



THE TAHRIR INSTITUTE
FOR MIDDLE EAST POLICY



**CLOONEY
FOUNDATION
FOR JUSTICE**

WAGING JUSTICE

Pretrial Detention in Egypt: Through the Eyes of Defense Lawyers

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TrialWatch is an initiative of the **Clooney Foundation for Justice**. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world. TrialWatch monitors criminal trials globally against those who are most vulnerable — including journalists, protesters, women, LGBTQ+ persons, and minorities — and advocates for the rights of the unfairly convicted. Over time, TrialWatch will use the data it gathers to publish a Global Justice Index evaluating countries' justice systems.

INTRODUCTION



Under President Abdel Fattah El-Sisi's rule, Egyptian authorities have increasingly leveraged the laws and practices around pretrial detention to turn what was meant to be a "measure of last resort"¹ into a potent weapon against dissent. Political activists, journalists, lawyers, artists, social media users, academics, and others have regularly been ordered into pretrial detention on vague charges, kept in custody for lengthy periods of time in overcrowded prisons, and systemically denied due process protections guaranteed by Egyptian and international law.²

In order to better understand the pretrial detention process and the impact it is having not only on detainees but their defense counsel, access to justice, and society at-large, the Tahrir Institute for Middle East Policy (TIMEP) and the TrialWatch Initiative of the Clooney Foundation for Justice (CFJ) interviewed ten Egyptian defense lawyers. The defense lawyers were asked to share their experiences on representing individuals caught in the system of pretrial detention, particularly in cases brought by the Supreme State Security Prosecution (SSSP), which handles the vast majority of cases of a political nature, defined by this report to include cases involving dissent, government criticism, protest, and other forms of protected expression. The lawyers interviewed for this report have cumulatively represented more than a thousand detainees through the pretrial detention process. These defense lawyers interact with the justice system on a daily basis and have important insights—which have not been reflected in the reporting on the use of pretrial detention in Egypt to date. This report builds on prior work by TIMEP and the International Commission of Jurists, which documented how the Egyptian authorities are targeting defense lawyers for the legitimate discharge of their duties,³ and shows how the machinery of pretrial detention affects not only lawyers' clients, but the lawyers themselves, creating a culture of reprisal and deterioration in the rule of law.

¹ African Commission on Human and Peoples Rights, "Luanda Guidelines on the Conditions of Arrest, Police Custody and Pretrial Detention in Africa", 55th Ordinary Session, May 2014, ¶ 1(b), *available at* <https://achpr.au.int/index.php/en/node/853> [hereinafter "Luanda Guidelines"].

² See generally Amnesty International, "Egypt: Detainees trapped in 'revolving doors' of prison system as authorities bypass release orders", July 10, 2019, *available at* <https://www.amnesty.org/en/latest/press-release/2019/07/egypt-detainees-trapped-in-revolving-doors-of-prison-system-as-authorities-bypass-release-orders/>; OHCHR, "Egypt's targeting of human rights defenders must stop, says UN expert", Jan. 22, 2021, *available at* <https://www.ohchr.org/en/press-releases/2021/01/egypts-targeting-human-rights-defenders-must-stop-says-un-expert>; EuroMed Rights, "The Chilling Effect: A study on the use of pre-trial detention as a tool of repression against human rights defenders and activists in Egypt", Mar. 2020, *available at* <https://euromedrights.org/publication/egypt-the-chilling-effect-of-pretrial-detention-as-a-tool-to-silence-human-rights-defenders/>; Human Rights Watch, "Egypt Arrests Dissident's Families Under Allies' Noses", Mar. 3, 2021, *available at* <https://www.hrw.org/news/2021/03/03/egypt-arrests-dissidents-families-under-allies-noses>; EuroMed Rights, "Egypt: Mohamed El-Baqer: 1000 days of arbitrary detention", June 23, 2022, *available at* <https://euromedrights.org/publication/egypt-mohamed-el-baqer-1000-days-of-arbitrary-detention/#:~:text=Egyptian%20authorities%20routinely%20employ%20repressive,for%20national%20security%20and%20counter%2D>.

³ The Tahrir Institute for Middle East Policy & International Commission of Jurists, "Targeting the last line of defense: Egypt's Attacks Against Lawyers", Sept. 2020, *available at* <https://icj2.wpenginepowered.com/wp-content/uploads/2020/09/Egypt-Last-Line-of-Defense-Advocacy-Analysis-brief-2020-ENG.pdf> [hereinafter "TIMEP and ICJ Report"].

METHODOLOGY



To gather data for this report, CFJ and TIMEP conducted interviews with ten defense lawyers who are currently practicing in Egypt. A common questionnaire was used for all lawyers. All defense lawyers have had experience representing clients in pretrial detention hearings either before prosecutors, including the Supreme State Security Prosecution (SSSP), or before the courts, or both. Most lawyers interviewed had eight to ten years of experience. To ensure that the report accurately reflects the experiences of both male and female defense lawyers, five men and five women were interviewed.

Geographical diversity was also important to ensure that the report captures any differences there might be in pretrial detention dynamics in various cities/governorates across Egypt. Lawyers practicing in Cairo, Giza, Alexandria, El Gharbia, Kafr El Shaikh, Ismailia, and El Sharqia were therefore interviewed. The names of the defense lawyers interviewed have been replaced by pseudonyms to protect their identities. All quotes attributed to the defense lawyers in this report have been drawn from their interview responses.

Given its role in cases of a political nature, the vast majority of the cases featured were initiated by the SSSP.

KEY FINDINGS



- All the lawyers interviewed reported enforced disappearance⁴ to be a routine occurrence—in particular, that they either did not know that their clients had been arrested or the location of their clients’ detention until significant time had passed, ranging from a few days to a few years. All of them stated that in practice, there is no specific timeline within which a detainee is presented before a prosecutor after arrest, despite legislation purporting to require this.
- Once an individual surfaces before prosecutorial authorities, Egyptian authorities then fail to provide the detainee or their lawyer any written notice of the grounds of arrest or charges against them. Ten out of ten lawyers interviewed stated that they are notified of the charges against their client only when they attend an interrogation session before the prosecutor or, if they are not notified of that and their client is ordered to be detained by the prosecutor, only when they attend a pretrial detention renewal hearing—and even then, the information is provided only orally. Further, the charges are also subject to change up until the case is referred to trial.
- Ten out of ten lawyers reported that the prosecution does not submit any documentation to justify the need for pretrial detention following an interrogation session (when pretrial detention is usually initially ordered) or at pretrial detention renewal hearings. Three lawyers commented on the different standards for what they described as cases of a political nature, stating that written records are rarely, if ever, made available to them in these cases.
- All the lawyers interviewed spoke to grave difficulties in representing clients being investigated by the Supreme State Security Prosecution (SSSP), a special branch of the prosecution. Security protocols prohibit them from carrying any electronic devices, including mobile phones, into the building, rendering them unable to effectively represent their clients but also subjecting the lawyers to complete isolation for hours on end.

⁴ According to the UN Working Group on Enforced or Involuntary Disappearances, an individual’s arrest, detention or deprivation of liberty by agents of the State, followed by a refusal to acknowledge the arrest or concealment of the fate or whereabouts of the disappeared person, is called an enforced disappearance. See Working Group on Enforced or Involuntary Disappearances, “About Enforced Disappearances”, *available at* <https://www.ohchr.org/en/special-procedures/wg-disappearances/about-enforced-disappearance>. Likewise, the African Commission defines enforced disappearance as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by the refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, thereby placing them outside the protection of the law.” See African Commission on Human and Peoples’ Rights, “Guidelines on the Protection of All Persons from Enforced Disappearances in Africa”, Oct. 25, 2022, ¶ 2.1, *available at* <https://achpr.au.int/en/documents/2022-10-25/guidelines-protection-persons-enforced-disappearances-africa>.

- Ten out of ten lawyers stated that pretrial detention renewal hearings generally last less than ten minutes and most are around two minutes per defendant and are perfunctory in nature.
- Most lawyers interviewed “do not feel free” to present legal arguments and defenses regarding the detention of their clients due to a range of factors including that: they are not allowed to do so by the judge or prosecutor; the judge or prosecutor seems biased; they are pressured to expedite arguments; or they face the threat of arrest and detention themselves.
- Ten out of ten lawyers reported that appeals against pretrial detention orders are either not allowed or frequently rejected.
- Ten out of ten lawyers interviewed who reported making complaints on behalf of their clients regarding torture or ill-treatment stated that complaints were disregarded by the relevant authorities and that no action was taken in follow-up.
- Ten out of ten lawyers interviewed reported that the introduction of remote pretrial detention renewal hearings by the courts in 2021 and by prosecuting authorities in 2023 has had a significant negative impact on the rights of detainees and on their ability to adequately defend their clients and perform their professional duties.
- Lawyers reported that as a result of the use of remote pretrial detention hearings, their clients are confined to the prison complex indefinitely, which is deleterious not only to their well-being, but also renders it impossible for the lawyers to communicate privately with them.
- Lawyers interviewed described the grave impact of the pretrial detention process on the mental and physical health of their clients as well as their families—they face loss of hope, frustration, depression, and are completely isolated from their loved ones.
- Most lawyers indicated that they operate in a context that chills effective representation, as apart from being unable to discharge their professional duties, they may be subject to threats or arbitrary detention themselves. At least one lawyer interviewed believes he was targeted and arrested because of his profession.

BACKGROUND



Egypt's pretrial detention system is notoriously opaque, with little official information available on the thousands of people estimated to be behind bars.⁵ Senior government officials refuse to speak publicly about the prison population and the state has not released official figures on the number of people being held in pre- or post-trial detention in over two decades.⁶ As a 2022 *New York Times* investigation concludes: "No public records exist of how many people are in pretrial detention."⁷

Yet it is clear that pretrial detention is a pervasive phenomenon.⁸ The *New York Times* estimates that "[i]n just the six months from September 2020 to February 2021...about 4,500 people were trapped in pretrial detention...The true total is likely greater than our estimate...And there is no public accounting of prisoners held off the books in police stations and military camps or those who have simply vanished."⁹

In 2021, the United Nations Working Group on Arbitrary Detention (UNWGAD), when assessing the ongoing detention of four human rights defenders in Egypt, raised concerns about "indefinite detention, which has constituted the rule rather than the exception, contrary to international law," and noted that it was worried that this could "constitute a broader and systematic pattern in Egypt, where authorities may be using the repeated renewal of pretrial detention and bringing additional charges against human rights defenders and lawyers, to prevent them from carrying out their work, such as documenting and denouncing human rights violations."¹⁰

Once detained, individuals are held in deplorable conditions. TIMEP has previously reported on Egypt's poor prison conditions, noting the rampant allegations of torture and mistreatment by detainees.¹¹ These conditions further deteriorated during the COVID-19 pandemic, with a lack of adequate medical care and overcrowding, which made it impossible to practice social distancing.¹² More recently, the Egyptian authorities have

⁵ Vivian Yee et al., "Egypt's Revolving Jailhouse Door: One Pretrial Detention After Another", *N. Y. Times*, July 16, 2022, *available at* <https://www.nytimes.com/interactive/2022/07/16/world/middleeast/egypt-prisoners.html> [hereinafter "NYT Report"].

⁶ Human Rights Watch, "Egypt: Release Prison Population Figures", Feb. 28, 2023, *available at* <https://www.hrw.org/news/2023/02/28/egypt-release-prison-population-figures>.

