

September 23, 2015

The Honorable John F. Kerry
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Secretary Kerry:

With the 70th Session of the United Nations General Assembly about to commence, we write to you today as President of Robert F. Kennedy Human Rights and Executive Director of RFK Partners for Human Rights to request that the issue of remand be on the forefront of any conversation with our Egyptian counterparts during the upcoming bilateral dialogues. As has been customary with past UNGA sessions and as was the case last year, you hosted a high-level government meeting with Egyptian President Abdel Fattah el-Sisi to discuss shared security issues and human rights concerns.

Under the tenure of President Abdel Fattah el-Sisi, the concept of remand, also known as preventive, pretrial, or temporary detention, has been disproportionately used as a punitive measure against political prisoners. The 2014 Department of State Human Rights Report noted an “increased use of pretrial detention” in Egypt. As per official Egyptian Prison Authority counts announced in December 2014, out of 12,800 persons detained since June 2013, 7,389 were still being held in remand detention; the Department of State reports that this number alone reflects a 360% increase over the prior year’s estimate of pretrial detainees. With local human rights organizations suggesting that the total number of detainees is closer to 40,000 and no reported change in detention trends in the time since, the number of pretrial detainees is likely to be even higher.

As per Article 142 of Egypt’s Criminal Procedure Code, an individual who has been arrested 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. If a judge determines that preliminary investigations are not yet complete at the 45-day mark, he may grant additional periods of detention renewal. Article 143 of the Code stipulates that remand cannot be extended for more than one-third of the maximum penalty for the charge: a maximum of six months for misdemeanors, 18 months for felonies, and two years for crimes carrying death or life imprisonment. In September 2013 however, interim President Adly Mansour amended Article 143 to grant the referring court and the Court of Cassation authority to extend the pretrial detention of individuals in cases where the defendant is appealing a death or life imprisonment sentence for 45-day periods with no maximum time limit, thus creating a regime in which prisoners can find themselves subject to indefinite pretrial detention.

Local lawyers report that the standard for extending remand is subject to the “provision of enough evidence,” a subjective standard that leaves the door open for significant judicial discretion. The Department of State further notes that the significant backlog in the criminal courts has contributed to “protracted periods of pretrial detention.” A number of egregious cases reflect the extent to which remand has become regularized. Photojournalist Shawkan Abou Zeid, detained while reporting on the Rabaa sit-

in dispersal, was held in pretrial detention without charge for over two years before he was finally referred to trial in September 2015; despite being a journalist, he faces what his lawyers and family claim to be trumped-up charges of weapons possession, murder, and illegal assembly. Mahmoud Mohamed, a 19 year old student initially arrested on the third anniversary of January 25, was detained for wearing a t-shirt that read: “A Nation without Torture.” Mohamed, who has been in remand for over 600 days, faces constant detention renewals and no set trial date. Pretrial detainees are often kept in the same prison facilities as convicted prisoners, a measure that effectively negates the long-standing legal principle of “innocence before guilt.”

Under its constitutional obligations enshrined in Article 54 of the Constitution, Article 6 of the African Charter on Human and Peoples' Rights, and international human rights law, Egypt has a duty to safeguard the personal freedoms, liberties, and due process rights of its citizens, while protecting them from arbitrary detention. Having ratified the International Covenant for Civil and Political Rights (ICCPR), Egypt must further ensure that its remand legal regime and practices do not violate the Article 9(3) 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.” General Comment No. 8 (1982) of the United Nations Human Rights Committee explains the notion of “promptly” by reference to a period of a few days, implying that pretrial detention be as short as possible. 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. Similarly, the African Commission on Human and Peoples' Rights states 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 wellbeing of the detainee. The 2011 Report of the UN Working Group on Arbitrary Detention concludes that “any detention must be exceptional and of short duration.”

By indefinitely extending remand periods, embracing less than concise legal standards to make determinations, and subjecting remand prisoners to the same conditions as convicted persons, Egypt violates its constitutional and international human rights obligations.

We urge the U.S. Government to call on its Egyptian counterparts to amend its Criminal Procedure Code provisions to place more stringent restrictions on pretrial detention, take measures to make pretrial investigations more effective, reform the judicial process to cut the criminal court backlog, and release detainees like Abou Zeid and Mohamed whose time in remand has exceeded all appropriate legal standards. Respect for the rights of Egyptian citizens should be at the forefront of any relationship that the United States and Egypt enjoy.

We hope that you address this urgent and timely matter at the upcoming UNGA.

Sincerely,



EXPOSE INJUSTICE. TEACH CHANGE. RIGHT WRONG.
HEAL PAIN. JOIN US. RFKHumanRights.org

A handwritten signature in cursive that reads "Kerry Kennedy".

Kerry Kennedy
President
Robert F. Kennedy Human Rights

A handwritten signature in cursive that reads "S. A. Canton".

Santiago A. Canton
Executive Director
RFK Partners for Human Rights
Robert F. Kennedy Human Rights