued a [decision](#) that Mahmoud Hussein was being arbitrarily detained in contravention of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.³⁰ The WGAD found that Egypt had detained Mahmoud for his exercise of his right to free expression and violated his due process rights, stating that the continued detention amounted to cruel, inhuman and degrading treatment.³¹

In this decision, the WGAD criticized Egypt's overly broad and vague laws on pre-trial detention and noted that Mahmoud's prolonged detention without trial "appears to be part of the Government's widespread crackdown on the independent media and bloggers for political opinion at odds with its own." Further, the WGAD expressed grave concern about the pattern of arbitrary detention, torture, and enforced disappearance perpetrated by the Egyptian Ministry of Interior's Homeland Security Agency, which had been involved in Mahmoud's arrest, interrogation, and forced confessions.

Rather than respond to the WGAD's decision by bringing its laws on pretrial detention into conformity with international standards and putting an end to punitive pretrial detention, Egypt has disregarded the WGAD's decision and refused to release all who, like Mahmoud, are being detained without trial. As the Sisi regime further extends the reach of pretrial detention, its silencing of free expression is being decried as unprecedented in Egypt's modern history.³²

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²⁶ *Id.* at Art. 142.

²⁷ *Id.* at Art. 143.

²⁸ *Id.*

²⁹ U.N. Working Group on Arbitrary Detention, Opinion No. 83/2017 concerning Mahmoud Hussein Gomaa Ali (Egypt), WGAD, 21 Oct. 2016, p. 11, https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session80/A_HRC_WGAD_2017_83.pdf.

³⁰ *Id.* at p. 16.

³¹ Wade McMullen, *Al Jazeera Journalist Mahmoud Hussein Was Arbitrarily Detained, United Nations Body Determines*, ROBERT F. KENNEDY HUMAN RIGHTS, 2 Feb. 2018, <https://rfkhumanrights.org/news/al-jazeera-journalist-mahmoud-hussein-was-arbitrarily-detained-united-nations-body-determines>.

³² *See, e.g., Egypt 'More Dangerous than Ever' for Peaceful Critics*, AMNESTY INTERNATIONAL, 24 Jan. 2019, <https://www.amnesty.org/en/latest/news/2019/01/egypt-more-dangerous-than-ever-for-peaceful-critics/>.