⁷ NYT Report.

⁸ What is known about pretrial detention in Egypt, including who is being targeted and detained, the charges against them, the prison conditions, and the justice system that enables the ongoing and indefinite detention of thousands of individuals, has generally been gathered by local and international organizations, policy institutes, and independent media. *See supra n. 2.*

⁹ NYT Report.

¹⁰ UN Working Group on Arbitrary Detention, Opinion No. 45/2021 concerning Mohamed Hassan Mohamed Salaheldin el-Baker, Mahinour Mohamed Abdel-Salam Mohamed el-Masry, Amr Mohamed Adel Imam Mohamed Mostafa, Hoda Abdel Moneam Abdel Aziz Hassan (Egypt), UN Doc. A/HRC/WGAD/2021/45, Jan. 14, 2022, ¶ 106.

¹¹ TIMEP, "Detention Conditions in Egypt", Aug. 29, 2019, *available at* <https://timep.org/2019/08/29/timep-brief-detention-conditions-in-egypt/>.

¹² Human Rights Watch, "Egypt: Apparent Covid-19 Outbreaks in Prisons", July 20, 2020, *available at* <https://www.hrw.org/news/2020/07/20/egypt-apparent-covid-19-outbreaks-prisons>; Amnesty International, "Egypt: 'What do I care if you die?': Negligence and denial of health care in Egyptian

touted the opening of new prisons, including the Wadi el-Natroun and Badr Prison Complexes, as models for reform; however, reports suggest that even in these new prisons, conditions are no better, with detainees continuing to be denied healthcare, contact with their families and lawyers, and subjected to ill-treatment and torture.¹³

While Egypt's Criminal Procedure Code only allows a suspect to be held in detention for a maximum of two years throughout the preliminary investigation stage and criminal trial,¹⁴ civil society actors have documented how prosecutors and judges are circumventing the law and its requirement for release after two years through the practice of *tadweer* (most commonly translated as 'rotation' or 'recycling').¹⁵ This takes different forms; however, quite commonly, when detainees are about to reach their maximum period of pretrial detention, prosecutors re-arrest them in connection with a new case, yet often on near-identical factual allegations to the original case brought against them, thus starting the clock on pretrial detention over again and keeping these individuals in indefinite detention without trial.¹⁶ According to one research institute, during the period between January 1, 2018 and March 15, 2021, at least 941 cases of rotation impacted 774 defendants. From among those defendants, 660 were subject to rotation once; 77 were subject to it twice; 26 were subject to it three times; nine were subject to it four times; two were subject to it five times; and one person was subject to it seven times.¹⁷ During its most recent periodic review of Egypt in early 2023, the UN Human Rights Committee

prisons", Jan. 25, 2021, *available at* <https://www.amnesty.org/en/latest/press-release/2021/01/egypt-abused-and-denied-health-care-prisoners-lives-at-risk/>.

¹³ Amnesty International, "Egypt: New prison, PR gloss ahead of COP27 cannot hide human rights crisis", Oct. 20, 2022, *available at* <https://www.amnesty.org/en/latest/news/2022/10/egypt-new-prison-pr-gloss-ahead-of-cop27-cannot-hide-human-rights-crisis/>; Farah Saafan and Aidan Lewis, "Egypt's model prison rife with abuses, inmates' families and activists say", Feb. 15, 2023, Reuters, *available at* <https://www.reuters.com/world/africa/egypts-model-prison-rife-with-abuses-inmates-families-activists-say-2023-02-15/>.

¹⁴ Egypt's Criminal Procedure Code No.150 of 1950, Last amended on September 5, 2020, Article 143 [hereinafter "Criminal Procedure Code"]. Article 143 of Egypt's Criminal Procedure Code sets specific maximum periods of pretrial detention for different categories of offences: six months for misdemeanors, eighteen months for felonies, and two years if the penalty for the crime is life imprisonment or death. However, the two-year limitation does not apply to cases in which a death penalty or life imprisonment verdict is appealed, and the defendant is going through a retrial process. See MENA Rights Group, "The practice of 'rotation': how Egypt keeps its dissidents in indefinite detention", Dec. 14, 2021, *available at* <https://www.menarights.org/en/articles/practice-rotation-how-egypt-keeps-its-dissidents-indefinite-detention>.

¹⁵ MENA Rights Group, "The practice of 'rotation': how Egypt keeps its dissidents in indefinite detention", Dec. 14, 2021, *available at* <http://menarights.org/en/articles/practice-rotation-how-egypt-keeps-its-dissidents-indefinite-detention>; see also Amnesty International, "Egypt: Detainees trapped in 'revolving doors' of prison system as authorities bypass release orders", July 10, 2019, *available at* <https://www.amnesty.org/en/latest/press-release/2019/07/egypt-detainees-trapped-in-revolving-doors-of-prison-system-as-authorities-bypass-release-orders/>.

¹⁶ MENA Rights Group, "The practice of 'rotation': how Egypt keeps its dissidents in indefinite detention", Dec. 14, 2021, *available at* <http://menarights.org/en/articles/practice-rotation-how-egypt-keeps-its-dissidents-indefinite-detention>.

¹⁷ The Tahrir Institute for Middle East Policy, "Renewed Arbitrary Detention: Keeping the Egyptian Opposition in Detention", Jan. 31, 2022, *available at* <https://timep.org/commentary/analysis/renewed-arbitrary-detention-keeping-the-egyptian-opposition-in-detention/>.

called on Egypt not only to put an end to the practice of *tadweer* but also to ensure that “statutory limits to the duration of pretrial detention are enforced.”¹⁸

These practices are all the more concerning when the lawyers tasked with representing detainees themselves become targets simply for the legitimate discharge of their professional duties. TIMEP and ICJ previously documented 35 cases between January 2018 and September 2020 in which defense lawyers working with detainees found themselves arrested, and often disappeared prior to being formally arrested, on vague and broad charges, and then held in pretrial detention.¹⁹ Many of these lawyers reported that they were subjected to torture or ill-treatment.²⁰ Such repression has serious consequences for the legal profession and chills effective legal representation.

In May 2023, Egyptian authorities kicked off the National Dialogue, a political process established by the state in the wake of widespread international criticism of the country’s human rights record and domestic instability aggravated by the country’s economic crisis.²¹ Speaking to the media in the lead-up to the opening session, the General Coordinator of the National Dialogue, Diaa Rashwan, said: “Pretrial detention, in my opinion, will be one of the most important outcomes of the dialogue.”²² Now, over one year later, no systemic remedy or reform for the abusive use of pretrial detention in Egypt has been offered.

¹⁸ Human Rights Committee, “Concluding observations on the fifth periodic report of Egypt”, UN Doc. CCPR/C/EGY/CO/5, Apr. 14 2023, ¶ 32(b).

¹⁹ TIMEP and ICJ Report.

²⁰ *Id.*

²¹ Farah Saafan, “Egypt launches national dialogue amid ongoing security crackdown”, Reuters, May 3, 2023, *available at* <https://www.reuters.com/world/africa/egypt-launches-national-dialogue-amid-ongoing-security-crackdown-2023-05-03/>.

²² Amr Kandil, “Pretrial detention topmost on National Dialogue agenda: Rashwan”, Ahram Online, May 3, 2023, *available at* <https://english.ahram.org.eg/NewsContent/1/64/498982/Egypt/Politics-/Pretrial-detention-topmost-on-National-Dialogue-ag.aspx>.

THE LIFECYCLE OF PRETRIAL DETENTION

A. BRIEF BACKGROUND

When a human rights defender or someone who has spoken critically of the government is arrested in Egypt, they are not generally presented with a warrant or informed of their rights.²³ Instead, they are either brought before a prosecutor immediately (the law requires that this take place within 24 hours of arrest) or, according to the interviews conducted for this report, subject to enforced disappearance that can last anywhere between a few days to a few years, and thereafter brought before a prosecutor. As will be described below, the 24-hour requirement is circumvented either through what Amnesty International has described as falsification of arrest dates or through an exception laid out in the country's anti-terrorism legislation.

For the most part and in recent years, cases against these kinds of defendants are initiated by the Supreme State Security Prosecution (SSSP), which is a special branch of the prosecution. However, and on occasion, the general Prosecution may also take up cases of a political nature.

When a person surfaces at the prosecution's offices following arrest or disappearance, they are usually interrogated. In cases before 'regular' prosecutors (as distinct from the SSSP), a prosecutor can opt to order pretrial detention for an initial four-day period.²⁴ Thereafter, pretrial detention is reviewed and renewed by the Misdemeanor Court of First Instance in successive periods of up to 15 days each, up to a maximum of 45 days in total.²⁵ Following the 45-day mark, pretrial detention is reviewed before the Appellate Misdemeanor Court, sitting in the consultation room, which can issue orders in 45-day increments until the 150-day mark (in felonies); once the 150-day mark is reached, it is the competent court that reviews pretrial detention every 45 days.²⁶

In cases defined by Article 206bis of the Criminal Procedure Code, which in practice includes cases brought before the SSSP, the prosecutor, specifically those holding the rank of Chief Prosecutor or higher, has authority to review pretrial detention in 15-day increments until the 150-day mark and then detention must be reviewed by the competent court every 45 days.

²³ Ms. Mary Lawlor, Special Rapporteur on the situation of human rights defenders, "Egypt: Human rights defenders held incommunicado, face spurious charges, says UN expert", Press Release, Jul. 15, 2021, ("Lawlor highlighted a common trend across multiple cases she recently raised with the Egyptian Government, whereby human rights defenders are often arrested without a warrant and detained incommunicado at an unknown location and subjected to enforced disappearance, before being presented before the Supreme State Security Prosecution"), available at <https://www.ohchr.org/en/press-releases/2021/07/egypt-human-rights-defenders-held-incommunicado-face-spurious-charges-says>.

²⁴ Criminal Procedure Code, Article 201.

²⁵ Criminal Procedure Code, Article 202.

²⁶ Criminal Procedure Code, Articles 143 and 203.

At any point before a case is referred to trial, the prosecution can call a defendant in for additional questioning. Only when a case is referred to trial are the charges brought against the defendant considered finalized.

LAW AND PRACTICE IN EGYPT COMPARED TO INTERNATIONAL STANDARDS

Egypt has legal obligations under both international and domestic law relating to pretrial detention and the treatment of detainees, although the interviews with defense lawyers suggest they are not often followed in practice. Egypt is a party to the International Covenant on Civil and Political Rights (ICCPR), as well as both the African Charter on Human and Peoples' Rights (African Charter) and the Arab Charter on Human Rights (Arab Charter); as such, it has assumed binding obligations and duties and must respect, protect, and fulfill the rights articulated within those treaties as they relate to the exceptional measure of pretrial detention. Likewise, Egyptian law conceives of pretrial detention as an exceptional measure,²⁷ although as has been noted, the practice has often become the rule rather than the exception. This section outlines each stage of the pretrial detention process, comparing the international and regional legal standards on pretrial detention with domestic law and practice to show how Egypt is not only violating its international human right obligations but often its own laws.

The laws governing pretrial detention in Egypt “grant judges ample prerogatives to extend detention and some [of the laws] are unjustly applied by judges and prosecutors. Or, in other words, in my view, the application of the laws is more unjust than the law itself.”

-- Saeed, a lawyer who works in Cairo²⁸

A. Arrest and Enforced Disappearances

Domestic Law

Article 54 of the Egyptian Constitution provides that an arrest must not occur in the absence of a judicial warrant, with the exception of cases of arrest *in flagrante delicto*.²⁹ That same provision guarantees that those arrested enjoy the right to be informed of the reasons for their arrest, must be notified of their rights in writing, must be allowed immediately to contact their family and their lawyer, and must be brought before an

²⁷ Criminal Procedure Code, Article 134 allows pretrial detention where two conditions are met: if they are accused of a misdemeanor or a felony that is punishable by imprisonment of no less than a year, and credible evidence is presented AND one of the five following grounds applies: (1) the person was arrested in flagrante delicto; (2) there is fear that the accused will flee; (3) there is fear that the interests of the investigation will be compromised by the defendant's interference with the victim or witnesses, tampering with evidence, or reaching agreements with other accused parties to distort the truth; (4) to prevent a severe breach of security and public order resulting from the gravity of the crime; and/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.

²⁸ Throughout this report, interview subjects are identified by pseudonyms.

²⁹ Egyptian Constitution, Last amended in 2019, Article 54 [hereinafter “Egyptian Constitution”].

investigating authority within 24 hours of arrest. The Egyptian Criminal Procedure Code reiterates these rights as well.³⁰

Article 40 of Egypt's Anti-Terrorism Law carves out an exception to the requirement that detained individuals be brought before an investigative authority within 24 hours, granting broad discretion for the Public Prosecution or the competent investigative authorities to justify the holding of "suspected terrorists" for an exceptional period of 14 days, renewable once, up to a total of 28 days.³¹ During this period, the law subjects the rights of a defendant to call a family member or seek the assistance of a lawyer to "the interests of the investigation."³² In practice, according to the UN, Egyptian authorities regularly accuse human rights defenders, journalists, dissidents, and lawyers of being "suspected terrorists."³³

Practice

All the lawyers interviewed for this report noted that pretrial detention is often preceded by a period of enforced disappearance.³⁴ Defendants later inform their lawyers that they were held in State Security facilities, blindfolded, and, in some instances, subject to torture.³⁵ These periods of enforced disappearance, lasting from days to months, are usually justified by invoking the terrorism law's exception to the 24-hour rule,³⁶ which, as discussed below, is itself inconsistent with international standards.

In any event, the authorities do not even necessarily adhere to the 28-day limit under the Anti-Terrorism Law. When asked about the typical length of a period of enforced disappearance, Salma, who practices in Cairo and Giza, highlights the arbitrariness of the practice; she says: "I cannot provide an exact answer, it can be between two days to two weeks, or one month to many years. For example, at the Supreme State Security

³⁰ Criminal Procedure Code, Article 139.

³¹ Egypt's Anti-Terrorism Law No. 94 of 2015, Last amended on March 3, 2020, Article 40 [hereinafter "Anti-Terrorism Law"].

³² Anti-Terrorism Law, Article 41.

³³ United Nations Human Rights Office of the High Commissioner, "UN experts urge release of rights defenders in Egypt, condemn misuse of counter-terrorism measures", Dec. 1, 2021 ("UN human rights experts* today called on Egypt to halt the misuse of counter-terrorism measures against civil society activists, lawyers, journalists and human rights defenders"), *available at* <https://www.ohchr.org/en/press-releases/2021/12/un-experts-urge-release-rights-defenders-egypt-condemn-misuse-counter>.

³⁴ Egyptian law does not officially recognize the crime of "enforced disappearance"; however, there are a number of related provisions that can be used to argue its illegality. For example, Article 40 of the Criminal Procedure Code requires that an individual only be arrested on the basis of a judicial warrant; it also requires that they be treated with dignity and without being subject to physical or moral harm. Article 41 of the same law requires that a person detained only be held in a prison designated for such purpose, that a prison warden only accept prisoners designated for detention by a written order, and that a detained person not be held beyond the dates stipulated in any written order.

³⁵ Amnesty International, "Egypt: 'Officially you do not exist': Disappeared and tortured in the name of Counter-Terrorism", July 2016, *available at* <https://www.amnesty.org/en/documents/mde12/4368/2016/en/>.

³⁶ Interview with Saeed.

Prosecution, some accused persons appeared after being victims of enforced disappearance for periods extending to two years or even three and a half years.” Likewise, lawyer Soliman who works in Kafr el-Sheikh and El Gharbia governorate, says: “There is no specific period, but for example, in [El] Gharbia, we know by now that if the client disappears for four or five days, there is a possibility that he will appear before the [regular prosecution]. If his detention lasts more than 10 days, he will often remain disappeared until he appears at the [Supreme] State Security Prosecution.”

During this period, lawyers and family members have no knowledge of where the accused person is being held. When their clients are taken into custody, lawyers do not receive notice from arresting or prosecuting officials. Newly-detained individuals are also not allowed to make phone calls or contact their lawyer. Instead, the vast majority of lawyers learn that defendants have been taken into custody when family members or friends report the incident or when a defendant is spotted at a police station. In many cases, when families and lawyers go to police stations or State Security offices looking for a missing person, officials deny holding them, according to *New York Times* reporting.³⁷ When lawyers and family members submit reports of enforced disappearance, they often receive no official answer from authorities.³⁸

In some cases of disappearance, according to Amnesty International, the date of arrest is falsified to accord with the legal requirement that defendants be brought before an investigating authority within 24 hours of their arrest.³⁹ When lawyers try to document previous disappearances at any point during the investigation of a case, the relevant authorities refuse to act. For instance, Cairo-based lawyer Noora explained that authorities previously used to “accept telegraphs as proof of disappearance”; however, judges now refuse to confirm enforced disappearance in case records.⁴⁰

At the time someone is brought into custody, there is generally no information provided regarding the grounds for arrest. The lawyers interviewed for this report state that they are usually only notified of the charges against their client when they attend an interrogation or pretrial detention renewal session. Saeed confirms: “If I attend the [interrogation session], I know [the charges only] then. If not, I know during the detention

³⁷ NYT Report.

³⁸ Amnesty International, “Egypt: ‘Officially you do not exist’: Disappeared and tortured in the name of Counter-Terrorism”, July 2016, *available at* <https://www.amnesty.org/en/documents/mde12/4368/2016/en/>

³⁹ Amnesty International, “Egypt: End and redress shocking crimes against toddler and family forcibly disappeared for 23 months”, Mar. 4, 2021, *available at* <https://www.amnesty.org/en/latest/press-release/2021/03/egypt-end-and-redress-shocking-crimes-against-toddler-and-family-forcibly-disappeared-for-23-months/>

⁴⁰ Lawyers have the ability to send a telegraph to the prosecution to establish a disappearance or inquire about the status of a missing person. Some lawyers would then use the fact that they filed these telegraphs as establishing proof of disappearance in their defense arguments.

renewal, maybe within two weeks from the date the defendant was first brought before the Prosecution.”

International and Regional Standards & Application to Egypt’s Law and Practice

Article 9 of the ICCPR protects the right to liberty and prohibits arbitrary detention.⁴¹ Article 9(1) of the ICCPR stipulates that no one may be deprived of liberty or “subjected to arbitrary arrest or detention...except on such grounds and in accordance with such procedures as are established by law.”⁴² Arbitrariness “is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law.”⁴³

Article 6 of the African Charter similarly protects the right to liberty and security of person, prohibits arbitrary arrest and detention, and guarantees that “[n]o one may be deprived of his freedom except for reasons and conditions previously laid down by law.”

The UN Human Rights Committee has specifically held that “[e]nforced disappearances violate numerous substantive and procedural provisions of the Covenant and constitute a particularly aggravated form of arbitrary detention.”⁴⁴ Likewise, the African Commission’s Guidelines on the Protection of All Persons from Enforced Disappearance in Africa state that “enforced disappearance is prohibited in absolute terms and no exceptional circumstances whatsoever may be invoked as a justification for violating this prohibition.”⁴⁵

Under Article 9(3) of the ICCPR, all individuals detained on a criminal charge must be brought “promptly” before a judge or other person exercising “judicial power.” This applies “even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.”⁴⁶ The Human Rights Committee has made

⁴¹ United Nations General Assembly, “International Covenant on Civil and Political Rights”, Treaty Series 999, Dec. 1966, Article 9 [hereinafter “ICCPR”]; United Nations General Assembly, “The Universal Declaration of Human Rights”, Dec. 1948, Article 3.

⁴² ICCPR, Article 9(1).

⁴³ Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, Dec. 16, 2014, ¶ 12 [hereinafter “General Comment No. 35”].

⁴⁴ General Comment No. 35, ¶ 17.

⁴⁵ African Commission on Human and Peoples’ Rights, “Guidelines on the Protection of All Persons from Enforced Disappearances in Africa”, Oct. 25, 2022, ¶ 1.4.5, *available at* <https://achpr.au.int/en/documents/2022-10-25/guidelines-protection-persons-enforced-disappearances-africa>.

⁴⁶ General Comment No. 35, ¶ 32.

clear that “promptly” generally means within 48 hours of arrest.⁴⁷ Any longer delay must remain absolutely exceptional and be justified under the circumstances.⁴⁸

Likewise, the African Commission’s Guidelines on the Conditions of Arrest, Police Custody, and Pretrial Detention in Africa (the Luanda Guidelines) stipulate that the maximum duration of police custody prior to appearing before a judge shall be no more than 48 hours “extendable in certain circumstances by a competent judicial authority, consistent with international law and standards.”⁴⁹

Article 9(2) of the ICCPR requires that the authorities give prompt notice of the reasons for arrest at the time of the arrest, enabling the arrestee “to seek release if [they] believe that the reasons given are invalid or unfounded.”⁵⁰ The Human Rights Committee has commented that reasons given for an arrest must include both legal and factual grounds, including the alleged crime(s) and identity of any alleged victim(s), and must be in a language the arrested person understands.⁵¹ The Committee has held that this right applies across all kinds of proceedings, including military prosecutions or other special criminal regimes.⁵²

The Committee has also stated that an individual must be provided with such an explanation “immediately upon arrest” barring exceptional circumstances, such as the need for an interpreter.⁵³ In *M.T. v. Uzbekistan*, for example, the Committee found a violation of Article 9(2) where police officers failed to promptly inform a human rights activist of the reasons for her arrest, charging her only the subsequent day.⁵⁴

Similarly, the African Commission on Human and Peoples’ Rights (African Commission) has held that the right to a fair trial includes the requirement that persons arrested “be informed at the time of arrest, in a language which they understand of the reason for their

⁴⁷ General Comment No. 35, ¶ 33 (“48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.”).

⁴⁸ Human Rights Committee, *Kovsh v. Belarus*, Comm. No. 1787/2008, UN Doc. CCPR/C/107/D/1787/2008, July 5, 2023, ¶¶ 7.3–7.5; see also Human Rights Committee, *Fillastre and Bizouarn v. Bolivia*, Comm. No. 336/1988, UN Doc. CCPR/C/40/D/336/1988, Nov. 6, 1990, ¶ 6.4 (budgetary constraints did not justify 10-day delay).

⁴⁹ Luanda Guidelines, ¶ 7(b)(ii).

⁵⁰ General Comment No. 35, ¶ 25.

⁵¹ *Id.*, ¶¶ 25, 26.

⁵² *Id.*, ¶ 29.

⁵³ *Id.*, ¶ 27.

⁵⁴ Human Rights Committee, *M.T. v. Uzbekistan*, Comm. No. 2234/2013, UN Doc. CCPR/C/114/D/2234/2013, Oct. 21, 2015, ¶¶ 2.1, 7.7–7.8.

arrest” and “promptly of any charges against them.”⁵⁵ Failure to do so constitutes a violation of the right to a fair trial as guaranteed by the African Charter.⁵⁶

In Egypt’s case, both the domestic law itself—specifically the provisions of the Anti-Terrorism Law that permit an individual to be held for 28 days without judicial review—and the corresponding practice with respect to both the extended periods of enforced disappearance and the lack of notice of the reasons for arrest reported by the lawyers interviewed for this report fall short of international and regional standards.

First, a legislative provision that permits 28 days of incommunicado detention, in the words of numerous UN mandate holders, “effectively codifie[s] enforced disappearances.”⁵⁷

Second, the periods of time individuals reportedly spend in incommunicado detention, whether under the terrorism law or in defiance of applicable law, are a flagrant breach of the rule under both international and regional standards requiring that detained persons be ‘promptly’ presented before a judicial authority.

Third and finally, the failure of the authorities to inform detainees of why they have been arrested until they are interrogated by the prosecution, often many days after their arrest, breaches the requirement under international and regional standards requiring prompt notice of the reasons of arrest.

B. Investigation and Interrogation

Domestic Law

Article 54 of the Egyptian Constitution states that any detained person has the right to contact a lawyer, that questioning may only begin in the presence of a lawyer, and that if an individual does not have a lawyer, one will be appointed for them. The same article states: “In all cases, the accused may be brought to criminal trial for crimes that he may be detained for only in the presence of an authorized or appointed lawyer.” In the same

⁵⁵ See e.g., African Commission on Human and Peoples’ Rights, *Media Rights Agenda (on behalf of Niran Malaolu) v. Nigeria*, Comm. No. 224/98, ¶ 43.

⁵⁶ African Commission on Human and Peoples’ Rights, *Huri-Laws (on behalf of the Civil Liberties Organisation) v. Nigeria*, Comm. No. 225/98, ¶¶ 43-44.

⁵⁷ Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention, *et. al.*, Communication Reference: OL EGY 4/2020, Feb. 28, 2020, *available at* <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25072>.

Compounding the concerns with this provision, as numerous lawyers have previously confirmed, Egyptian authorities regularly abuse the term “terrorist,” and misapply it to individuals who have simply criticized the government. See OHCHR, “UN experts urge release of rights defenders in Egypt, condemn misuse of counter-terrorism measures”, Dec. 1, 2021, *available at* <https://www.ohchr.org/en/press-releases/2021/12/un-experts-urge-release-rights-defenders-egypt-condemn-misuse-counter>.

vein, Article 139 of the Criminal Procedure Code establishes that every person who is arrested or detained has the right to access a lawyer.

Practice

When defendants publicly surface following a period of enforced disappearance, or simply shortly after arrest, they are taken to the prosecution for their interrogation. It is there that they are orally informed of the reason for their arrest or the charges against them.

But their lawyers are not often informed of this interrogation. Salma says: “I never heard of a written record sent by the Supreme State Security Prosecution for [a lawyer to be informed] to attend the [client’s] interrogation hearing.” Instead, lawyers learn informally or through their private sources that an interrogation is taking place. As a result, many lawyers miss the initial interrogation and only get the opportunity to represent their clients at the first pretrial detention renewal session, which happens either four days after the interrogation concludes in cases before the ‘regular prosecution’ or 15 days after the interrogation concludes in cases before the SSSP.

El-Sayed, who is a lawyer in Cairo, says: “There is often difficulty in attending the first interrogation hearing of the accused because the Supreme State Security Prosecution usually tends to hold the first interrogation without the presence of a lawyer, in order to meet with the accused privately and extract confessions.”

Noora confirms and explains that lawyers step in for each other in the absence of proper notice: “Sometimes, I see a detainee appearing before the prosecutor without their counsel, so I try to attend with them.” Reporting from the *New York Times* confirms the same: “Volunteer defense lawyers who come to court each day jump in to represent other detainees, the only way for some to tell their families where they are.”⁵⁸

Across all of the interviews conducted for this report, lawyers agreed that it has also become the general practice of the prosecution, irrespective of whether ‘regular’ or SSSP, not to provide access to written documentation during interrogation sessions with the defendant. Nour, who practices in Cairo, summarizes the state of affairs: “Lawyers have no access [to written documentation] in Supreme State Security Prosecutions, but may be able to access [written documentation], though with extreme difficulty, at the [‘regular’] Prosecution.”

In fact, Salma explains that no documentation is provided detailing the charges, evidence, or justification for having arrested the defendant during the entire time before a case is referred to trial: “I get informed [of the charges] orally when attending the investigative hearing or the detention renewal. I am not allowed to access the charge [sheet] during

⁵⁸ NYT Report.

the investigation period. Normally, once the case is referred to trial, following the judge's opening statement, I am allowed to get a copy of the case file."

Lawyers explain that the failure to provide written charge records extends broad discretion to the prosecuting authorities. It gives prosecuting authorities the ability to add and amend charges throughout the entire pretrial detention period, which deprives lawyers of the ability to prepare and present a proper defense and denies the accused the minimum necessary information to know what they are accused of having done.

Salma reflects on one case on which she worked: "I had a client and the prosecution directed one charge against him in the interrogation, but after referring the case to trial, we found in the referral order another charge that [was not presented] during the interrogation, which is the possession of a weapon!!"

Even where lawyers do know of an interrogation session, the process for attending is not always straightforward. For example, on a number of occasions for sessions at the SSSP, lawyers were required to submit advance notice to prosecutorial officials informing them that they were representatives of the accused. By contrast, "in [regular] prosecutions and courts, it is sufficient to prove attendance at the time of hearing or right before," explains Nour.

When an interrogation (or, later, detention renewal hearing) is held at the SSSP, lawyers are not allowed to bring in any electronic devices, including mobile phones, smart watches, and laptops; even large briefcases are confiscated. Lawyers present documentation confirming their right to practice law and go through security; they are allowed to bring in pens, papers, and at times, case files or law references. Sara, who is a lawyer in Alexandria, adds: "Sometimes, the male lawyers are [physically] searched, then you enter into the lawyers' room, which is a room at the ground floor with a limited number of chairs. You stay there, and you are not allowed to go outside it or outside the first floor generally, until the accused appears before the prosecution."

Salma explains the implications of strict security protocols at the SSSP; she says: "Being prohibited to enter with any devices restricts our ability to review [relevant] legal provisions [to the case at hand]. It is worth noting that usually waiting periods at the Supreme State Security Prosecution are too lengthy. Sometimes, we have to wait six hours to attend an interrogation or a detention renewal hearing." El-Sayed agrees: "The case files are not with me, nor the law textbooks that help me prepare for the session. You are also obliged to hand in the mobile phone, so you are practically isolated from the outside world, which makes you feel neither safe nor secure."

Nour notes that he has previously been allowed to bring law references in book or printout form but explains that with some files reaching over 1,000 pages, a device with search capability is necessary to provide a proper defense. According to El-Sayed, these

heightened security protocols are “applied at the Supreme State Security Prosecution and terrorism courts in Tora, Badr and Wadi El Natrun and the military courts.”

Noora highlights the implications of this lack of connectivity with the outside world; she says: “We are disconnected from the outside world, and we cannot communicate with the families of the accused if we want to inform them of anything. Often, when I take long inside, my own family will be worried, because my mobile is turned off while I am inside. There is also the risk that my phone might be hacked or they might spy on it. Many times, I would find it unlocked.”

This is in clear contrast to lawyers who represent clients being brought before ‘regular’ prosecutors. Salma describes: “There we can enter with all our tools and devices; we do not hand in our cards at the door. There is also a cafeteria for food and drinks.” Sara confirms: “You enjoy freedom of movement and communication within the ordinary prosecutor’s offices as opposed to the Supreme State Security Prosecutor’s Office.”

Though authorities technically have the right to interrogate defendants throughout the pretrial detention process, it has been acknowledged that, “[a]fter initial questioning in the first week, detainees are rarely if ever questioned again during their months or years of pretrial detention, which has transformed pretrial detention to a punishment in itself.”⁵⁹

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Those detained on suspicion of having committed a criminal offense are entitled to legal representation, even before charges are formally brought. In *Osincev v. Kyrgyzstan*, for instance, the Human Rights Committee determined that Kyrgyzstan had violated the rights of a person detained for 22 days before being able to contact his lawyer.⁶⁰ In a case involving Egypt, the African Commission further clarified that the “right to counsel applies during all stages of any criminal prosecution” including “preliminary investigations in which evidence is taken [and] periods of administrative detention.”⁶¹ The Luanda Guidelines likewise stipulate that all persons detained in police custody, or subject to police questioning, shall be afforded the right to assistance by a lawyer.⁶²

⁵⁹ Amnesty International, “Egypt: Detainees trapped in ‘revolving doors’ of prison system as authorities bypass release orders”, July 10, 2019, *available at* <https://www.amnesty.org/en/latest/press-release/2019/07/egypt-detainees-trapped-in-revolving-doors-of-prison-system-as-authorities-bypass-release-orders/>.

⁶⁰ Human Rights Committee, *Osincev v. Kyrgyzstan*, Comm. No. 2313/2013, UN Doc. CCPR/C/125/D/2313/2013, Apr. 4, 2019, ¶ 7.4.

⁶¹ African Commission on Human and Peoples’ Rights, *Egyptian Initiative for Personal Rights and Interights v. Egypt*, Comm. No. 334/2006, ¶ 209.

⁶² Luanda Guidelines, ¶ 9(d).

Additionally, supplementing the right to be informed of the reasons for arrest, the ICCPR protects the right of individuals to be informed of the charges against them under two separate provisions—Article 9(2) and Article 14(3)(a).⁶³ While international standards do not necessarily require that information about the charges be provided in writing at the time of arrest,⁶⁴ when an individual is detained, the authorities cannot simply argue that charges have not yet been finalised to avoid providing them with details in writing (as is required under the Article 14 right).⁶⁵ Thus, for instance, in one case before the Human Rights Committee, the Committee found a violation of Article 14(3)(a) where an individual was arrested in May and only charged at the end of July: “The Committee takes the view that the delay in presenting the charges to the detained author...affected the possibilities of [the defendant] to defend himself.”⁶⁶

Defendants also have the right to “adequate time and facilities for the preparation of [their] defense and to communicate with counsel of [their] own choosing.”⁶⁷ This means that an individual must be able to meet with their defense counsel to discuss their case, including during a hearing,⁶⁸ but must also be able to do so “in private and to communicate with [their lawyer] in conditions that fully respect the confidentiality of their communications.”⁶⁹

Finally, lawyers should be able to advise and represent persons charged “without restrictions, influence, pressure or undue interference from any quarter,” in accordance with generally recognized professional ethics.⁷⁰

Egypt’s practice, as described by the lawyers interviewed for this report, is inconsistent with these standards. First, defendants are not being given prompt access to lawyers—in advance of and sometimes even during interrogation sessions.

Second, defendants and their lawyers are not being given adequate information regarding the charges, in light of the fact that these defendants are in detention. The failure to provide any kind of written documentation over time and especially coupled with the inability of defendants to communicate with their lawyers before interrogation sessions,

⁶³ The Article 9 right is intended to facilitate challenges to detention while the Article 14 right is intended to permit formulation of a defense. They are cumulative.

⁶⁴ General Comment No. 35, ¶ 26 (Under Article 9(2), “[o]ral notification of reasons for arrest satisfies the requirement”).

⁶⁵ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007, ¶ 31 (“The specific requirements of [Article 14] 3 (a) may be met by stating the charge either orally - if later confirmed in writing - or in writing”) [hereinafter “General Comment No. 32”].

⁶⁶ Human Rights Committee, *Kurbanov v. Tajikistan*, Comm. No. 1096/2002, U.N. Doc. CCPR/C/79/D/1096/2002, Nov. 6, 2003, ¶ 7.3.

⁶⁷ Article 14(3)(b), ICCPR.

⁶⁸ Human Rights Committee, *Rayos v. Philippines*, Comm. No. 1167/2003, U.N. Doc. CCPR/C/81/D/1167/2003, July 27, 2004, ¶ 7.3.

⁶⁹ General Comment No. 32, ¶ 34.

⁷⁰ *Id.*

significantly affects the defendants' rights both to contest their detention and prepare a defense.

Finally, the restrictions on access to the places where interrogations and detention renewal hearings take place are sufficiently onerous as to functionally restrict lawyers from effectively discharging their duties.

C. Pretrial Detention Review Sessions

Domestic Law

In general, the prosecution has the authority to order pretrial detention for four days, but then pretrial detention should be ordered and reviewed only by a judge. However, as mentioned above, Article 206 bis of the Criminal Procedure Code expanded the authority of members of the Public Prosecution, specifically those holding the rank of Chief Prosecutor or higher, to allow for review of pretrial detention for certain crimes, including state security crimes, which fall under the SSSP's jurisdiction. Accordingly, prosecutors before the SSSP (rather than judges) are granted authority to review pretrial detention in 15-day increments up to the 150-day mark. After the 150-day mark, pretrial detention is reviewed and renewed in 45-day increments by a judge.

The Criminal Procedure Code makes clear that pretrial detention can only be ordered when one of the following five scenarios is applicable: (1) the person was arrested *in flagrante delicto* (meaning that the authorities arrested someone while they were allegedly in the process of committing a crime); (2) there is fear that the accused will flee; (3) there is fear that the interests of the investigation will be compromised by the defendant's interference with the victim or witnesses, tampering with evidence, or reaching agreements with other accused parties to distort the truth; (4) to prevent a severe breach of security and public order resulting from the gravity of the crime; and/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.⁷¹

The Criminal Procedure Code requires that before detention is ordered (in cases not subject to Article 206 bis and therefore heard by a judge after the first four days),⁷² the

⁷¹ Criminal Procedure Code, Article 134.

⁷² As explained above, in cases under the Regular Prosecution's jurisdiction, the prosecutors can only order pretrial detention for four days from the day the defendant surfaces before the prosecution (Article 201 of the Criminal Procedure Code). If the prosecution decides to extend pretrial detention further, it must present the case to the district judge (usually a judge from the Misdemeanor Court of First Instance) who can authorize detention in 15-day increments (Article 202 of the Criminal Procedure Code). The district judge shall issue the order after hearing the statements of the Public Prosecution and the defendant (Article 202 of the Criminal Procedure Code). If the investigation is not completed within 45 days, the case must be sent to the Appellate Misdemeanor Court, sitting in the consultation room. The court can renew pretrial detention after hearing the Public Prosecution and the defendant in each renewal session. This court can extend the detention for successive increments of 45 days each and not exceeding a total

judge must hear from the Public Prosecution and the defense.⁷³ In these cases, as well as cases where the prosecution themselves decides on detention, the detention order must also include an explanation of the crime attributed to the accused, the punishment set forth for the crime, and the reasons upon which the detention order is based.⁷⁴

Egyptian law conceives of pretrial detention as a measure of last resort and stipulates a number of alternatives to pretrial detention, including house arrest, probation check-ins at a police station, and restrictions on travel.⁷⁵

Practice

Increasingly in Egypt, pretrial detention is no longer a measure of last resort as stipulated by the law. Rather, it has become the norm in many cases. There is no evidence to indicate that prosecutors and judges sufficiently consider alternatives to pretrial detention. There is similarly no evidence to indicate the prosecutors and judges conduct an individualized assessment to determine which of the five categories set forth under domestic law applies in a particular case.⁷⁶

What appears to happen in practice is that when a defendant is brought before the prosecution for an interrogation, pretrial detention is ordered (as discussed above, for four days if before the general prosecution or for 15 days if before the SSSP). There are then pretrial detention renewal hearings before the prosecution or a judge at regular intervals.

These, whether before a prosecutor or eventually a judge, are short. Eight out of ten of the lawyers reported that renewal hearings last less than ten minutes — five lawyers were more specific and said they last closer to two minutes per defendant. This is consistent with public reporting from the *New York Times*, which described hearings as being “about 90 seconds in length.”⁷⁷ In some cases, the pretrial detention reviews for defendants listed in the same case are conducted *en masse*. Renewal hearings are closed to the public, including the families of detainees. All of the lawyers interviewed report that renewal hearings are now conducted remotely, with the defendant being made to ‘call in’ from the

of 150 days in felonies (including the initial 45 days) (Articles 143, 203 of the Criminal Procedure Code). After the 150-day mark, the competent court, such as the Criminal Court in felonies, is the only authority that can decide on pretrial detention renewal. However, in state-security-related crimes (as mentioned above, according to Article 206 bis of the Criminal Procedure Code), the prosecution has the authority to extend pretrial detention for the first 150 days without judicial review and without the need to involve the competent court. Therefore, there is no independent judicial authority to hear the defense for the first 150 days in such cases.

⁷³ In cases before the SSSP, this provision is irrelevant, since the prosecutor has the authority to autonomously extend pre-trial detention for the first 150 days as per Article 206 bis.

⁷⁴ Criminal Procedure Code, Article 136.

⁷⁵ Criminal Procedure Code, Article 201.

⁷⁶ MENA Rights Group, “The practice of ‘rotation’: how Egypt keeps its dissidents in indefinite detention”, Dec. 14, 2021, available at <https://www.menarights.org/en/articles/practice-rotation-how-egypt-keeps-its-dissidents-indefinite-detention>.

⁷⁷ NYT Report.

prison itself. The issues with this new way of conducting hearings are discussed in detail in the Spotlight section below.

In addition, and as alluded to above, the prosecution does not present any written materials regarding the substance of the allegations at the time of renewal hearings.⁷⁸

Further, when lawyers inquire about the justification for a pretrial detention order or renewal, they are dismissed and told that “investigations are still ongoing” or that “the technical reports have not yet been issued.” In some rarer cases, a vague justification “to protect national security” is offered.

Lawyers are not allowed, or in some cases, are strongly discouraged from presenting substantive or extensive legal arguments or a defense during a pretrial detention review. El-Sayed reports that judges and prosecutors cut him off when he argues against renewing the pretrial detention of his clients; he is told “not to speak on the merits of the case because the hearing is intended only to renew the detention and not to rule on the case.” Salma says that while she has been allowed to present some arguments before prosecutors, when the review has been before a judge, it becomes less likely; she says: “The Court requires that arguments be brief.” Nour adds that even lawyers who are able to present a legal defense often do not feel that the process is fair; he says: “There is always fear of the authorities or judge’s bias.”

Nour explains that no written record is provided; he adds that only once in his career has he been allowed to take a photo of a written order. El-Sayed says that while renewal decisions are backed up by written orders directed to the Prisons Authority of the Ministry of Interior, these orders can only be accessed or photocopied after a case has been referred to trial. He says, “During pretrial detention, it is really hard to access those files or read them.”

For a period of time and ostensibly justified by the pandemic, detention renewals were also taking place on paper, in the absence of counsel, and without the defendant being physically brought before an authority (whether prosecutor or judge). El-Sayed, a lawyer who has been practicing since 2013 and works in Cairo, says: “During that period of time, the detainees could not file complaints against mistreatment and medical neglect.” Salma confirms the same: “The right to defense and the rights of the defendant to prove any harm or problems that occurred during the detention were completely lost.” Although the pandemic has abated, detention renewal hearings in Egypt continue to be held remotely, without the defendant being physically present, as discussed below.

⁷⁸ EuroMed Rights, “The Chilling Effect: A study on the use of pre-trial detention as a tool of repression against human rights defenders and activists in Egypt”, Mar. 2020, *available at* <https://euomedrights.org/wp-content/uploads/2020/03/Chilling-Effect-of-pretrial-Detention-on-Human-Rights-Defenders-in-Egypt.pdf>.

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Both Articles 9(3) and 9(4) of the ICCPR provide a detainee with the right to judicial review. Under Article 9(3), all individuals detained on a criminal charge must be brought before a judge or other person exercising “judicial power.”⁷⁹ The Human Rights Committee has specified that prosecutors do not suffice, since a “public prosecutor could not be regarded as having the institutional objectivity and impartiality necessary to be considered an ‘officer authorized to exercise judicial power’ within the meaning of article 9(3).”⁸⁰

In a case involving Egypt, the African Commission has likewise expressly held that Egypt had violated its “obligation to bring the victims promptly to an independent judicial authority” because while “they did appear before a prosecutor, the right guaranteed in law is to bring them before a judicial authority that is independent of the authorities detaining, interrogating and ultimately prosecuting them.”⁸¹

Substantively, Article 9(3) clearly articulates that detention pending trial “shall not be the general rule.” The Human Rights Committee has clarified that pretrial detention should be as short as possible and “reasonable and necessary in all circumstances, for example to prevent flight, interference with evidence or the recurrence of crime.”⁸² In evaluating the reasonableness and necessity of pretrial detention, courts must make an “individualized determination.”⁸³ Additionally, if a detention period is extended, then any “additional detention must be justified by compelling reasons arising from the gravity of the crimes committed and the likelihood of the detainee’s committing similar crimes in the future,” and any such decision should be “a last resort and [be subject to] regular periodic

⁷⁹ See also African Commission on Human and Peoples’ Rights, “Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa”, May 29, 2003, Principle M(3)(a) (“Anyone who is arrested or detained on a criminal charge shall be brought before a judicial officer authorized by law to exercise judicial power.”) [hereinafter “Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa”]; General Comment No. 35, ¶ 32 (“It is inherent to the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with.”).

⁸⁰ Human Rights Committee, *Kulomin v. Hungary*, Comm. No. 521/1992, U.N. Doc. CCPR/C/50/D/521/1992, Mar. 22, 1996, ¶ 11.3.

⁸¹ African Commission on Human and Peoples’ Rights, *Egyptian Initiative for Personal Rights and Interights v. Egypt*, Comm. No. 334/2006, ¶ 187.

⁸² General Comment No. 35, ¶ 12; Human Rights Committee, *Cedeno v. Bolivarian Republic of Venezuela*, Comm. No. 1940/2010, U.N. Doc. CCPR/C/106/D/1940/2010, Oct. 29, 2012, ¶ 7.10.

⁸³ General Comment No. 35, ¶ 38 (“Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. The relevant factors should be specified in law and should not include vague and expansive standards such as ‘public security’”).

reviews by an independent body.”⁸⁴ Courts must also provide reasons for forgoing non-custodial alternatives.⁸⁵

The African Commission has adopted a similar position deeming pretrial detention a “measure of last resort” that should be “used where necessary and where no other alternatives are available.”⁸⁶

Article 9(4) of the ICCPR states that “[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.” The right to challenge the lawfulness of detention encompasses the right to access material related to the detention as well as the right to assistance by legal counsel of choice.⁸⁷

The Luanda Guidelines likewise state that in all hearings that determine the legality of detention, “detainees have the right to be present, the right to the assistance of a lawyer or other legal service provider, the right to access all relevant documents, the right to be heard, and the right to reasonable accommodation to ensure equal enjoyment of rights by persons with disabilities.”⁸⁸

Finally, the Human Rights Committee has clarified that accused persons “must be brought to appear *physically*.”⁸⁹ As mentioned above, the Luanda Guidelines likewise specify that detainees have the right to be present during detention hearings.⁹⁰ One reason for this is in order to check whether the accused person has been mistreated in detention.⁹¹

As the International Commission of Jurists has explained, “most importantly, physical appearance before a judge creates a temporary break in the absolute or near-absolute

⁸⁴ *Id.*, ¶ 21.

⁸⁵ *Id.*; See also Luanda Guidelines.

⁸⁶ Luanda Guidelines.

⁸⁷ United Nations, “United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings before a Court”, UN Doc. A/HRC/30/37, July 6, 2015, Principles 9, 12.

⁸⁸ Luanda Guidelines, ¶ 11(f).

⁸⁹ General Comment No. 35, ¶ 34; see also General Comment No. 35, ¶ 42 (“In general, the detainee has the right to appear in person before the court, especially where such presence would serve the inquiry into the lawfulness of detention or where questions regarding ill-treatment of the detainee arise.”). Accused persons likewise have the right to appear in person to challenge the legality of their detention under Article 9(4) of the ICCPR.

⁹⁰ Luanda Guidelines, ¶ 11(f).

⁹¹ See generally General Comment No. 35, ¶ 34; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Principle M(3)(b)(iv) (noting that one of the purposes of judicial review is to “safeguard the well-being of the detainee”).

control that detaining authorities often otherwise exercise over a person deprived of liberty.”⁹²

Egypt’s law and practice as described in this report violates these international and regional standards.

First, Egyptian law permits a prosecutor rather than a judge to authorize and review detention for up to 150 days. This is flatly inconsistent with international and regional law requiring that a *judicial* power take such decisions—a finding that the African Commission has already made, and thus a persistent violation.

Second, Egypt is not using detention as a measure of last resort, with careful attention to the specifics of each case. The speed of detention renewal hearings—reported to be measured in minutes—makes this impossible.

Third, and as also discussed above, the authorities’ failure to provide written documentation, including of detention decisions, impedes defendants’ ability to take proceedings to challenge the lawfulness of their detention before a court.

Finally, Egypt has held detention renewal hearings “on paper,” and more recently adopted a practice of remote detention renewal hearings. As Human Rights Watch has concluded, this “undermines detainees’ right to be brought physically before a judge to assess the legality and conditions of detention, the well-being of detainees, and for the detainees to be able to speak to the judge directly and to their lawyers in private.”⁹³

D. Complaints and Appeals

Domestic Law

As per Article 164 of the Code of Criminal Procedure, pretrial detention orders, whether those involving detention or release, may be appealed by the defendant or the Public Prosecution.⁹⁴

Further, the Egyptian Constitution guarantees to those who have been detained the right to dignity, the right to be free from torture, and the right to be held in designated locations that meet health and humanitarian standards.⁹⁵ Article 126 of the Penal Code stipulates that any public official who orders torturing people or commits torture themselves shall be

⁹² International Commission of Jurists, “Videoconferencing, Courts and COVID-19 Recommendations Based on International Standards”, Nov., 2020, *available at* https://www.unodc.org/res/ji/import/guide/icj_videoconferencing/icj_videoconferencing.pdf.

⁹³ Human Rights Watch, “Egypt: Pretrial Detention Renewals by Video”, May 26, 2023, *available at* <https://www.hrw.org/news/2023/05/26/egypt-pretrial-detention-renewals-video>.

⁹⁴ Criminal Procedure Code, Article 164.

⁹⁵ Egyptian Constitution, Article 55.

punished. The same applies to state officials who abuse their power “to impose cruelty on people, resulting in dishonor to them or causing physical pain,” according to Article 129 of the Penal Code.⁹⁶

Practice

Lawyers interviewed for this report said it was very difficult to appeal pretrial detention orders, particularly in cases before the SSSP. Saeed for instance said that in 2022 alone, he was only allowed to make two appeals of a prosecutor’s detention renewal decision. Another lawyer, Ahmed, who works in Alexandria, clarified that detention orders before a court can be appealed; he himself regularly submits appeals before the Alexandria Court and is allowed to do so per defendant once every month. However, all the lawyers reported that appeals against pretrial detention orders are frequently rejected.

Lawyers also reported the frequent refusal by prosecutors and judges to enter into the record or investigate allegations of enforced disappearance, torture, and inadequate medical care or medical negligence.

Noora speaks about her experience attempting to document an incident of torture experienced by her client: “I once met an accused who was subjected to torture....Signs of torture were clear all over his body. I was not his lawyer, but as I passed by at the Prosecution, I saw his leg and it was a telltale sign that he had been tortured. I entered the investigation with him and asked to prove torture...The prosecutor refused to document torture and I later learned from the accused that those signs [of torture] had been covering his body for four months and the prosecutor had refused to document this [throughout this entire time period].”

Salma likewise explained: “My client requested an investigation after being subjected to torture. I requested a separate investigation [into the matter and for him to be] question[ed] as a victim, but the Prosecution refused.” Similarly, Saeed adds: “It is possible to submit some documents about forced disappearance or torture, but the Court does not take them into consideration.” He cites the example of one client in particular: “One client submitted a complaint once during the interrogation hearings, and he was younger than 18 years old at the time. He complained about the prison conditions at El Aqrab prison and narrated how his hands and feet remained cuffed for 15 days until the interrogation hearing. However, nothing happened with the complaint.”

⁹⁶ Egypt’s Penal Code No. 58 of 1937, Last amended on August 15, 2021, Articles 126,129.

International and Regional Standards & Application to Egypt's Law and Practice

While the ICCPR does not require that proceedings challenging detention be subject to appeal, “[i]f a State party does provide for appeal or further instances,” the delay in deciding an appeal “must not be excessive.”⁹⁷ As a corollary, where domestic law permits an appeal, it cannot be unlawfully pretermitted.

Article 10 of the ICCPR stipulates that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” This provision complements Article 7 of the ICCPR, which prohibits torture or other cruel, inhuman or degrading treatment or punishment.⁹⁸ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Egypt is also a party, requires State Parties to ensure any individual alleging torture has the right to complain to, and to have their case promptly and impartially examined by, its competent authorities.⁹⁹

The Luanda Guidelines likewise guarantee the right of all persons deprived of their liberty to “lodge a complaint with a competent, independent and impartial authority with a mandate to conduct prompt and thorough investigations.”¹⁰⁰

By reportedly denying the right to appeal detention orders provided in domestic law, Egyptian authorities are violating defendants’ rights.

Further, and critically, the reported failure to investigate allegations of torture and other forms of mistreatment is inconsistent with Egypt’s obligations under international and regional law.

E. Rotation, Release Orders, and Referrals to Trial

Domestic Law

The Criminal Procedure Code sets forth maximum durations for pretrial detention in any single case: six months for defendants accused of a misdemeanor; 18 months for defendants accused of a felony; and two years for defendants accused of a felony punishable by life in prison or a death sentence in cases of first review.¹⁰¹

⁹⁷ General Comment No. 35, ¶ 48.

⁹⁸ Human Rights Committee, General Comment No. 21, U.N. Doc. HRI/GEN/1/Rev.1, Apr. 10, 1992, ¶ 33.

⁹⁹ Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 1465 UNTS 85, [1989] ATS 21, UN Doc. A/RES/39/46, Dec. 10, 1984, Article 13.

¹⁰⁰ Luanda Guidelines, ¶ 22(a).

¹⁰¹ Criminal Procedure Code, Article 143 (In cases where a defendant has already been sentenced to life imprisonment or the death penalty in a particular case and they are appealing the sentence before the

When a defendant is ordered released from pretrial detention, they may be released on their own recognizance; on bail; or subject to probationary measures that would involve house arrest, would obligate the defendant to check-in with the police station on a regular basis, or would restrict their movement to only particular locations.¹⁰² The particular restrictions applied where a defendant is released pending trial are at the discretion of the prosecutor or the judge, depending on who is authorizing/reviewing the detention.¹⁰³

Practice

Trials on the merits of a case are often delayed, if they ever do occur. (Instead, as documented in this report and other sources, extended pretrial detention is a preferred means of punishment.)

At the same time, there is no guarantee of eventual release for many defendants. When a defendant is finally ordered released from pretrial detention, there is a chance that they may not be physically released right away, or at all, due to the practice of *tadweer*. Practically, *tadweer* takes a variety of different forms: (1) adding a defendant to two or more cases when a defendant is first arrested; (2) adding a defendant to another case during their detention in relation to the first case; (3) adding a defendant to another case after the defendant has been ordered released from their first case but before they are physically let go; (4) adding a defendant to another case after the defendant has been physically released or while they are completing probationary measures post-release.¹⁰⁴ Because pretrial detention periods run consecutively rather than concurrently, the authorities' decision to add a single defendant to multiple cases creates scenarios in which indefinite pretrial detention becomes possible; even after a two-year-maximum period ends, another can begin, and so rather than being released, the defendant remains detained. Rotation is not a practice recognized or created by Egyptian law, but rather, one that exists within the loopholes left by the law.¹⁰⁵

El-Sayed described one particularly egregious case he recalled in which his client, who was arrested in 2017, had been subject to rotation on five different occasions. He said: "Between each release from one case and another, he would be disappeared for a period from one month to one month and a half before he was added to a new case." Salma notes another defendant who had been subject to rotation on six occasions and who

Court of Cassation, the two-year maximum on pretrial detention is lifted; in these circumstances, the court can renew pretrial detention in 45 day increments without a maximum time period.).

¹⁰² Criminal Procedure Code, Article 201.

¹⁰³ Criminal Procedure Code, Article 144.

¹⁰⁴ Egyptian Front for Human Rights, "How did the State Security Prosecution revive 'the administrative detention'?", Apr. 13, 2020, *available at* <https://egyptianfront.org/2020/04/how-did-the-state-security-prosecution-revive-the-administrative-detention/>.

¹⁰⁵ The Tahrir Institute for Middle East Policy, "Indefinite Pretrial Detention in Egypt: Rotation and Detention Pending Multiple Cases", Feb. 9, 2021, *available at* <https://timep.org/2021/02/09/indefinite-pretrial-detention-in-egypt-rotation-and-detention-pending-multiple-cases/>.

remained in custody as of the writing of this report. Saeed says: “Unfortunately, [rotation] happens a lot with many clients. That is why the accused and their families no longer see the release orders as good news. They remain scared of rotation and renewed disappearance. Some of my clients were subjected to rotation in more than seven consecutive cases. Another client, a child, was added to six different cases.”

Lawyers report that their clients face identical or near-identical charges in the cases into which they have been rotated, suggesting that these cases are initiated as a pretense to justify continued detention. Much like the initial cases that defendants are detained under, authorities also fail to provide transparent and accessible evidence in the new cases. Egyptian experts conclude that rotation “creates a new reality in which a detainee who would normally be certain that he or she would be released after a maximum detention period, could instead be subject to indefinite detention as authorities continue to add him or her to new cases.”¹⁰⁶

In other cases, according to reports, the authorities take days to process release orders, raising concern that a defendant may be forcibly disappeared, or the SSSP opts to appeal a release order, which can result in the defendant being ordered back into pretrial detention pending the appeal.¹⁰⁷

International and Regional Standards & Application to Egypt’s Law and Practice

Under Article 9(3) of the ICCPR, “[a]nyone arrested or detained on a criminal charge...shall be entitled to trial within a reasonable time or to release.” Likewise, the African Commission’s Fair Trial Principles provides that “[a]nyone who is arrested or detained on a criminal charge...shall be entitled to trial within a reasonable time or to release.” Prolonged pretrial detention may also violate the presumption of innocence as pretrial detention then becomes hard to distinguish from a sentence following a finding of guilt.¹⁰⁸ In interpreting Article 7 of the African Charter,¹⁰⁹ the African Court has expressed its approval of the maxim “justice delayed is justice denied.”¹¹⁰

¹⁰⁶ *Id.*

¹⁰⁷ MENA Rights Group, “The practice of ‘rotation’: how Egypt keeps its dissidents in indefinite detention”, Dec. 14, 2021, *available at* <https://menarights.org/en/articles/practice-rotation-how-egypt-keeps-its-dissidents-indefinite-detention>.

¹⁰⁸ Human Rights Committee, *Cagas v. Philippines*, *supra*, ¶ 7.3 (“[T]he Committee is of the opinion that the excessive period of preventive detention, exceeding nine years, does affect the right to be presumed innocent and therefore reveals a violation of article 14 (2).”).

¹⁰⁹ Article 7 of the African Charter provides for “[t]he right to be tried within a reasonable time by an impartial court or tribunal.” It thus parallels Article 14(3)(c) of the ICCPR. The African Charter does not contain an explicit parallel to Article 9(3), but as discussed, the Fair Trial Principles include this concept.

¹¹⁰ African Court on Human and Peoples’ Rights, *Onyango Nganyi & 9 Others v United Republic of Tanzania*, Comm. No. 006/2013, Mar. 18, 2016, ¶ 127. The African Court has adopted the jurisprudence

The Human Rights Committee has held that if a person already detained on one criminal charge is ordered to be detained on another unrelated criminal charge, “prompt information must be provided regarding the unrelated charge.”¹¹¹ Further, the person must be promptly brought before a judge for control of the second detention.¹¹²

The UN Working Group on Arbitrary Detention has specifically raised concern about the “practice of the Supreme State Security Prosecution of nominally ordering preventive detention pending further investigation but in practice enabling indefinite detention without prospect of trial.”¹¹³ Indeed, the practice of *tadweer* is flatly inconsistent with international and regional standards protecting the right to be tried without undue delay.

of the European Court of Human Rights in assessing whether a delay in bringing a case to trial is reasonable. *See id.*, ¶¶ 136-37.

¹¹¹ General Comment No. 35, ¶ 24.

¹¹² *Id.*, ¶ 32.

¹¹³ UN Working Group on Arbitrary Detention, Opinion No. 14/2020 concerning Amal Fathy, Mohamed Lofty and a minor whose name is known to the Working Group (Egypt), UN Doc. A/HRC/WGAD/2020/14, June 18, 2020, ¶ 52.

SPOTLIGHT ON REMOTE PRETRIAL DETENTION HEARINGS

Pretrial detention renewal hearings in Egypt are now being conducted entirely virtually, making the already abusive pretrial detention process more egregious. What seemingly started as a precautionary public health measure during the COVID-19 pandemic has now become the norm, taking away detainees' right to be physically present during their pretrial detention renewal hearings (and the check that this could provide against abuse), precluding them from consulting with their lawyers privately, and leading to a situation where detainees rarely, if ever, leave the prison complex where they are detained.

In March 2020, the Egyptian authorities announced a series of precautionary public health measures, including the closure of courts, in an attempt to reduce the spread of the COVID-19 virus.¹¹⁴ Detention renewal hearings were also suspended during this time, with detainees kept in notoriously overcrowded prisons where social distancing was near impossible while violating their right to judicial review of their detention.¹¹⁵ Following a decision by the Cairo Appeals Court on April 28, 2020, which lifted the requirement to have defendants present in court for their detention renewal hearings, judicial authorities more or less automatically renewed pretrial detention for hundreds of individuals, according to Amnesty International.¹¹⁶

In October 2020, the Ministry of Justice launched a pilot project that authorized courts to conduct remote hearings for pretrial detention renewals.¹¹⁷ The initial stages of the pilot project, which was touted not only as a step in achieving speedy justice but also an attempt to stem the spread of the COVID-19 pandemic,¹¹⁸ saw the New Cairo Court electronically connected to a number of prisons including Tora and El-Nahda.¹¹⁹ During the implementation of the new directive across Cairo and Alexandria, individuals in pretrial detention appeared before a judge via video-conference, with their lawyer joining from

¹¹⁴ Human Rights Watch, "Egypt: No Pretense of Judicial Review for Hundreds", May 18, 2020, *available at* <https://www.hrw.org/news/2020/05/18/egypt-no-pretense-judicial-review-hundreds>. What was initially proclaimed by the Ministry of Justice to be a two-week suspension, from March 15, 2020, was subsequently extended to early May 2020.

¹¹⁵ *Id.*; Amnesty International, "Egypt: Court arbitrarily extends the pre-trial detention of over 1,600 defendants", May 7, 2020, *available at* <https://www.amnesty.org/en/latest/news/2020/05/egypt-court-arbitrarily-extends-the-pretrial-detention-of-over-1600-defendants/>.

¹¹⁶ Amnesty International, "Egypt: Court arbitrarily extends the pre-trial detention of over 1,600 defendants", May 7, 2020, *available at* <https://www.amnesty.org/en/latest/news/2020/05/egypt-court-arbitrarily-extends-the-pretrial-detention-of-over-1600-defendants/>.

¹¹⁷ Association of Freedom of Thought and Expression, "A Continued Isolation...the Annual Report on the State of Freedom of Expression in Egypt in 2020", Mar. 4, 2021, *available at* <https://afteegypt.org/en/research-en/monitoring-reports-en/2021/03/02/21129-afteegypt.html>; Ahram Online, "Egypt launches new system to hold pretrial detention hearings remotely", Oct. 18, 2020, *available at* <https://english.ahram.org.eg/NewsContent/1/64/388649/Egypt/Politics-/Egypt-launches-new-system-to-hold-pretrial-detenti.aspx>.

¹¹⁸ Ahram Online, "Egypt launches new system to hold pretrial detention hearings remotely", Oct. 18, 2020, *available at* <https://english.ahram.org.eg/NewsContent/1/64/388649/Egypt/Politics-/Egypt-launches-new-system-to-hold-pretrial-detenti.aspx>.

¹¹⁹ *Id.*

the courtroom, without the need for the defendant to be transferred from the pretrial detention facilities.¹²⁰

A year later, on December 20, 2021, the Ministry of Justice issued Decision No. 8901 of 2021, which allows the use of videoconferencing for pretrial detention renewals by courts across Egypt on a permanent basis.¹²¹ While the decision promised that this mode of renewal hearings would “tak[e] into account all legal guarantees,”¹²² it failed to articulate what these legal guarantees actually were, or how they would be protected. Then, in July 2023, the SSSP and prosecuting authorities replicated the process and formalized remote hearings in cases before them, and started conducting renewal sessions via videoconference, which detainees attend from their detention facility instead of in person.¹²³

While Egyptian authorities continue to proclaim the success of these new detention renewal video conference hearings, lawyers interviewed explain that the way that these remote hearings are conducted violates due process and fair trial rights. First, lawyers interviewed noted that it is not possible to communicate with their clients immediately before or during renewal hearings or interrogations. Sara stated that “... since all renewals are done electronically...there is no communication between the lawyers and their clients.” Noora added that “most of the times, we are not even sure if the accused that we represent can hear us.” Commenting on the SSSP’s use of virtual hearings, Sara noted that “[a] week ago, it was possible although difficult to consult with clients. Now, renewals take place electronically and the accused do not even come to the Prosecution, so it is not possible to consult with them in a private setting.”

Second, defense lawyers have acknowledged that they often question their clients’ ability to effectively participate in these remote sessions and hearings. There have been reports of judges asking prison officers to remove detainees from the room from which they attend the remote hearing because detainees were too talkative.¹²⁴ The flip side of this is that some defendants are just too scared to speak freely about the violations they have experienced, with many lawyers noting that they fear for the safety and wellbeing of their

¹²⁰ Again, the Egyptian government cited public health safety as well as security risks and economic efficiency to justify this decision. Egyptian Commission for Rights and Freedoms, “Legal Commentary on Remote Detention Renewal Sessions” (title translated from Arabic), p4, *available in Arabic at* <https://www.ec-rf.net/wp-content/uploads/2022/10/تعليق-قانوني-جلس-عن-بعد.pdf>.

See also Egypt Today, “Egyptian Court holds 1st ‘online hearing session’”, Nov. 5, 2020 *available at* <https://www.egypttoday.com/Article/1/93917/Egyptian-court-holds-1st-‘online-hearing-session’>.

¹²¹ Ashraf Ghaith, “Remote Detention Renewal: Launched by the Ministry of Justice in October, and el-Sisi Orders Its Nationwide Implementation Today” (title translated from Arabic), Almasry Alyoum, Mar. 1, 2021, *available in Arabic at* <https://www.almasryalyoum.com/news/details/2271951>; Egyptian Front For Human Rights, “Human Rights Organizations Condemn Minister of Justice’s Statements: Disregard for the Law and Entrenchment of a Judicial System that Undermines Citizens’ Rights and Freedoms” (title translated from Arabic), Dec. 9, 2020, *available in Arabic at* <https://egyptianfront.org/ar/2020/12/omar-marwan/>.

¹²² Human Rights Watch, “Egypt: Pretrial Detention Renewals by Video”, May 26, 2023, *available at* <https://www.hrw.org/news/2023/05/26/egypt-pretrial-detention-renewals-video>.

¹²³ Human Rights Watch, “Egypt Using Remote Hearings to Isolate Prisoners”, July 6, 2023, *available at* <https://www.hrw.org/news/2023/07/06/egypt-using-remote-hearings-isolate-prisoners>.

¹²⁴ Human Rights Watch, “Egypt: Pretrial Detention Renewals by Video”, May 26, 2023, *available at* <https://www.hrw.org/news/2023/05/26/egypt-pretrial-detention-renewals-video>.

could not discuss the matter with him in secret in order to convince him of the need to submit the communication.¹²⁹

Finally, sometimes, defendants are not able to participate in their remote sessions at all. There have been multiple reports of pretrial detainees being denied the right to join their detention renewal hearing online due to technical malfunctions—in the Badr prison complex, renewal hearings were not convened for more than two weeks between February and March, 2023.¹³⁰ Where the hearing does proceed, often defense lawyers are uncertain as to whether their clients can even hear the proceedings that will determine whether they are to remain behind bars. Lawyer Nour described his experience with the remote renewal hearings: “The accused is called through Zoom, he may respond or not depending on the connection. The hearing begins and the accused might not be able to hear what is being said whether by the lawyer or judge.” As Saeed explained: “[a]t the end of the day, this type of hearings undermines the right to justice for any accused.”

¹²⁹ Interview with Ahmed.

¹³⁰ Egyptian Front for Human Rights, Joint Statement: “Rights Groups Warn of Collective Punishment at Badr Prison: International Committee of the Red Cross and Independent Rights Groups Must be Granted Access to Badr Prison Complex”, Mar. 20, 2023, *available at* <https://egyptianfront.org/2023/03/rights-groups-warn-of-collective-punishment-at-badr-prison-international-committee-of-the-red-cross-and-independent-rights-groups-must-be-granted-access-to-badr-prison-complex/>.

IMPACT OF ABUSIVE APPLICATION OF PRETRIAL DETENTION



A. ON THE DETAINEES AND THEIR FAMILIES

Lawyers interviewed described the grave impact of the pretrial detention process on the mental and physical health of their clients as well as on detainees' families. Indefinite pretrial detention, often facilitated by the practice of *tadweer*, leads to loss of hope, frustration and depression. Lawyer Saeed notes, "...the accused and their families no longer see the release orders as good news. They remain scared of the rotation and renewed disappearance."

As Nahla, a lawyer based in Ismailia and El Sharqia governorate, explained:

Condemned prisoners know that they will be imprisoned for a certain number of years, and they would be waiting to get out of prison. Those in pretrial detention, however, or those subjected to rotations would remain in prison, and would lose hope of getting out, and they would become depressed. For example, one of my clients, a young man, was 18 years old when he was arrested six years ago. He remained in prison, subject to rotation, and he has now, like many others, lost hope that he would get out of prison.

Depression among detainees is widespread, particularly among political prisoners. Malek, a lawyer based in Cairo, says that "detainees become frustrated and depressed, especially those held [in cases of a political nature] without being political activists and not being well aware of the subject."¹³¹ Sara gives the example of a "client who is a member of a left-wing party who was detained on a charge of spreading false news." She adds: "His family informed me that he was in a bad psychological state to the extent that he refused a visit from his parents, and refrained from talking to the rest of the detainees in his cell."¹³² Some detainees also refuse to attend the detention renewal sessions before the prosecutor because they lose hope in "law and justice."

The long periods of imprisonment also lead to isolation from loved ones, and several detainees decided to separate from their spouse or end their marriage for various reasons that may include having no hope for their release.¹³³ In Sara's experience, "a very large proportion of our friends and clients separated from their partners because of the imprisonment, and the larger proportion of them after getting out of prison because the years of imprisonment made the married couple grow apart. Some who are detained for longer than two years would decide to end their marriage and separate because they see no hope for their near release."

¹³¹ Interview with Malek.

¹³² Interview with Sara.

¹³³ Interview with Sara; Interview with El-Sayed.

El-Sayed shares that many families of detainees stop enjoying normal life. Even where families are allowed to visit, some of them are unable to go due to the high cost of visiting prisons.

Many inmates in the new prisons, such as Badr 3, are denied any contact with family; as per one report an inmate attempted to commit suicide after prison officials refused to allow him to contact his family, who were potentially affected by the earthquake in Turkey.¹³⁴

Malek explains that the “absence of human treatment in prisons and the loss of hope for a fair trial, as well as the loss of hope and accumulations... could lead to suicide.” The dire need for adequate health care facilities, particularly mental healthcare, is exacerbated by the fact that detainees may be tortured or disappeared prior to their formal detention.¹³⁵ Ahmed explains that mental health conditions continue even after they are released, “[detainees] remain in permanent isolation and cannot go about their lives normally.”

Egypt’s prisons are notorious for inhumane conditions and lack of access to healthcare facilities, including lack of mental healthcare support.¹³⁶ As Saeed shared: “Imprisonment generally leads to physical health problems and if someone enters the prison with an onset of symptoms of a particular disease, these will get worse after imprisonment due to the bad psychological state and lack of healthcare.” He gives the example of one client who discovered a breast tumor while in detention and another who discovered a tumor in her womb, after she had been in pretrial detention for five years without being referred to trial. She had to undergo a hysterectomy; she was, however, “scared the news would affect her family so she did not tell them about her illness.” Noora said that many prisoners only found out they had cancer or other chronic illnesses after they were released from prison.

B. ON THE LAWYERS

The practices surrounding pretrial detention in cases of a political nature in Egypt impair lawyers’ ability to discharge their functions during the entire pretrial life cycle of these cases, starting from arrest, interrogation, and subsequent pretrial detention, detention renewal hearings and through the entire duration of pretrial detention. As explained in the sections above, the lawyers interviewed report that they are not notified of the arrest of their client or the charges against them (at least until the interrogation) and they have no access to documents until the trial. Further, they are unable to present arguments during detention renewal hearings and have lost contact with their clients in prison as a result of remote hearings. Combined, these factors not only lead to an erosion of the rights of the detainees, but also significantly impact the rule of law.

Lawyers have to navigate myriad restrictions in order to represent their clients, and even then, are not able to do so effectively. Sara states that during interrogations, “it is

¹³⁴ Middle East Eye, “Egypt: Why inmates are dying in Sisi’s new ‘model’ prison”, Mar. 1, 2023, *available at* <https://www.middleeasteye.net/news/egypt-why-inmates-dying-model-prison-badr>.

¹³⁵ Interview with Noora.

¹³⁶ Amnesty International, “Egypt: ‘What do I care if you die?’: Negligence and denial of health care in Egyptian prisons”, Jan. 25, 2021, *available at* <https://www.amnesty.org/en/documents/mde12/3538/2021/en/>.

forbidden to write down any information,” so she has to “remember it all until I leave and take notes at my office.”

Nahla explains that “electronic renewal [has] eliminated any opportunity for communication with the defendants, making it practically impossible to engage in confidential or private discussions between the lawyer and their client.” Many times she attends renewal hearings, only to discover that her clients are not even present. These restrictions she says, “significantly impacts my work as a lawyer.” In some cases, lawyers are not even allowed to attend detention renewal hearings.¹³⁷

With laptops and mobiles prohibited at the SSSP facilities and courtrooms, lawyers face difficulties doing their job and are cut off from the outside world. Saeed states that it is difficult to concentrate on his work when every time he has to make a call, he has to leave the building. These restrictions also have grave personal consequences. He recalls one tragic instance:

Once, I remained late at Badr Court until 6, and I was surprised that my brother called many times to notify me that my uncle passed away. I could not attend the funeral because I was isolated at the court all day long.

Given the risks lawyers themselves are under, this isolation makes them worry for their own safety, that something may happen to them and “no one would know.”¹³⁸ Saeed often receives calls from “the wives or relatives of other lawyers worried about their loved ones because they took too long at the prosecution and could not respond to their calls.”

The lawyers interviewed spoke to the chilling effect this has on their profession. Sara explains that many lawyers are “afraid to talk [publicly] about any violation occurring during hearing,” and that she does “not feel free in general within the Public Prosecutor’s office.” Noora echoes this feeling saying, “I do not feel free [to present arguments], I am always under restrictions.”

This chilling effect is exacerbated by the fact that lawyers are in fact sometimes themselves arrested in the course of or due to the exercise of their profession. As TIMEP has previously reported, lawyers too can face terrorism-related charges and the corresponding risk of enforced disappearance and mistreatment, for simply performing their duties and representing their clients.¹³⁹ One such case is the September 2019 arrest and detention of Mohamed Al-Baqer, a prominent human rights lawyer and director of the Adalah Center for Rights and Freedoms. Al-Baqer was arrested while representing detained human rights activist Alaa Abdelfattah before the SSSP. During Abdelfattah’s questioning, the prosecutor informed Al-Baqer that he too was under arrest. He was subsequently charged in two separate cases based on allegations that included “joining

¹³⁷ Interview with Saeed (“Lawyers were prevented from attending with defendants, such as the [...] case. Lawyers were prevented from attending the first of 5 renewal hearings. Also, the case of [...] who appeared before the State Security Prosecutor’s Office in March 2016 and was handcuffed and blindfolded, and her lawyers were not allowed to accompany her.”).

¹³⁸ *Id.*

¹³⁹ TIMEP and ICJ Report.

and funding a terrorist organization.”¹⁴⁰ He was released in July 2023 after receiving a presidential pardon.

When asked if he felt free to present a defense of clients held in pretrial detention, Saeed stated that “as the arrests of lawyers have been on the rise lately, even from inside the Prosecution building, like what happened with Al-Baqer, we no longer feel free to present the defense.” El-Sayed reported similar concerns. He explains that previously, “[w]hen we saw someone passing out or being tortured inside the prosecution, we would insist on accompanying him and proving all the violations he endured. Whereas now, we look the other way.”

El-Sayed was subject to pretrial detention himself on terrorism-related charges. He was subject to many threats prior to his arrest, and believes he was targeted because of his work as a lawyer. He explains that “the threats affected my work, I could not practice my profession freely.” Like the clients he has represented, his detention was also renewed on paper—the prosecution did not bring him in for the hearing.

¹⁴⁰ *Id.*

RECOMMENDATIONS



The interviews conducted for this report not only reaffirm the extensive abuses and flaws in Egypt's pretrial detention laws and practice, but also reveal the enormous hurdles that defense lawyers face, which in turn subject them to individual risk and harm, further diminish detainees' ability to challenge their detention, and contribute to the deterioration of the criminal justice system. Urgent reform is needed.

TIMEP and TrialWatch call on Egypt to abide by its constitutional, regional, and international legal obligations and to:

- End enforced disappearances and ensure that all individuals arrested are promptly brought before a judge within 24 hours, as provided under Egyptian law, in all cases and afforded their rights including the right to be informed of the reasons for their arrest and the charges against them, the right to a lawyer, and the right to communicate with their families;
- Amend the relevant provisions of the Anti-Terrorism Law that carve out an exception to allow incommunicado detention in violation of Egypt's constitution;
- Ensure timely investigation and resolution in all cases of enforced disappearance and hold officials and authorities complicit in it to account;
- Repeal laws that allow prosecutors to authorize and extend pretrial detention;
- Prioritize non-custodial alternatives to pretrial detention, in cases where legally necessary, to ensure that it becomes a measure of last resort across the criminal justice system;
- Ensure defendants are able to physically attend detention renewal hearings and communicate with their counsel confidentially; likewise, ensure lawyers are able to attend detention renewal hearings without undue restrictions;
- Ensure that judges deciding on detention memorialize their decisions in writing, including consideration of whether detention is necessary and proportionate, and make those decisions available to the defense;
- Ensure that statutory limits to the duration of pretrial detention are enforced and are not circumvented, including by ending the practice of *tadweer*, and ensuring that detained individuals are brought to trial expeditiously;
- Ensure that appeals of pretrial detention orders are given due consideration and ensure that allegations of torture and mistreatment in detention are meaningfully investigated;

- Ensure that lawyers are able to carry out their duties “without any harassment, undue interference or fear of arbitrary criminal prosecution and conviction or of other retaliatory measures.”¹⁴¹

¹⁴¹ United Nations Human Rights Office of the High Commissioner, “Basic Principles on the Role of Lawyers”, adopted Sep. 7, 1990, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Principle 16.